TEXAS REGISTER

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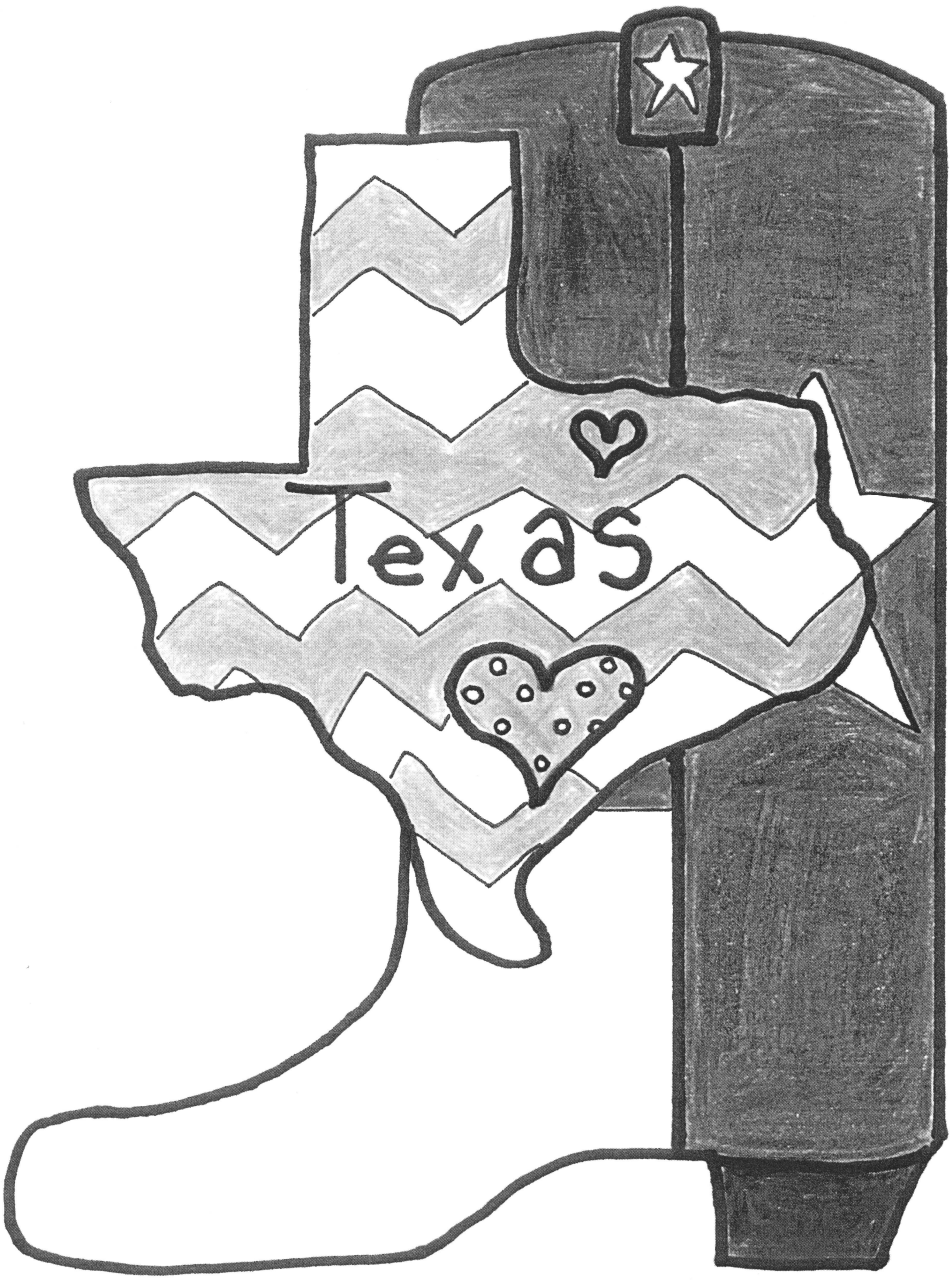
Texas

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 November 10, 2020

Appointed to the Texas Juvenile Justice Board for a term to expire February 1, 2023, James P. "Pat" Sabala Henry of Morton, Texas (replacing Stephanie A. Moreno of Beeville, who resigned).

Appointed to the Texas Department of Housing and Community Affairs, for a term to expire January 31, 2025, Ajay K. Thomas of Austin, Texas (replacing Maria "Asusena" Reséndiz of Petersburg, whose term expired).

Designated as presiding officer of the Texas Department of Housing and Community Affairs, for a term to expire at the pleasure of the Governor, Leopoldo R. "Leo" Vasquez, III of Houston (Mr. Vasquez is replacing James B. "J.B." Goodwin, Jr. of Austin).

Appointments for November 12, 2020

Appointed to the Jefferson and Orange County Board of Pilot Commissioners, for a term to expire August 22, 2022, Charles E. "Charlie" Holder of Vidor, Texas (Mr. Holder is being reappointed).

Appointed to the Jefferson and Orange County Board of Pilot Commissioners, for a term to expire August 22, 2022, William G. "Will" Jenkins, III of Beaumont, Texas (Mr. Jenkins is being reappointed).

Greg Abbott, Governor

TRD-202004867

♦ ♦ ♦

Proclamation 41-3782

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have issued proclamations renewing the disaster declaration for all Texas counties; and

WHEREAS, the Commissioner of the Texas Department of State Health Services, Dr. John Hellerstedt, has determined that COVID-19 represents a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, a state of disaster continues to exist in all counties due to COVID-19;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for all counties in Texas.

Pursuant to Section 418.017, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to cope with this declared disaster, I hereby suspend such statutes and rules for the duration of this declared disaster for that limited purpose.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 6th day of November, 2020.

Greg Abbott, Governor

TRD-202004839

♦ ♦ ♦

Proclamation 41-3783

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on August 23, 2017, certifying that Hurricane Harvey posed a threat of imminent disaster for Aransas, Austin, Bee, Brazoria, Calhoun, Chambers, Colorado, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Harris, Jackson, Jefferson, Jim Wells, Karnes, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, Nueces, Refugio, San Patricio, Victoria, Waller, Wharton, and Wilson counties; and

WHEREAS, the disaster proclamation of August 23, 2017, was subsequently amended on August 26, August 27, August 28, and September 14 to add the following counties to the disaster proclamation: Angelina, Atascosa, Bastrop, Bexar, Brazos, Burleson, Caldwell, Cameron, Comal, Grimes, Guadalupe, Hardin, Jasper, Kerr, Lee, Leon, Madison, Milam, Montgomery, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Washington, and Willacy; and

WHEREAS, on September 20, 2017, and in each subsequent month effective through today, I issued proclamations renewing the disaster declaration for all counties listed above; and

WHEREAS, due to the catastrophic damage caused by Hurricane Harvey, a state of disaster continues to exist in those same counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for the 60 counties listed above.

Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 6th day of November, 2020.

Greg Abbott, Governor

TRD-202004840

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THE ATTORNEY GENERAL

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

An index to the full text of these documents is available on the Attorney General's website at https://www.texas.attorneygeneral.gov/attorney-general-opinions. For information about pending requests for opinions, telephone (512) 463-2110.

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

Requests for Opinions

RQ-0386-KP

Requestor:

The Honorable Susan Deski

Burleson County Attorney

100 West Buck Street, Suite 402

Caldwell, Texas 77836

Re: Whether simultaneous service as county sheriff and municipal fire marshal violates article XVI, section 40 of the Texas Constitution or the common-law doctrine of incompatibility (RQ-0386-KP)

Briefs requested by December 14, 2020

RQ-0387-KP

Requestor:

The Honorable Luiz V. Saenz

Cameron County District Attorney

964 East Harrison Street, Fourth Floor

Brownsville, Texas 78520

Re: Whether section 3000.02 of the Government Code prohibits political subdivisions from adopting paint color and pattern requirements (RQ-0387-KP)

Briefs requested by December 16, 2020

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-202004848
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: November 17, 2020

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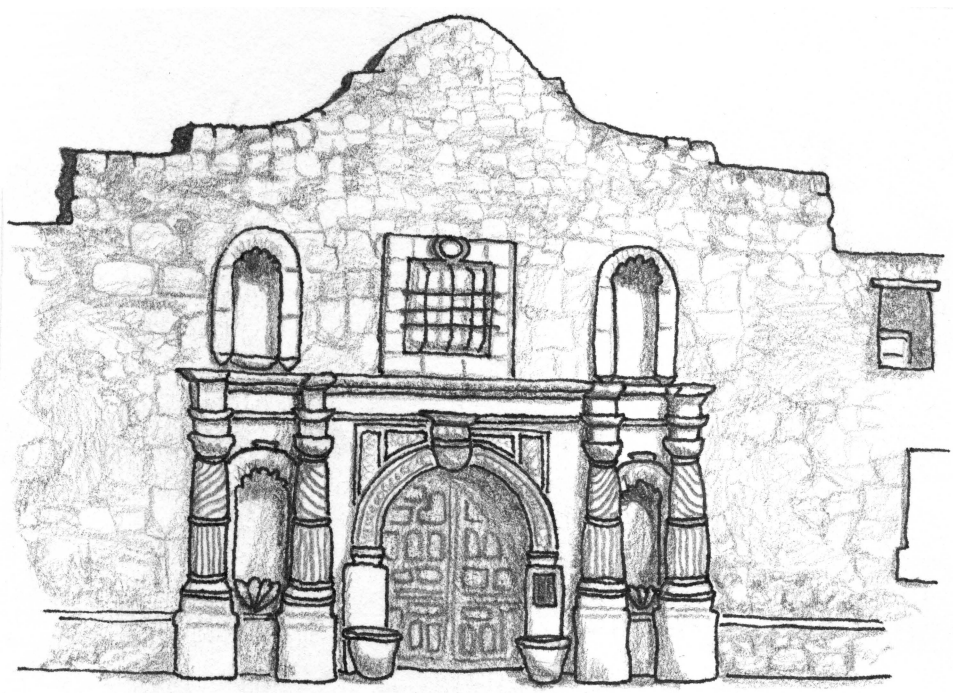

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Request/Question

Whether a for-profit limited liability company (LLC) may operate a contribution-processing website platform to be used by third parties to solicit, collect, and disperse political contributions to candidates as designated by third parties without having to register and report with the Commission. (AOR-637)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800 or opinions@ethics.state.tx.us.

TRD-202004855
J.R. Johnson
General Counsel
Texas Ethics Commission
Filed: November 18, 2020

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

TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 1. LIBRARY DEVELOPMENT

SUBCHAPTER C. MINIMUM STANDARDS FOR ACCREDITATION OF LIBRARIES IN THE STATE LIBRARY SYSTEM

13 TAC §1.87

The Texas State Library and Archives Commission (Commission) adopts on an emergency basis new §1.87, Emergency Waiver of Accreditation Criteria, in response to COVID-19. As authorized by Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency adoption is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Emergency Rule authorizing the Commission to waive one or more standards for library accreditation in an accreditation year if a library was unable to meet that standard for reasons related to COVID-19.

The COVID-19 pandemic has caused months of significant disruptions in library service and operations throughout the state of Texas. Although local responses varied widely, many public libraries closed their doors and ceased daily operations in March. In many cases, programming stopped, staff were furloughed, and circulation and acquisition of materials halted. While library staff adapted to new circumstances by offering some services online, many buildings remained closed with limited in-person public service. Though some libraries have begun to re-open, many have dramatically reduced the number of patrons allowed in the building, introduced quarantines of returned books, and require new safety procedures that limit public use of technology. Many libraries are not fully open even now; for example, some may only be offering curbside service.

Government Code, §441.127 authorizes the Commission to set accreditation standards for libraries so that they are eligible for Library Systems membership. The Commission established these standards in Texas Administrative Code, Title 13, Part 1, Subchapter C. The Commission anticipates that libraries may face significant difficulty meeting certain standards, including, but not limited to, §1.74 (relating to Local Operating Expenditures) and §1.81 (relating to Quantitative Standards for Accreditation of Library), particularly the subsections pertaining to minimum expenditures and weekly hours open for service. Existing rules authorize probational accreditation if a library fails to meet not more than one of the requirements in §1.81. However, the library must equal or exceed its previous level of effort on the deficient requirement at the end of the probational accreditation period to regain full system membership, and indications are that the pandemic will have a severe economic impact that may last for an extended period. Furthermore, the rule does not authorize probational accreditation for failure to meet any other requirement established by a different rule in Subchapter C.

Internal studies indicate that several hundred libraries could face potential loss of accreditation. Public libraries rely on accreditation for access to the TexShare databases, grants, and special training programs. Adoption of this emergency rule will provide assurances to libraries that they will not necessarily lose accreditation in the next accreditation year if they fail to meet an accreditation standard due to a situation created by the COVID-19 pandemic. Such assurances could, in turn, prevent or lessen budget cuts based on assumptions that libraries will lose accreditation.

SIMULTANEOUS RULEMAKING

Under Government Code, §2001.034, the emergency rule may be effective for 120 days, and may be renewed once for an additional 60 days. Along with this emergency rule, and because disasters, public health emergencies, and other extraordinary hardships could occur at any time, the Commission is also proposing this rule in compliance with Government Code, §2001.023 to ensure continued application of this (or similar) standard. Both this adoption and the notice of proposal are being published in the same issue of the *Texas Register.*

STATUTORY AUTHORITY

The emergency rule is adopted under Government Code, §2001.034, Government Code, §441.006, and Government Code, §441.127. Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Government Code, §441.006(a)(2) authorizes the Commission to adopt policies and rules to aid and encourage the development of and cooperation among all types of libraries, including public, academic, special, and other types of libraries.

Government Code, §441.127 authorizes the Commission to establish accreditation standards for libraries.

The statutory provisions affected by the emergency rule are those set forth in Government Code, Chapter 441.

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

§1.87. Emergency Waiver of Accreditation Criteria.

One or more accreditation criteria in this subchapter may be waived if a library shows good cause for failure to meet the criteria. For purposes of this subchapter, good cause means a public health emergency, including, but not limited to a pandemic or epidemic; a natural or man-made disaster, including, but not limited to a tornado, hurricane, flood, wildfire, explosion, or chemical spill; or other extraordinary hardship which is beyond the control of the library as determined by the agency.

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

Filed with the Office of the Secretary of State on November 10, 2020.

TRD-202004762
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Effective date: November 10, 2020
Expiration date: March 9, 2021
For further information, please call: (512) 463-5591

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 306. BEHAVIORAL HEALTH DELIVERY SYSTEM

SUBCHAPTER Z. EMERGENCY RULEMAKING

26 TAC §306.1351

The Health and Human Services Commission is renewing the effectiveness of emergency new §306.1351 for a 60-day period. The text of the emergency rule was originally published in the August 7, 2020, issue of the *Texas Register* (45 TexReg 5461).

Filed with the Office of the Secretary of State on November 13, 2020.

TRD-202004814
Nycia Deal
Attorney
Health and Human Services Commission
Original effective date: July 23, 2020
Expiration date: January 18, 2021
For further information, please call: (512) 468-1729

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 30. MEDICAID HOSPICE PROGRAM

SUBCHAPTER B. ELIGIBILITY REQUIREMENTS

40 TAC §30.14

The Department of Aging and Disability Services is renewing the effectiveness of emergency amended §30.14 for a 60-day period. The text of the emergency rule was originally published in the July 31, 2020, issue of the *Texas Register* (45 TexReg 5265).

Filed with the Office of the Secretary of State on November 13, 2020.

TRD-202004818
Nycia Deal
Attorney
Department of Aging and Disability Services
Original effective date: July 18, 2020
Expiration date: January 13, 2021
For further information, please call: (512) 407-3269

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 393. INFORMAL DISPUTE RESOLUTION AND INFORMAL RECONSIDERATION

1 TAC §§393.1 - 393.3

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §393.1, concerning Informal Dispute Resolution for Nursing Facilities and Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID); §393.2, concerning Informal Dispute Resolution for Assisted Living Facilities; and new §393.3 concerning Informal Dispute Resolution for Texas Home Living and Home and Community-based Service providers.

BACKGROUND AND PURPOSE

The purpose of the amendment to §393.1 is to comply with Senate Bill (S.B.) 304, 84th Legislature, Regular Session, 2015, which modified §531.058 Texas Government Code by requiring HHSC to contract with a disinterested non-profit organization to perform Informal Dispute Resolution (IDR) reviews for nursing facilities. To foster consistency, all three facility types IDR serves were included in the procurement. Additionally, amendments to this rule also align with House Bill (H.B.) 2025, 85th Legislature, Regular Session, 2017, which modified Texas Health and Safety Code Chapters 242, 247, and 252. H.B. 2025 required a system to be developed to record and track the severity and scope of licensure violations for Intermediate Care Facilities (ICF/IIDs) and Assisted Living Facilities (ALFs).

The purpose of the amendment to §393.2 is to comply with S.B. 924, 85th Legislature, Regular Session, 2017, which modified Texas Health and Safety Code §247.051, concerning the IDR process for ALFs. This statute was modified to include the language in Texas Government Code §531.058 from S.B. 304 regarding the outsourcing of the IDR process to ensure it was also required of ALFs. Other modifications to that statute included provisions for Assisted Living Facility providers to be able to obtain documentation regarding the survey/investigation. Additionally, amendments to this rule also align with H.B. 2025.

The purpose of the new §393.3 is to comply with H.B. 2590, 85th Legislature, Regular Session, 2017, which modified Human Resources Code by adding a new section §161.0892. This new section directs HHSC to establish and outsource an IDR process for Texas Home Living (TxHmL) and Home and Community-based Service (HCS) providers.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §393.1(b) specifies the name of the program and deletes text related to due dates falling on a Saturday, Sunday or legal holiday. The text is unnecessary because it is already included by reference in another subsection. The amendment also adds "official" in front of the statement of deficiencies/violations to clarify what initiates the opportunity for the IDR process. Subsection 393.1(d) is revised to remove the unnecessary text related to due dates falling on a Saturday, Sunday or legal holiday, as this is already included by reference in another subsection. This revision also removes the requirement for facilities to submit two copies of the rebuttal letter and supporting documentation, as that is no longer customary practice. Additionally, minor edits are made for clarity. The revision to §393.1(e) removes the requirement which specifies how a facility's supporting documentation is to be submitted. Minor edits are made for clarity. The revision to §393.1(g) rearranges and renumbers the paragraphs and subparagraphs to create a new subsection (h) for clarity. The revision also changes the availability of review of severity and scope to include ICF/IIDs. H.B. 2025 required HHSC to develop definitions of severity and scope and a system to record and track the severity and scope of licensure violations by certain facilities, including ICF/IIDs. Previously, severity and scope was not assigned to ICF/IID licensure violations and therefore, there was no opportunity to dispute it in an IDR. The subsections are relabeled to account for the new subsection. The revision to §393.1(i) deletes text regarding the method in which IDR receives information from the State survey agency, and the reference to IDR operating procedures.

New subsection (m) is added to §393.1 to provide a timeframe in which all information must be received.

The revision to current §393.1(m) modifies the verbiage to indicate participating in an IDR conference, and deletes telephone and face-to-face as the types of conferences to expand the types of conferences that may be offered. The revision to §393.1(n) deletes telephone and face-to-face as the types of conferences offered and adds that the conference may be scheduled by a designee. The revision to §393.1(o) replaces "emphasize" with "present" which is more suitable to the nature of an IDR conference. Additionally, the revision removes "new" as the reference to the information submitted in an IDR and specifies the types of information (Statement of Deficiencies/Licensing Violations, submitted in the provider's rebuttal letter, or response(s) to shared information) for clarity. Last, the revision clarifies the nature of questioning that is acceptable in IDR conferences.

The revision to §393.1(p) removes the text related to due dates falling on a Saturday, Sunday, or legal holiday that is unneces-

sary because it is already included by reference in another subsection. The revision also changes "decision" to "recommendation" to adhere to Federal guidance. A minor formatting edit is made to §393.1(q). The revision to §393.1(s) changes "decision" to "recommendation" and names the specific authority as the State survey agency, to revise an IDR recommendation in accordance with Federal guidance.

New subsection (v) is added to comply with the legislative mandate from S.B. 304, which required HHSC to contract IDR functions to a disinterested non-profit organization, and with relevant Federal guidance.

The proposed amendment to §393.2(a) removes "or its designee" as there is no other governing authority that cites licensure violations against ALFs. The revision to §393.2(b) specifies the name of the program and deletes text related to due dates falling on a Saturday, Sunday or legal holiday. The text is unnecessary because it is already included by reference in another subsection. The revision also adds "official" in front of the statement of violations to clarify what initiates the opportunity for the IDR process. The revision to §393.2(d) also removes the unnecessary text related to due dates falling on a Saturday, Sunday or legal holiday and the requirement for facilities to submit two copies of the rebuttal letter and supporting documentation, as that is no longer customary practice. Minor edits are made for clarity. The revision to §393.2(e) removes the requirement which specifies how a facility's supporting documentation is to be submitted and minor edits are made for clarity. The revisions to §393.2(g) are consistent with the revisions to Texas Health and Safety Code as a result of S.B. 924. The bill removed language that specified information to be considered in the IDR process. The language now indicates that full consideration will be given to all factual arguments raised in the IDR process. The revisions to §393.2(h) are consistent with the revisions to Texas Health and Safety Code as a result of S.B. 924. The language was modified to exclude references to IDR staff, as the process is required to be outsourced.

New subsection (i) and (j) are added to comply with the revisions to Texas Health and Safety Code as a result of S.B. 924. Subsection (i) provides a provision for both parties in the dispute to be able to respond to information presented in the IDR process. Subsection (j) provides that the State survey agency bears the burden of proof when proving a violation of a standard. The subsections are relabeled to account for the new subsections.

The revision to §393.2(i) adds language to indicate that a violation must first be established by the State survey agency and rearranges the paragraphs into new subsection (l). Paragraphs (5) and (6) are added to provide the availability of review of severity and scope as H.B. 2025 required HHSC to develop definitions of severity and scope and a system to record and track the severity and scope of licensure violations by certain facilities, including ALFs. Previously, severity and scope was not assigned to ALF licensure violations and therefore, there was no opportunity to dispute it in an IDR. The revision to §393.2(k) deletes text regarding the method in which IDR receives information from the State survey agency, and the reference to IDR operating procedures. The revision to §393.2(m) changes "the ALF or the State survey agency" to "either party in the dispute."

New subsection (q) provides a timeframe in which all information must be received.

The revision to §393.2(o) modifies the verbiage to indicate participation in an IDR conference and deletes telephone and face-to-face as the types of conferences to expand the types of conferences that may be offered. The revision to §393.2(p) deletes telephone and face-to-face as the types of conferences offered and adds that the conference may be scheduled by a designee. The revision to §393.2(q) replaces "emphasize" with "present" which is more suitable to the nature of an IDR conference. Additionally, the amendment removes "new" as the reference to the information submitted in an IDR and specifies the types of information (Statement of Licensing Violations, submitted in the provider's rebuttal letter, or response(s) to shared information) for clarity. Last, the amendment clarifies the nature of questioning that is acceptable in IDR conferences. The revision to §393.2(r) removes the text related to due dates falling on a Saturday, Sunday or legal holiday that is unnecessary because it is already included by reference in another subsection. The amendment also changes "decision" to "recommendation" to ensure consistency in the IDR process. A minor formatting edit is made to §393.2(s).

New subsection (y) is added to comply with the legislative mandate from S.B. 924 which required HHSC to contract the IDR function to a disinterested organization.

Proposed new §393.3(a) establishes the new IDR process for HCS and TxHmL waiver providers. Subsections 393.3(b)-(f) establish timeframes for submitting IDR materials, and subsection (g) describes potential outcomes of an IDR. Limitations in the IDR process are described in subsection (h). Subsection (i) states the necessary information the IDR Department must receive from the State survey agency to process an IDR request. Subsections (j)-(l) discuss the timelines for receiving additional information in IDR, and the requirements for sharing information with all parties. The prohibition against ex parte communications is described at (m).

Subsections (n)-(p) discuss the availability of IDR conferences to the provider, the deadline by which an IDR conference must occur, and the requirements for the IDR conferences. The deadline by which an IDR must be completed is stated at (q). Subsection (r) requires that timeframes in the IDR process be computed in accordance with Texas Government Code §311.014. The requirement for IDR participants to comply with operating procedures is discussed at (s). Subsection (t) permits the State survey agency to revise an IDR recommendation should it violate a federal law, regulation, or State of Texas rule. Last, subsection (u) complies with the legislative mandate by H.B. 2590 to contract the IDR function to a disinterested organization.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that during the first five-year period the rules are in effect, there will be a fiscal impact to state government of an estimated additional cost of $591,694 General Revenue (GR) ($591,695 Federal Funds (FF), $1,183,389 All Funds (AF)) for State Fiscal Year (SFY) 2021, $1,014,333 GR ($1,014,334 FF, $2,028,667 AF) for SFY 2022, $1,011,833 GR ($1,011,834 FF, $2,023,667 AF) for SFY 2023, $1,014,333 GR ($1,014,334 FF, $2,028,667 AF) for SFY 2024 and $1,011,833 GR ($1,011,834 FF, $2,023,667 AF) for SFY 2025.

Enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of local government.

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rules will create a government program;

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

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

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

(5) the proposed rules will create a new rule;

(6) the proposed rules will not repeal existing rules;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons, and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT

Karen Ray, HHSC Chief Counsel, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result is ensuring an independent third party is conducting the IDR reviews.

Trey Wood has also determined that for the first five years the rules are in effect there are no anticipated economic costs to persons required to comply with the proposed rules because the proposal does not impose and new costs or fees on persons required to comply.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Allison Levee, Director, by email to InformalDisputeResolution@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed by midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R093" in the subject line.

STATUTORY AUTHORITY

The proposed amendments and new rule are authorized by Texas Government Code §531.038(a), which provides that the HHSC Executive Commissioner by rule establish an informal dispute resolution process that must provide for adjudication by an appropriate disinterested person of disputes relating to a proposed enforcement action or related proceeding of the commission under Section 32.021(d), Human Resources Code, or the Department of Aging and Disability Services or its successor agency under Chapter 242, 247, or 252, Health and Safety Code; and Texas Human Resources Code §161.0892(a) that provides that the Executive Commissioner of HHSC by rule establish an informal dispute resolution process for HCS and TxHmL waiver providers.

The amendments and new sections affect Texas Government Code §531.058, Texas Health and Safety Code §247.058, and Texas Human Resources Code §161.0892.

§393.1. Informal Dispute Resolution for Nursing Facilities and Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID).

(a) The Texas Health and Human Services Commission (HHSC) provides an informal dispute resolution (IDR) process for nursing facilities and intermediate care facilities for individuals with an intellectual disability or related conditions (ICF/IID) (hereinafter referred to collectively as "facility") through which a facility may dispute deficiencies/violations cited against that facility by the State survey agency, or its designee.

(b) The HHSC IDR Department must receive a facility's written request for an IDR no later than the tenth [~~10th~~] calendar day after the facility's receipt of the official statement of deficiencies/violations from the State survey agency, or its designee. [~~If the 10th calendar day falls on a Saturday, Sunday, or legal holiday, the due date becomes the following business day.~~] The facility must submit its written request for an IDR on the form designated for that purpose by HHSC. HHSC will make that form publicly available, e.g., maintained on the HHSC website.

(c) Within three business days of its receipt of the facility's written request for an IDR, HHSC will notify the facility and the State survey agency's regional office under which the facility operates of its receipt of the request.

(d) Within five calendar days of HHSC's receipt of the facility's request for an IDR, HHSC must receive from the facility [~~two copies of~~] the facility's rebuttal letter and attached supporting documentation. [~~If the 5th calendar day falls on a Saturday, Sunday, or legal holiday, the due date becomes the following business day.~~] The rebuttal letter must contain:

(1) a list of the deficiencies/violations disputed (only those deficiencies/violations listed on the IDR request form and addressed in the rebuttal letter and supporting [~~letter/supporting~~] documentation will be reviewed);

(2) the reason or reasons [~~reason(s)~~] each deficiency/violation is disputed; and

(3) the outcome desired by the facility for each disputed deficiency/violation.

(e) The facility submits its supporting documentation or information in the following format. [~~:~~]

(1) Organize the attachments by deficiency/violation and cross-reference to the disputed deficiency/violation in the rebuttal letter.

(2) Ensure all information is labeled and legible.

(3) Highlight information relevant to the disputed deficiency/violation, such as a particular portion of a narrative.

(4) Describe the relevance of the documentation or information [~~documentation/information~~] to the disputed deficiency/violation.

(5) Do not de-identify documents that name residents referenced in disputed deficiencies/violations.

[~~(6) Submit supporting documentation or information by regular mail, hand delivery, or overnight delivery. HHSC will not review supporting documentation submitted by facsimile transmission.~~]

(f) If the facility substantially complies with the procedures set out in subsections (d) and (e) of this section, HHSC will proceed with its review of the facility's IDR request.

(g) It is the facility's responsibility to present sufficient credible information to HHSC to support the outcome requested by the facility.

(h) [~~(1)~~] Possible outcomes of an IDR for nursing facilities and ICF/IID are:

(1) [~~(A)~~] a determination that there is insufficient evidence to sustain a deficiency/violation;

(2) [~~(B)~~] a determination that there is insufficient evidence to sustain a portion or a finding of a deficiency/violation;

(3) [~~(C)~~] a determination that there is sufficient evidence to sustain a deficiency/violation; or

(4) [~~(D)~~] a determination that there is insufficient evidence to sustain the deficiency/violation as cited but that there is sufficient evidence to sustain a different citation.

[~~(2) In addition to the outcomes stated in paragraph (1) of this subsection, possible additional outcomes of an IDR for nursing facilities only include:~~]

(5) [~~(A)~~] a determination that there is insufficient evidence to sustain the severity and scope assessment but that there is sufficient evidence to sustain a reduced severity and scope assessment (for Immediate Jeopardy or Substandard Quality of Care only); or

(6) [~~(B)~~] a determination that there is sufficient evidence to sustain the severity and scope assessment as cited.

(i) [~~(h)~~] HHSC will not conduct an IDR based on alleged surveyor misconduct, alleged State survey agency failure to comply with survey protocol, complaints about existing federal or State standards, or attempts to clear previously corrected deficiencies/violations.

(j) [~~(i)~~] Upon receipt of the facility's IDR request, the State survey agency must submit to HHSC [~~by means allowing confirmation of HHSC's receipt, e.g., overnight delivery or electronic mail,~~] the following supporting documentation [~~as specified in the IDR operating procedures~~]:

(1) resident identifier list;

(2) report of contact; and

(3) Automated Survey Processing Environment (ASPEN) event ID number.

(k) [~~(j)~~] Any information related to an IDR request that is received by HHSC from either the facility or the State survey agency will be made available by HHSC to the opposing party. Parties have until the end of the second business day after receipt of such shared IDR information to respond to HHSC about that information. HHSC will share any responses with the opposing party.

(l) [~~(k)~~] HHSC may request additional information from the facility and/or the State survey agency. Both parties will be notified of the request for additional information and have until the end of the second business day after notification to respond to the request. The opposing party will be provided with copies of the response submitted to HHSC.

(m) All responses to shared information as described in subsections (j) and (k) of this section must be received no later than the tenth calendar day after the facility's rebuttal letter and supporting documentation are submitted.

(n) [~~(l)~~] Ex parte communications by the facility or by the State survey agency with HHSC personnel conducting the IDR are prohibited.

(o) [~~(m)~~] An eligible facility may participate in an [~~receive a telephone or face-to-face~~] IDR conference provided that the facility requested an IDR conference on the IDR request form.

(p) [~~(n)~~] Any [~~telephone or face-to-face~~] IDR conference will be scheduled by HHSC, or its designee on or before the 22nd calendar day after HHSC received the IDR request. If the facility is unable to participate on the scheduled date, the IDR conference will be cancelled, and the IDR will continue as though no conference had been requested.

(q) [~~(o)~~] The IDR conference is an informal opportunity for an eligible facility to present [~~emphasize~~] important information previously submitted in the facility's rebuttal letter or responses [~~response(s)~~] to shared information. The facility and the State survey agency may attend any IDR conference, but neither party may present [~~new~~] information that was not previously included in the Statement of Deficiencies/Licensing Violations, submitted in the provider's rebuttal letter, or responses to shared information as set forth in subsections (j), (k), and (l) of this section. While the facility may ask clarifying questions related to the information in the Statement of Deficiencies/Licensing Violations, the questions are strictly limited to the review in question.

(r) [~~(p)~~] HHSC will complete the IDR no later than the 30th calendar day after its receipt of the facility's written request. [~~If the 30th calendar day falls on a Saturday, Sunday or legal holiday, the due date becomes the following business day.~~] The IDR recommendation [~~decision~~] shall be in writing, address all the issues raised by the facility, and explain the rationale for the recommendation [~~decision~~].

(s) [~~(q)~~] The time frames designated in the IDR process shall be computed in accordance with Texas Government Code §311.014[~~, Texas Government Code~~].

(t) [~~(r)~~] HHSC may issue and enforce operating procedures concerning the IDR process and the conduct of IDR participants. IDR participants must comply with any such procedures. HHSC may deny an IDR request if the information submitted is incorrect, incomplete, or otherwise not in compliance with applicable HHSC operating procedures.

(u) [~~(s)~~] The State survey agency may [~~HHSC will~~] revise an IDR recommendation [~~decision~~] as a result of a review[~~, requested by the State survey agency,~~] and subsequent determination that the IDR recommendation [~~decision~~] may violate a federal law, regulation, or the CMS State Operations Manual.

(v) HHSC may contract with an appropriate disinterested organization to adjudicate disputes between a facility and the State survey agency. Texas Government Code §2009.053 does not apply to the selection of an appropriate disinterested organization. For purposes

of this section, a reference to HHSC with respect to HHSC's role in the IDR process includes an organization with which HHSC has contracted for the purpose of performing IDR, and a contracted organization is bound by the same requirements to which HHSC is bound for the purposes of conducting an IDR. The results of an IDR conducted by a contracted organization serve only as a recommendation to the State survey Agency. The State survey Agency maintains responsibility for and makes final IDR decisions.

§393.2. Informal Dispute Resolution for Assisted Living Facilities.

(a) The Texas Health and Human Services Commission (HHSC) provides an informal dispute resolution (IDR) process for assisted living facilities (ALFs) through which an ALF may dispute violations cited against that ALF by the State survey agency [~~or its designee~~].

(b) The HHSC IDR Department must receive the ALF's written request for an IDR no later than the tenth [~~10th~~] calendar day after the ALF's receipt of the official statement of violations [~~from the State survey agency or its designee. If the 10th calendar day falls on a Saturday, Sunday, or legal holiday, the due date becomes the following business day~~]. The ALF must submit its written request for an IDR on the form designated for that purpose by HHSC. HHSC will make that form publicly available, e.g., maintained on the HHSC website.

(c) Within three business days of its receipt of the ALF's written request for an IDR, HHSC will notify the ALF and the State survey agency's regional office under which the ALF operates of its receipt of the request.

(d) Within 15 calendar days of HHSC's receipt of the ALF's request for an IDR, HHSC must receive from the ALF [~~two copies of~~] the ALF's rebuttal letter and attached supporting documentation. [~~If the 15th calendar day falls on a Saturday, Sunday, or legal holiday, the due date becomes the following business day.~~] The rebuttal letter must contain:

(1) a list of the violations disputed (only those violations listed on the IDR request form and addressed in the rebuttal letter and supporting [~~letter/supporting~~] documentation will be reviewed);

(2) the reason or reasons [~~reason(s)~~] each violation is disputed; and

(3) the outcome desired by the ALF for each disputed violation.

(e) The ALF submits its supporting documentation or information in the following format:

(1) organize the attachments by violation and cross-reference to the disputed violation in the rebuttal letter;

(2) ensure all information is labeled and legible;

(3) highlight information relevant to the disputed violation, such as a particular portion of a narrative;

(4) describe the relevance of the documentation or information [~~documentation/information~~] to the disputed violation; and

(5) do not de-identify documents that name residents referenced in disputed deficiencies/violations. [~~; and~~]

[~~(6) submit supporting documentation or information by regular mail, hand delivery, or overnight delivery. HHSC will not review supporting documentation submitted by facsimile transmission.~~]

(f) If the ALF substantially complies with the procedures set out in subsections (d) and (e) of this section, HHSC will proceed with its review of the ALF's IDR request.

(g) HHSC will give full consideration to all factual arguments raised during the IDR process. [~~that are:~~]

[~~(1) supported by references to specific information that the ALF or State survey agency relies on to dispute or support findings in the statement of violations; and~~]

[~~(2) provided by the proponent of the argument to HHSC and the opposing party.~~]

(h) Full [~~IDR staff will give full~~] consideration will be given during the IDR process to the information provided by the ALF and the State survey agency.

(i) Both parties will be given a reasonable opportunity to submit arguments and information supporting the position of the ALF or the State survey agency, and to respond to arguments and information presented against them, provided that the ALF submits its arguments and supporting information by the tenth business day after the date of the receipt of the materials specified by Texas Health and Safety Code Chapter 247.051(a)(3).

(j) The State survey agency bears the burden of proving the violation of a standard or standards.

(k) [~~(i)~~] Assuming a violation has been established, it [~~It~~] is then the ALF's responsibility to present sufficient credible information to HHSC to support the outcome requested by the ALF.

(l) Possible outcomes of an IDR are:

(1) a determination that there is insufficient evidence to sustain a violation;

(2) a determination that there is insufficient evidence to sustain a portion or a finding of a violation;

(3) a determination that there is sufficient evidence to sustain a violation; [~~or~~]

(4) a determination that there is insufficient evidence to sustain the violation as cited but that there is sufficient evidence to sustain a different citation; [~~,~~]

(5) a determination that there is insufficient evidence to sustain the severity and scope assessment but that there is sufficient evidence to sustain a reduced severity and scope assessment (for Immediate Threat only); or

(6) a determination that there is sufficient evidence to sustain the severity and scope assessment as cited.

(m) [~~(j)~~] HHSC will not conduct an IDR based on alleged surveyor misconduct, alleged State survey agency failure to comply with survey protocol, complaints about existing State standards, or attempts to clear previously corrected violations.

(n) [~~(k)~~] Upon receipt of the ALF's IDR request, the State survey agency must submit to HHSC [~~by means allowing confirmation of HHSC's receipt, e.g., overnight delivery or electronic mail,~~] the following supporting documentation [~~as specified in the IDR operating procedures~~]:

(1) resident identifier list;

(2) report of contact; and

(3) Automated Survey Processing Environment (ASPEN) event ID number.

(o) [~~(l)~~] Any information related to an IDR request that is received by HHSC from either the ALF or the State survey agency will be made available by HHSC to the opposing party. Parties have until the end of the second business day after receipt of such shared IDR

information to respond to HHSC about that information. HHSC will share any responses with the opposing party.

(p) [~~(m)~~] HHSC may request additional information from either party in the dispute [~~the ALF or the State survey agency~~]. Both parties will be notified of the request for additional information and have until the end of the second business day after notification to respond to the request. The opposing party will be provided with copies of the response submitted to HHSC.

(q) All responses to shared information as described in (o) and (p) above must be received no later than the tenth calendar day after the facility's rebuttal letter and supporting documentation are submitted.

(r) [~~(n)~~] Ex parte communications by the ALF or by the State survey agency with HHSC personnel conducting the IDR are prohibited.

(s) [~~(o)~~] An eligible ALF may participate in an [~~receive a telephone or face-to-face~~] IDR conference provided that the ALF requested an IDR conference on the IDR request form.

(t) [~~(p)~~] Any [~~telephone or face-to-face~~] IDR conference will be scheduled by HHSC, or its designee on or before the 30th calendar day after HHSC received the IDR request. If the ALF is unable to participate on the scheduled date, the IDR conference will be cancelled and the IDR will continue as though no conference had been requested.

(u) [~~(q)~~] The IDR conference is an informal opportunity for an eligible ALF to present [~~emphasize~~] important information previously submitted in the ALF's rebuttal letter or responses [~~response(s)~~] to shared information. The ALF and the State survey agency may attend any IDR conference but neither party may present [~~new~~] information that was not previously included in the Statement of Licensing Violations, submitted in the provider's rebuttal letter, or responses to shared information. While the facility may ask clarifying questions related to the information in the Statement of Licensing Violations, the questions are strictly limited to the review in question.

(v) [~~(r)~~] HHSC will complete the IDR no later than the 90th calendar day after its receipt of the ALF's written request. [~~If the 90th calendar day falls on a Saturday, Sunday or legal holiday, the due date becomes the following business day.~~] The IDR recommendation [~~decision~~] shall be in writing, address all the issues raised by the ALF, and explain the rationale for the recommendation [~~decision~~].

(w) [~~(s)~~] The time frames designated in the IDR process shall be computed in accordance with Texas Government Code §311.014[~~, Texas Government Code~~].

(x) [~~(t)~~] HHSC may issue and enforce operating procedures concerning the IDR process and the conduct of IDR participants. IDR participants must comply with any such procedures. HHSC may deny an IDR request if the information submitted is incorrect, incomplete, or otherwise not in compliance with applicable HHSC operating procedures.

(y) HHSC may contract with an appropriate disinterested organization to adjudicate disputes between an ALF and the State survey agency. Texas Government Code §2009.053 does not apply to the selection of an appropriate disinterested organization. For purposes of this section, a reference to HHSC with respect to HHSC's role in the IDR process includes an organization with which HHSC has contracted for the purpose of performing IDR, and a contracted organization is bound by the same requirements to which HHSC is bound for the purposes of conducting an IDR. The results of an IDR conducted by a contracted organization serve only as a recommendation to the State survey Agency. The State survey Agency maintains responsibility for and makes final IDR decisions.

§393.3. Informal Dispute Resolution for Texas Home Living and Home and Community-Based Service Providers.

(a) The Texas Health and Human Services Commission (HHSC) provides an informal dispute resolution (IDR) process for Texas Home Living (TxHmL) and Home and Community-based Service (HCS) providers (hereinafter referred to collectively as "provider") through which a provider may dispute citations cited against that provider by the State survey agency.

(b) The HHSC IDR Department must receive a provider's written request for an IDR no later than the tenth calendar day after the provider's receipt of the final report from the State survey agency, or its designee. The provider must submit its written request for an IDR on the form designated for that purpose by HHSC. HHSC will make that form publicly available, e.g., maintained on the HHSC website. The provider must also submit the final report containing the citations the provider wishes to dispute.

(c) Within three business days of its receipt of the provider's written request for an IDR, HHSC will notify the provider and the State survey agency of its receipt of the request.

(d) Within five calendar days of HHSC's receipt of the provider's request for an IDR, HHSC must receive from the provider, the provider's rebuttal letter and attached supporting documentation. The rebuttal letter must contain:

(1) a list of the citations disputed (only those citations listed on the IDR request form and addressed in the rebuttal letter and supporting documentation will be reviewed);

(2) the reason or reasons each citation is disputed; and

(3) the outcome desired by the provider for each disputed citation.

(e) The provider submits its supporting documentation or information in the following format:

(1) organize the attachments by citation and cross-reference to the disputed citation in the rebuttal letter;

(2) ensure all information is labeled and legible;

(3) highlight information relevant to the disputed citation, such as a particular portion of a narrative;

(4) describe the relevance of the documentation or information to the disputed citation; and

(5) do not de-identify documents that name individuals referenced in disputed citations.

(f) If the provider substantially complies with the procedures set out in subsections (d) and (e) of this section, HHSC will proceed with its review of the provider's IDR request.

(g) It is the provider's responsibility to present sufficient credible information to HHSC to support the outcome requested by the provider. Possible outcomes of an IDR for TxHmL and HCS are:

(1) a determination that there is insufficient evidence to sustain a citation;

(2) a determination that there is insufficient evidence to sustain a portion or a finding of a citation;

(3) a determination that there is sufficient evidence to sustain a citation;

(4) a determination that there is insufficient evidence to sustain the citation as cited but that there is sufficient evidence to sustain a different citation;

(5) a determination that there is insufficient evidence to sustain the severity and scope assessment but that there is sufficient evidence to sustain a reduced severity and scope assessment (for Immediate Threat only); or

(6) a determination that there is sufficient evidence to sustain the severity and scope assessment as cited.

(h) HHSC will not conduct an IDR based on alleged surveyor misconduct, alleged State survey agency failure to comply with survey protocol, complaints about existing federal or State standards, or attempts to clear previously corrected citations.

(i) Upon receipt of the provider's IDR request, the State survey agency must submit the following to HHSC:

(1) report Log ID;

(2) contract number; and

(3) component code.

(j) Any information related to an IDR request that is received by HHSC from either the provider or the State survey agency will be made available by HHSC to the opposing party. Parties have until the end of the second business day after receipt of such shared IDR information to respond to HHSC about that information. HHSC will share any responses with the opposing party.

(k) HHSC may request additional information from the provider and/or the State survey agency. Both parties will be notified of the request for additional information and have until the end of the second business day after notification to respond to the request. The opposing party will be provided with copies of the response submitted to HHSC.

(l) All responses to shared information as described in subsections (j) and (k) above must be received no later than the tenth calendar day after the provider's rebuttal letter and supporting documentation are submitted.

(m) Ex parte communications by the provider or by the State survey agency with HHSC personnel conducting the IDR are prohibited.

(n) A provider may participate in an IDR conference provided that the provider requested an IDR conference on the IDR request form.

(o) Any IDR conference will be scheduled by HHSC, or its designee on or before the 22nd calendar day after HHSC received the IDR request. If the provider is unable to participate on the scheduled date, the IDR conference will be cancelled, and the IDR will continue as though no conference had been requested.

(p) The IDR conference is an opportunity for an eligible provider to present important information previously submitted in the provider's rebuttal letter or responses to shared information. The provider and the State survey agency may attend any IDR conference, but neither party may present information that was not previously included in the final report, submitted in the provider's rebuttal letter, or responses to shared information.

(q) HHSC will complete the IDR no later than the 30th calendar day after its receipt of the provider's written request. The IDR recommendation shall be in writing, address all the issues raised by the provider, and explain the rationale for the recommendation.

(r) The time frames designated in the IDR process shall be computed in accordance with Texas Government Code §311.014.

(s) HHSC may issue and enforce operating procedures concerning the IDR process and the conduct of IDR participants. IDR participants must comply with any such procedures. HHSC may deny an IDR request if the information submitted is incorrect, incomplete, or otherwise not in compliance with applicable HHSC operating procedures.

(t) The State survey agency may revise an IDR recommendation as a result of a review and subsequent determination that the IDR recommendation may violate a federal law, regulation, or State of Texas rule.

(u) HHSC may contract with an appropriate disinterested organization to adjudicate disputes between a provider and the State survey agency. Texas Government Code §2009.053 does not apply to the selection of an appropriate disinterested organization. For purposes of this section, a reference to HHSC with respect to HHSC's role in the IDR process includes an organization with which HHSC has contracted for the purpose of performing IDR, and a contracted organization is bound by the same requirements to which HHSC is bound for the purposes of conducting an IDR. The results of an IDR conducted by a contracted organization serve only as a recommendation to the State survey Agency. The State survey Agency maintains responsibility for and makes final IDR decisions.

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 November 13, 2020.

TRD-202004819
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 27, 2020
For further information, please call: (512) 706-7273

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 1. LIBRARY DEVELOPMENT
SUBCHAPTER C. MINIMUM STANDARDS FOR ACCREDITATION OF LIBRARIES IN THE STATE LIBRARY SYSTEM

13 TAC §1.87

The Texas State Library and Archives Commission (Commission) proposes new §1.87, Emergency Waiver of Accreditation Criteria.

BACKGROUND. Government Code, §441.127 authorizes the commission to set accreditation standards for libraries so that they are eligible for Library Systems membership. The Commission established these standards in Texas Administrative Code, Title 13, Part 1, Subchapter C. Existing rules authorize probational accreditation if a library fails to meet not more than one of the requirements in §1.81. The rule does not authorize probational accreditation for failure to meet any other requirement established by a different rule in Subchapter C.

The proposed new rule is necessary to provide a means by which an accredited library may retain accreditation if the library is unable to meet minimum accreditation criteria through no fault of their own, but due to circumstances caused by a disaster, public health emergency, or other extraordinary hardship. This rule would authorize Commission staff to waive one or more criteria for library accreditation in an accreditation year, thereby preventing loss of accreditation, if a library shows it was unable to meet that criteria for good cause.

The rule defines "good cause" as a public health emergency, including a pandemic or epidemic; a natural or man-made disaster, including a tornado, hurricane, flood, wildfire, explosion, or chemical spill; or other extraordinary hardship which is beyond the control of the library as determined by the agency. Examples of situations that may not be considered "good cause" include, but are not limited to, reporting errors made by previous library directors; staff turnover; loss of access to an integrated library system (ILS), which is used to manage cataloguing, borrowing, reports and stats, integrated access to a variety of digital resources, or the internet; changes in city leadership; library Board turmoil; local budget cuts or diminishment of library services due to voluntary local decisions, such as redistributing dedicated public library space for non-library use or other actions that result in curtailment in the resources and access available to the public.

Public libraries rely on accreditation for access to the TexShare databases, grants, and special training programs. This proposed rule will provide assurances to libraries that they will not necessarily lose accreditation if they fail to meet an accreditation standard due to a situation created by a disaster, emergency, or other extraordinary hardship.

If a library requests a waiver of one or more accreditation criteria under the proposed rule but Commission staff does not waive the criteria, the library may appeal the potential loss of accreditation to the Library Systems Act Advisory Board, which will make a recommendation to the Director and Librarian for decision. A decision of the Director and Librarian may be appealed to the Commission under 13 Texas Administrative Code §2.55.

SIMULTANEOUS RULEMAKING. Simultaneous with this proposal and in response to the current COVID-19 pandemic, the Commission has adopted this rule on an emergency basis under Government Code, §2001.034, which authorizes adoption of an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code, §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days. By also proposing this rule under Government Code, §2001.023, with the notice required by Government Code, §2001.024 and opportunity for public comment as provided by Government Code, §2001.029, the Commission will ensure continuity and coverage beyond the effective dates of the emergency rule.

FISCAL IMPACT. Jennifer Peters, Director, Library Development and Networking, has determined that for each of the first five years the proposed amendment and new rule are in effect, there will be no increase in costs to the state as a result of enforcing or administering these rules, as proposed. Ms. Peters does not anticipate a fiscal impact to local governments as a result of enforcing or administering these rules, as proposed.

PUBLIC BENEFIT AND COSTS. Ms. Peters has determined that for each of the first five years the proposed amendment and new rules are in effect, the anticipated public benefit will be continued accreditation of local public libraries and local access to agency services and programs when a library faces loss of accreditation due to extraordinary circumstances, such as a pandemic. Accreditation established a baseline of acceptable operations for stakeholders. Moreover, through accreditation, a library is able to offer its population access to statewide print and electronic resources, including TexShare databases, which are valued in the tens of millions of dollars. Libraries losing accreditation lose access to these resources, which provide free access to GED prep materials, basic computer skills, adult basic education, and other career and job tools. There are no anticipated economic costs to persons required to comply with the proposed amendment and new rule.

LOCAL EMPLOYMENT IMPACT STATEMENT. The proposal has no impact on local economy; therefore, no local employment impact statement under Government Code, §2001.022 is required.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, a regulatory flexibility analysis under Government Code, §2006.002 is not required.

COST INCREASE TO REGULATED PERSONS. The proposed rules do not impose or increase a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the commission is not required to take any further action under Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Government Code, §2001.0221, the commission provides the following government growth impact statement. For each year of the first five years the proposed rules will be in effect, the commission has determined the following:

1. The proposed rules will not create or eliminate a government program;

2. Implementation of the proposed rules will not require the creation of new employee positions or the elimination of existing employee positions;

3. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the commission;

4. The proposed rules will not require an increase or decrease in fees paid to the commission;

5. The proposed rules will create a new regulation as authorized by Government Code, §441.127;

6. The proposed rules will not expand, limit, or repeal an existing regulation;

7. The proposed rules will not increase the number of individuals subject to the proposed rules' applicability; and

8. The proposed rules may positively affect this state's economy. For example, access to TexShare databases provide free access to GED prep materials, basic computer skills, adult basic education, and career and job tools, which makes Texans more employable. Libraries losing accreditation will lose access to these resources.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action. Therefore, the proposed rules do not constitute a taking under Texas Gov't Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendment and new rule may be submitted to Jennifer Peters, Director, Library Development and Networking, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas, 78711, or via email at rules@tsl.texas.gov. To be considered, a written comment must be received no later than 30 days from the date of publication in the *Texas Register.*

STATUTORY AUTHORITY. This new rule is proposed under Government Code, §441.006(a)(2), which authorizes the Commission to adopt policies and rules to aid and encourage the development of and cooperation among all types of libraries, including public, academic, special, and other types of libraries; and Government Code, §441.127, which authorizes the Commission to set accreditation standards for libraries.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441, Subchapter I.

§1.87. Emergency Waiver of Accreditation Criteria.

One or more accreditation criteria in this subchapter may be waived if a library shows good cause for failure to meet the criteria. For purposes of this subchapter, good cause means a public health emergency, including, but not limited to a pandemic or epidemic; a natural or man-made disaster, including, but not limited to a tornado, hurricane, flood, wildfire, explosion, or chemical spill; or other extraordinary hardship which is beyond the control of the library as determined by the 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.

Filed with the Office of the Secretary of State on November 10, 2020.

TRD-202004770
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Earliest possible date of adoption: December 27, 2020
For further information, please call: (512) 463-5591

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 6. HEALTH EDUCATION, TRAINING, AND RESEARCH FUNDS

SUBCHAPTER C. TOBACCO LAWSUIT SETTLEMENT FUNDS

19 TAC §6.74

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 6, Subchapter C, §6.74, concerning the Minority Health Research and Education Grant Program. Specifically, this amendment will clarify the grant program's statutory authority, application and review processes, and procedures for award recommendations and approval.

Texas Education Code, Chapter 63, Subchapter D, Section 63.302(d) directs the Coordinating Board to adopt rules relating to the award of grants under the permanent fund for minority health research and education. The Coordinating Board adopted initial rules in 2003. Areas indicating a lack of clarity existed in the adopted rules, particularly relating to the grant application, evaluation, and award processes. Through a negotiated rulemaking process, the Coordinating Board amends the rules to enhance clarity.

Dr. Stacey Silverman, Assistant Commissioner for Academic Quality and Workforce, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Stacey Silverman, Assistant Commissioner for Academic Quality and Workforce, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be enhanced clarity in the administration of the Minority Health Research and Education Grant Program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

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

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

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

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

Comments on the proposal may be submitted to Dr. Stacey Silverman, Assistant Commissioner for Academic Quality and Workforce, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or via email at RuleComments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendment is proposed under the Texas Education Code, Section 63.301 and 63.302, which creates the Permanent Fund For Minority Health Research And Education, and provides the

Coordinating Board with the authority to adopt rules relating to the award of grants under the fund.

The proposed amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 6, Subchapter C, §6.74.

§6.74. Minority Health Research and Education Grant Program.

(a) General Information. The program, as it applies to this section:

(1) Name--Minority Health Research and Education Grant Program.

(2) Purpose--To provide funding to eligible institutions of higher education to conduct research and educational programs on public health issues affecting one or more minority groups in Texas.

(3) Authority--Texas Education Code [~~Texas Government Code~~], §§63.301 - 63.302.

(4) Minority--A [~~a~~] particular ethnic or racial group that is under-represented in one or more areas of health research or health education.

(5) Eligible institutions--Public and private accredited general academic and health-related institutions, and Centers for Teacher Education, that conduct research or educational programs that address minority health issues or form partnerships with minority organizations, colleges, or universities to conduct research and educational programs that address minority health issues. Two-year institutions, including junior and community colleges, state colleges or technical colleges, and other agencies of higher education as defined by Texas Education Code, §61.003(6) are not eligible to submit an application for program funding but may receive program funding indirectly as a partner to an eligible institution.

(6) Eligible programs--Research and educational initiatives, including those that expand existing research and degree programs, and develop other new or existing activities and projects, that are not funded by state appropriation during the funding period. Proposed programs shall not conflict with current judicial decisions and state interpretation on administering minority programs in higher education.

(7) Application requirements--Applicants shall submit applications [~~Applications shall be submitted~~] to the Board in the format and at the time specified by the Board.

(8) General Selection Criteria--Competitive. Designed to award grants that provide the best overall value to the state. Selection criteria shall be based on:

(A) Program quality as defined by the evaluation criteria in the Request for Applications (RFA) [~~as determined by reviewers~~];

(B) Potential impact [~~Impact the grant award shall have~~] on public health issues affecting one or more minority groups in the state;

(C) Cost of the proposed program; and

(D) Other factors to be considered may include [~~by the Board, including~~] financial ability to perform program, state and regional needs and priorities, whether the eligible institution has been designated as an Historically Black or Hispanic Serving institution by the U.S. Department of Education, ability to continue program after grant period, and past performance.

(9) Award amounts will be set forth in the RFA based on the availability of funds. [~~Minimum award--$15,000 per award in any fiscal year.~~]

[~~(10) Maximum award--30 percent of the estimated available funding per award in any fiscal year.~~]

(10) [~~(11)~~] Maximum award length--A program is eligible to receive funding for up to three years within a grant period. Currently and previously [~~Previously~~] funded programs may reapply to receive funding according to eligibility requirements specified in the RFA [~~for one additional grant period~~].

(b) Review Criteria. The review criteria will be set forth in the RFA.

(1) Board staff and/or peer reviewers may evaluate the applications. [~~The Board shall use peer and Board staff reviewers to evaluate the quality of applications.~~]

(2) The Commissioner shall select qualified individuals to serve as reviewers. Reviewers shall demonstrate appropriate credentials to evaluate grant applications in health research and education. Reviewers shall not evaluate any applications for which they have a conflict of interest.

(3) The Board staff shall provide written instructions and training for reviewers.

(4) The reviewers shall review [~~score~~] each application according to these evaluation criteria [~~award criteria and weights~~]:

(A) Significance and impact of research or educational program for minority health issues; [~~Significance of research or educational program for minority health issues. The reviewers shall consider issues such as: How relevant and timely is this topic to minority public health issues? Is the program unique and important or unique and important for a geographic area? Will the program be useful to or later replicated at other institutions in the state? Will the program provide an advancement of knowledge that may result in positive changes in patient care, education or health care policy for minorities? How many people will benefit directly from the program? Maximum points: 30~~]

(B) Program design; [~~Resources to perform program. The reviewers shall consider issues such as: What new personnel, equipment and facility resources are needed for the program? What existing resources can be used? Will the program draw on resources from other institutions and organizations? Do the institution's partners, if any, demonstrate financial stability and effectiveness in conducting similar research or education programs? What are the professional credentials and experience of the program's key personnel? Maximum points: 15~~]

(C) Resources to perform the program; [~~Program design. The reviewers shall consider issues such as: Is the program well defined? Is it a discrete program which can be completed in the grant period? Are the goals and objectives realistic? How well has the proposal described the data collection or program development process and the nature of analysis to be carried out? Maximum points: 25~~]

(D) Cost effectiveness; and [~~Cost sharing. The reviewers shall consider issues such as: What level of local funding, if any, is available to share in the cost of the program? Maximum points: 5~~]

(E) Evaluation and expected outcomes. [~~(E) Cost effectiveness. The reviewers shall consider issues such as: How appropriate are the chosen equipment, staffing and service providers for the program given the cost of the program? Is the budget realistic? Does the proposal make effective use of the grant funds? Maximum points: 25.~~]

[~~(F) Evaluation and expected outcomes. The reviewers shall consider issues such as: How well has the proposal described the methodology to evaluate and estimate the outcomes from the program?~~

Is the evaluation methodology appropriate and effective? Are the outcomes realistic? Maximum points: 30]

[(5) Award criteria and weights may be adjusted to best fulfill the purpose of an individual grant competition, if those adjusted award criteria and weights are first included in the Request for Proposal for the grant competition.]

(c) Application and Review Process.

[(1) The Commissioner may solicit recommendations from an advisory committee or other group of qualified individuals on funding priorities for each grant period, and the administration of the application and review process.]

(1) [(2)] The Board staff shall review applications to determine if they adhere to the grant program requirements and the funding priorities contained in the RFA [Request for Proposal]. An application must meet the requirements of the RFA [Request for Proposal] and be submitted with proper authorization on or before the deadline [before or on the day] specified by the RFA [Board] to qualify for further consideration. Qualified applications shall be forwarded to the reviewers for evaluation. Board staff shall notify an applicant if their application does not qualify based on [applicants eliminated through] the screening process no later than 30 days after the RFA deadline [within 30 days of the submission deadline].

(2) [(3)] Reviewers shall evaluate applications based on the evaluation criteria included in the RFA. [and assign scores based on award criteria. All evaluations and scores of the review committee are final.]

[(4) Board staff shall rank each application based on points assigned by reviewers, and then may request that individuals representing the most highly-ranked applications make oral presentations on their applications to the reviewers and other Board staff. The Board staff may consider reviewer comments from the oral presentations in recommending a priority ranked list of applications to the Board for approval.]

(d) Funding Decisions.

(1) Board staff and/or peer reviewers will evaluate applications for grant funding [Applications for grant funding shall be evaluated] only based upon the information provided in the written application.

(2) Board staff shall make a recommendation of selected applicants to be funded to the Commissioner, who will submit a funding decision recommendation to the Board for their final approval as consistent with Texas Administrative Code, Title 19, §1.16.

(3) [(2)] The Board shall review and may approve grants based upon the Commissioner's recommendation. [the recommendation of the panel of reviewers and Board staff. The Commissioner shall report approved grants to the Board for each biennial grant period.]

[(3) Funding recommendations to the Board shall consist of the most highly ranked and recommended applications up to the limit of available funds. If available funds are insufficient to fund a proposal after the higher-ranking and recommended applications have been funded, staff shall negotiate with the applicant to determine if a lesser amount would be acceptable. If the applicant does not agree to the lesser amount, the staff shall negotiate with the next applicant on the ranked list. The process shall be continued until all grant funds are awarded to the most highly ranked and recommended applications.]

[(e) Contract. Following approval of grant awards by the Board the successful applicants shall sign a contract issued by Board staff and based on the information contained in the application.]

[(f) Cancellation or Suspension of Grants. The Board has the right to reject all applications and cancel a grant solicitation at any point before a contract is signed.]

[(g) Request for Proposal. The full text of the administrative regulations and budget guidelines for this program are contained in the official Request for Proposal (RFP) available upon request from the Board.]

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

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: December 27, 2020
For further information, please call: (512) 427-6206

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.15

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.15, Experience Required for Licensing.

The proposed amendments clarify the type of supporting documentation that must be submitted to TALCB to verify an applicant's experience and the circumstances when additional documentation may be requested by TALCB.

The proposed amendments also allow TALCB staff to inform supervisory appraisers of its communications with supervisory appraisers' respective trainee, and to provide supervisory appraisers a better understanding of a trainee's progress in the licensure process and professional development.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro-businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the

public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

--create or eliminate a government program;

--require the creation of new employee positions or the elimination of existing employee positions;

--require an increase or decrease in future legislative appropriations to the agency;

--require an increase or decrease in fees paid to the agency;

--create a new regulation;

--expand, limit or repeal an existing regulation; and

--increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee in this state that are in accordance with Chapter 1103 and consistent with applicable federal law.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§153.15. Experience Required for Licensing.

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

(i) The Board must verify the experience claimed by each applicant generally complies with USPAP.

(1) Verification may be obtained by:

(A) requesting copies of appraisals and all supporting documentation, including the work files; and

(B) engaging in other investigative research determined to be appropriate by the Board.

(2) If the Board requests documentation from an applicant to verify experience claimed by an applicant, the applicant has 60 days to provide the requested documentation to the Board.

(A) In response to an initial request for documentation to verify experience, an applicant must submit a copy of the relevant appraisals, but is not required to submit the associated work files at that time.

(B) If in the course of reviewing the submitted appraisals, the Board determines additional documentation is necessary to verify general compliance with USPAP, the Board may make additional requests for supporting documentation.

(3) Experience involved in pending litigation.

(A) The Board will not request work files from an applicant to verify claimed experience if the appraisal assignments are identified on the experience log submitted to the Board as being involved in pending litigation.

(B) If all appraisal assignments listed on an applicant's experience log are identified as being involved in pending litigation, the Board may audit any of the appraisal assignments on the applicant's experience log, regardless of litigation status, with the written consent of the applicant and the applicant's supervisory appraiser.

(4) Failure to comply with a request for documentation to verify experience, or submission of experience that is found not to comply with the requirements for experience credit, may result in denial of a license application.

(5) A license holder who applies to upgrade an existing license and submits experience that does not comply with USPAP may also be subject to disciplinary action up to and including revocation.

(j) Unless prohibited by Tex. Occ. Code §1103.460, applicable confidentiality statutes, privacy laws, or other legal requirements, or in matters involving alleged fraud, Board staff shall use reasonable means to inform supervisory appraisers of Board communications with their respective trainees.

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

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TRD-202004836
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: December 27, 2020
For further information, please call: (512) 936-3652

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22 TAC §153.24

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.24, Complaint Processing.

The proposed amendments clarify the process in which complaints or allegations that staff determines are not within the TALCB's jurisdiction; found not to exist; or are inappropriate or without merit are investigated and dismissed in accordance with Texas Occupations Code §1103.452.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro-businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the

public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

--create or eliminate a government program;

--require the creation of new employee positions or the elimination of existing employee positions;

--require an increase or decrease in future legislative appropriations to the agency;

--require an increase or decrease in fees paid to the agency;

--create a new regulation;

--expand, limit or repeal an existing regulation; and

--increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§153.24. Complaint Processing.

(a) Receipt of a Complaint Intake Form by the Board does not constitute the filing of a formal complaint by the Board against the individual named on the Complaint Intake Form. Upon receipt of a signed Complaint Intake Form, staff shall:

(1) assign the complaint a case number in the complaint tracking system; and

(2) send written acknowledgement of receipt to the Complainant.

(b) Priority of complaint investigations. The Board prioritizes and investigates complaints based on the risk of harm each complaint poses to the public. Complaints that pose a high risk of public harm include violations of the Act, Board rules, or USPAP that:

(1) evidence serious deficiencies, including:

(A) Fraud;

(B) Identity theft;

(C) Unlicensed activity;

(D) Ethical violations;

(E) Failure to properly supervise an appraiser trainee; or

(F) Other conduct determined by the Board that poses a significant risk of public harm; and

(2) were done:

(A) with knowledge;

(B) deliberately;

(C) willfully; or

(D) with gross negligence.

(c) The Board or the Commissioner may delegate to staff the duty to dismiss complaints. The complaint shall be dismissed with no further processing if the staff determines at any time that:

(1) the complaint is not within the Board's jurisdiction;

(2) no violation exists; or

(3) an allegation or formal complaint is inappropriate or without merit.

[~~(c) If the staff determines at any time that the complaint is not within the Board's jurisdiction or that no violation exists, the complaint shall be dismissed with no further processing. The Board or the commissioner may delegate to staff the duty to dismiss complaints.~~]

(d) A determination that an allegation or complaint is inappropriate or without merit includes a determination that the allegation or complaint:

(1) was made in bad faith;

(2) filed for the purpose of harassment;

(3) to gain a competitive or economic advantage; or

(4) lacks sufficient basis in fact or evidence.

(e) Staff shall conduct a preliminary inquiry to determine if dismissal is required under subsection (d) of this section.

(f) [~~(d)~~] A complaint alleging mortgage fraud or in which mortgage fraud is suspected:

(1) may be investigated covertly; and

(2) shall be referred to the appropriate prosecutorial authorities.

(g) [~~(e)~~] Staff may request additional information from any person, if necessary, to determine how to proceed with the complaint.

(h) [~~(f)~~] As part of a preliminary investigative review, a copy of the Complaint Intake Form and all supporting documentation shall be sent to the Respondent unless the complaint qualifies for covert investigation and the Standards and Enforcement Services Division deems covert investigation appropriate.

(i) [~~(g)~~] The Board will:

(1) protect the complainant's identity to the extent possible by excluding the complainant's identifying information from a complaint notice sent to a respondent.

(2) periodically send written notice to the complainant and each respondent of the status of the complaint until final disposition. For purposes of this subsection, "periodically" means at least once every 90 days.

(j) [~~(h)~~] The Respondent shall submit a response within 20 days of receiving a copy of the Complaint Intake Form. The 20-day period may be extended for good cause upon request in writing or by e-mail. The response shall include the following:

(1) a copy of the appraisal report that is the subject of the complaint;

(2) a copy of the Respondent's work file associated with the appraisal(s) listed in the complaint, with the following signed statement attached to the work file(s) : I SWEAR AND AFFIRM THAT EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE COPY OF EACH AND EVERY APPRAISAL WORK FILE ACCOMPANYING THIS RESPONSE IS A TRUE AND CORRECT COPY OF THE ACTUAL WORK FILE, AND NOTHING HAS BEEN ADDED TO OR REMOVED FROM THIS WORK FILE OR ALTERED AFTER PLACEMENT IN THE WORK FILE.(SIGNATURE OF RESPONDENT);

(3) a narrative response to the complaint, addressing each and every item in the complaint;

(4) a list of any and all persons known to the Respondent to have actual knowledge of any of the matters made the subject of the complaint and, if in the Respondent's possession, contact information;

(5) any documentation that supports Respondent's position that was not in the work file, as long as it is conspicuously labeled as non-work file documentation and kept separate from the work file. The Respondent may also address other matters not raised in the complaint that the Respondent believes need explanation; and

(6) a signed, dated and completed copy of any questionnaire sent by Board staff.

(k) [~~(i)~~] Staff will evaluate the complaint within three months after receipt of the response from Respondent to determine whether sufficient evidence of a potential violation of the Act, Board rules, or the USPAP exists to pursue investigation and possible formal disciplinary action. If the staff determines that there is no jurisdiction, no violation exists, there is insufficient evidence to prove a violation, or the complaint warrants dismissal, including contingent dismissal, under subsection (m) of this section, the complaint shall be dismissed with no further processing.

(l) [~~(j)~~] A formal complaint will be opened and investigated by a staff investigator or peer investigative committee, as appropriate, if:

(1) the informal complaint is not dismissed under subsection (i) of this section; or

(2) staff opens a formal complaint on its own motion.

(m) [~~(k)~~] Written notice that a formal complaint has been opened will be sent to the Complainant and Respondent.

(n) [~~(l)~~] The staff investigator or peer investigative committee assigned to investigate a formal complaint shall prepare a report detailing its findings on a form approved by the Board. Reports prepared by a peer investigative committee shall be reviewed by the Standards and Enforcement Services Division.

(o) [~~(m)~~] In determining the proper disposition of a formal complaint pending as of or filed after the effective date of this subsection, and subject to the maximum penalties authorized under Texas Occupations Code §1103.552, staff, the administrative law judge in a contested case hearing, and the Board shall consider the following sanctions guidelines and list of non-exclusive factors as demonstrated by the evidence in the record of a contested case proceeding.

(1) For the purposes of these sanctions guidelines:

(A) A person will not be considered to have had a prior warning letter, contingent dismissal or discipline if that prior warning letter, contingent dismissal or discipline was issued by the Board more than seven years before the current alleged violation occurred;

(B) Prior discipline is defined as any sanction (including administrative penalty) received under a Board final or agreed order;

(C) A violation refers to a violation of any provision of the Act, Board rules or USPAP;

(D) "Minor deficiencies" is defined as violations of the Act, Board rules or USPAP which do not impact the credibility of the appraisal assignment results, the assignment results themselves and do not impact the license holder's honesty, integrity, or trustworthiness to the Board, the license holder's clients, or intended users of the appraisal service provided;

(E) "Serious deficiencies" is defined as violations of the Act, Board rules or USPAP that:

(i) impact the credibility of the appraisal assignment results, the assignment results themselves or do impact the license holder's honesty, trustworthiness or integrity to the Board, the license holder's clients, or intended users of the appraisal service provided; or

(ii) are deficiencies done with knowledge, deliberate or willful disregard, or gross negligence that would otherwise be classified as "minor deficiencies";

(F) "Remedial measures" include, but are not limited to, training, mentorship, education, reexamination, or any combination thereof; and

(G) The terms of a contingent dismissal agreement will be in writing and agreed to by all parties. If the Respondent completes all remedial measures required in the agreement within the prescribed period of time, the complaint will be dismissed with a non-disciplinary warning letter.

(2) List of factors to consider in determining proper disposition of a formal complaint:

(A) Whether the Respondent has previously received a warning letter or contingent dismissal and, if so, the similarity of facts or violations in that previous complaint to the facts or violations in the instant complaint matter;

(B) Whether the Respondent has previously been disciplined;

(C) If previously disciplined, the nature of the prior discipline, including:

(i) Whether prior discipline concerned the same or similar violations or facts;

(ii) The nature of the disciplinary sanctions previously imposed; and

(iii) The length of time since the prior discipline;

(D) The difficulty or complexity of the appraisal assignment(s) at issue;

(E) Whether the violations found were of a negligent, grossly negligent or a knowing or intentional nature;

(F) Whether the violations found involved a single appraisal/instance of conduct or multiple appraisals/instances of conduct;

(G) To whom were the appraisal report(s) or the conduct directed, with greater weight placed upon appraisal report(s) or conduct directed at:

(i) A financial institution or their agent, contemplating a lending decision based, in part, on the appraisal report(s) or conduct at issue;

(ii) The Board;

(iii) A matter which is actively being litigated in a state or federal court or before a regulatory body of a state or the federal government;

(iv) Another government agency or government sponsored entity, including, but not limited to, the United States Department of Veteran's Administration, the United States Department of Housing and Urban Development, the State of Texas, Fannie Mae, and Freddie Mac; or

(v) A consumer contemplating a real property transaction involving the consumer's principal residence;

(H) Whether Respondent's violations caused any harm, including financial harm, and the extent or amount of such harm;

(I) Whether Respondent acknowledged or admitted to violations and cooperated with the Board's investigation prior to any contested case hearing;

(J) The level of experience Respondent had in the appraisal profession at the time of the violations, including:

(i) The level of appraisal credential Respondent held;

(ii) The length of time Respondent had been an appraiser;

(iii) The nature and extent of any education Respondent had received related to the areas in which violations were found; and

(iv) Any other real estate or appraisal related background or experience Respondent had;

(K) Whether Respondent can improve appraisal skills and reports through the use of remedial measures;

(3) The following sanctions guidelines shall be employed in conjunction with the factors listed in paragraph (2) of this subsection to assist in reaching the proper disposition of a formal complaint:

(A) 1st Time Discipline Level 1--violations of the Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

(i) Dismissal;

(ii) Dismissal with non-disciplinary warning letter; or

(iii) Contingent dismissal with remedial measures.

(B) 1st Time Discipline Level 2--violations of the Act, Board rules, or USPAP which evidence serious deficiencies will result in one of the following outcomes:

(i) Contingent dismissal with remedial measures; or

(ii) A final order which imposes one or more of the following:

(I) Remedial measures;

(II) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(III) A probationary period with provisions for monitoring the Respondent's practice;

(IV) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(V) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(VI) Up to $250 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, not to exceed $3,000 in the aggregate.

(C) 1st Time Discipline Level 3--violations of the Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) Up to $1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum $5,000 statutory limit per complaint matter.

(D) 2nd Time Discipline Level 1--violations of the Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

(i) Dismissal;

(ii) Dismissal with non-disciplinary warning letter;

(iii) Contingent dismissal with remedial measures; or

(iv) A final order which imposes one or more of the following:

(I) Remedial measures;

(II) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(III) A probationary period with provisions for monitoring the Respondent's practice;

(IV) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(V) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(VI) Up to $250 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum $5,000 statutory limit per complaint matter.

(E) 2nd Time Discipline Level 2--violations of the Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) Up to $1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum $5,000 statutory limit per complaint matter.

(F) 2nd Time Discipline Level 3--violations of the Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) Up to $1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum $5,000 statutory limit per complaint matter.

(G) 3rd Time Discipline Level 1--violations of the Act, Board rules, or USPAP which evidence minor deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) $1,000 to $1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum $5,000 statutory limit per complaint matter.

(H) 3rd Time Discipline Level 2--violations of the Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) $1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum $5,000 statutory limit per complaint matter.

(I) 3rd Time Discipline Level 3--violations of the Act, Board Rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A revocation; or

(ii) $1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum $5,000 statutory limit per complaint matter.

(J) 4th Time Discipline--violations of the Act, Board rules, or USPAP will result in a final order which imposes the following:

(i) A revocation; and

(ii) $1,500 in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board rules, or the Act, up to the maximum $5,000 statutory limit per complaint matter.

(K) Unlicensed appraisal activity will result in a final order which imposes a $1,500 in administrative penalties per unlicensed appraisal activity, up to the maximum $5,000 statutory limit per complaint matter.

(4) In addition, staff may recommend any or all of the following:

(A) reducing or increasing the recommended sanction or administrative penalty for a complaint based on documented factors

that support the deviation, including but not limited to those factors articulated under paragraph (2) of this subsection;

(B) probating all or a portion of any sanction or administrative penalty for a period not to exceed five years;

(C) requiring additional reporting requirements; and

(D) such other recommendations, with documented support, as will achieve the purposes of the Act, Board rules, or USPAP.

(p) [~~(n)~~] The Board may order a person regulated by the Board to refund the amount paid by a consumer to the person for a service regulated by the Board.

(q) [~~(o)~~] Agreed resolutions of complaint matters pursuant to Texas Occupations Code §1103.458 or §1103.459 must be signed by:

(1) the Board Chair or if the Board Chair is unavailable or must recuse him or herself, the Board Chair's designee, whom shall be (in priority order) the Board Vice Chair, the Board Secretary, or another Board member;

(2) Respondent;

(3) a representative of the Standards and Enforcement Services Division; and

(4) the Commissioner.

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 November 16, 2020.

TRD-202004837
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: December 27, 2020
For further information, please call: (512) 936-3652

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22 TAC §153.28

The Texas Appraiser Licensing and Certification Board (TALCB) proposes new rule 22 TAC §153.28, Peer Investigative Committee Review.

The proposed new rule outlines the complaint review process of the Peer Investigative Committee pursuant to Texas Occupations Code §1103.453. The proposed new rule identifies who may serve on the committee, terms of appointment, delineates functions of the committee members and TALCB staff in the review process, and establishes process deadlines. The proposed rule also specifies the types of complaints that are subject or not subject to the review of the Peer Investigative Committee, and the manner committee members and staff may communicate during the review process.

The proposed new rule is intended to more clearly establish the agency's Peer Investigative Committee Review process and identify the roles of both committee members and TALCB staff. This rule also allows the Peer Investigative Committee members to provide TALCB Enforcement Division recommendations on complaints where adverse action is sought.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed new rule is in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed new rule. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed new rule. There is no significant economic cost anticipated for persons who are required to comply with the proposed new rule. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed new rule is in effect the public benefits anticipated as a result of enforcing the proposed new rule will be improved clarity and greater transparency for members of the public and license holders, as well as requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed new rule is in effect the rule will not:

--create or eliminate a government program;

--require the creation of new employee positions or the elimination of existing employee positions;

--require an increase or decrease in future legislative appropriations to the agency;

--require an increase or decrease in fees paid to the agency;

--create a new regulation;

--expand, limit or repeal an existing regulation; and

--increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed new rule is in effect, there is no anticipated impact on the state's economy.

Comments on the proposed new rule may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The new rule is proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed new rule.

§153.28. Peer Investigative Committee Review.

(a) The Board Chair, with the advice and consent of the Executive Committee, may appoint a Peer Investigative Committee pool at least every two years.

(b) A panel of the Peer Investigative Committee shall consist of:

(1) an Appraiser Board Member;

(2) a Board Member who is a licensed or certified appraiser; and

(3) a TALCB Investigator or a Peer Investigator. A Peer Investigator shall work in conjunction with a TALCB Investigator to ensure consistency in form, investigatory standards, and any other assistance as needed.

(c) The Board members serving on the Peer Investigative Committee shall serve on the committee on a rotating quarterly basis.

(d) During complaint intake, the Enforcement Director shall assign a TALCB Investigator or Peer Investigator working in conjunction with a TALCB Investigator to investigate the complaint.

(e) Complaints in which adverse action, including contingent dismissals, is recommended by an investigator are subject to review by the Peer Investigative Committee. Complaints that result in dismissals, defaults, or warning letters are not subject to review by the Peer Investigative Committee.

(f) No more than 7 days following the investigator's completion of an Investigative Report, the investigator shall provide his or her findings, including the investigative report and the complaint file, to the Board members of the Peer Investigative Committee. The investigative report must include:

(1) a statement of facts;

(2) the investigator's recommendations; and

(3) the position or defense of the respondent.

(g) Board members of the Peer Investigative Committee, Investigators, and staff may elect to confer in person, via e-mail, or video conference prior to the Board members' determination.

(h) The Board delegates its authority to receive the written findings or determination of the Peer Investigative Committee to the Commissioner.

(i) No more than five business days after the review of the investigator's findings, the Board members of Committee shall render a determination agreeing or disagreeing with the investigator's finding of alleged violations and submit a copy of their determination to the Commissioner or his or her designee on behalf of the Board. The determination shall serve as a recommendation to the TALCB Enforcement Division as to whether to pursue adverse action against a respondent. A copy of the Board members' determination shall be included in the complaint file. The Board Chair may request statistical data related to the investigator's recommendations, Board members' determination, and adverse action pursued by the Enforcement Division.

(j) Board members who participate in the Peer Investigative Committee Review of a complaint are disqualified from participating in any future adjudication of the same complaint.

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 November 16, 2020.

TRD-202004838
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: December 27, 2020
For further information, please call: (512) 936-3652

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PART 11. TEXAS BOARD OF NURSING

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.23

The Texas Board of Nursing (Board) proposes amendments to §217.23, relating to Balance Billing Dispute Resolution. The amendments are being proposed under the authority of the Insurance Code §752.0003 and §1467.003 and the Occupations Code §301.151 and implement the requirements of the Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, 1579.111 and the Insurance Code Chapter 1467.

Background. The proposed amendments are necessary to implement changes to the Insurance Code, effectuated by the passage of Senate Bill (SB) 1264 during the 86th Legislative Session, effective September 1, 2019. In order to protect consumers, SB 1264 prohibits balance billing by many out of network providers, except in a narrow set of circumstances. Additionally, SB 1264 authorizes a new dispute resolution process for claim disputes between out of network providers and health benefit plan issuers and administrators.

The balance billing protections provided by SB 1264 generally apply to enrollees of health benefit plans offered by insurers and health maintenance organizations regulated by the Texas Department of Insurance (Department), as well as the Texas Employees Group, the Texas Public School Employees Group, and the Texas School Employees Uniform Group. The provisions of the bill apply to health care and medical services and supplies provided on or after January 1, 2020.

Under SB 1264, an out of network provider is prohibited from seeking payment for a balance bill from an enrollee *unless* the provider provides the enrollee with a written disclosure identifying the projected amounts for which the enrollee may be responsible and the circumstances under which the enrollee may be responsible for those amounts *and* the enrollee elects, in writing, to receive the health care or medical service or supply anyway. This exception only applies in non-emergencies when an enrollee elects to receive covered health care or medical services or supplies from a facility-based provider, diagnostic imaging provider, or laboratory service provider that is not a participating provider for a health benefit plan, if the service or supply is provided at a health care facility that is a participating provider or is provided in connection with a health care or medical service or supply that is provided by a participating provider.

The Department, under the authority of SB 1264, adopted rules to implement this exception to the balance billing prohibitions set forth in the Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111. These rules took effect on June 25, 2020 (45 TexReg 4204).

Under the Department's rules, an enrollee's election to receive health care or a medical service or supply is only valid if the enrollee has a meaningful choice between an in network provider and an out of network provider; the enrollee was not coerced by another provider or his/her health benefit plan into selecting the out of network provider; and the enrollee signs a notice and disclosure statement at least ten business days before the service or supply is provided acknowledging that the enrollee may be liable for a balance bill and chooses to proceed with the service or

supply anyway. Only an out of network provider that chooses to balance bill an enrollee is required to provide a notice and disclosure statement to the enrollee. The out of network provider may choose to participate in the claim dispute resolution process authorized by SB 1264 instead of balance billing an enrollee. The Department also adopted a notice and disclosure statement that must be filled out by the out of network provider and given to the enrollee if the provider chooses to engage in balance billing.

In light of the many changes made by SB 1264, the provisions of the Board's current rule are now obsolete. The proposed amendments are necessary to implement the new requirements of SB 1264 and mirror the Department's adopted rules.

Section by Section Overview. The title of the section is proposed for amendment to read "Balance Billing Notice and Disclosure Requirements".

Proposed amended §217.23(a) identifies the purpose of the section, which is to implement the requirements of the Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111 and the Insurance Code Chapter 1467 and notify licensees of their responsibilities under those sections.

Proposed amended §217.23(b) provides the definitions for terms used throughout the section and describes the applicability of the section. Under the proposal, the section only applies to a covered non-emergency health care or medical service or supply provided on or after January 1, 2020, by a facility based provider that is not a participating provider for a health benefit plan, if the service or supply is provided at a health care facility that is a participating provider; or a diagnostic imaging provider or laboratory service provider that is not a participating provider for a health benefit plan, if the service or supply is provided in connection with a health care or medical service or supply provided by a participating provider. Further, the proposed amended subsection makes it clear that the section applies only to providers that are subject to the Board's jurisdiction. For purposes of this rule, this includes an out of network licensee provider that provides non-emergency health care or medical services or supplies, diagnostic imaging services, or laboratory services at an in network health care facility or in connection with a health care or medical service or supply provided by a participating provider.

Proposed amended §217.23(c) sets forth the responsibilities of such licensee providers related to balance billing. First, under the proposal, and consistent with the rules adopted by the Department, an out of network provider may not balance bill an enrollee receiving a non-emergency health care or medical service or supply, and the enrollee does not have financial responsibility for a balance bill, unless the enrollee elects to obtain the service or supply from the out of network provider knowing that the provider is out of network and the enrollee may be financially responsible for a balance bill. An enrollee's legal representative or guardian may elect on behalf of an enrollee.

Second, an enrollee elects to obtain a service or supply only if the enrollee has a meaningful choice between a participating provider for a health benefit plan issuer or administrator and an out of network provider; the enrollee is not coerced by a provider or health benefit plan issuer or administrator when making the election; and the out of network provider or the agent or assignee of the provider provides written notice and disclosure to the enrollee and obtains the enrollee's written consent, as specified in the later provisions of the rule. Under the proposal, a meaningful choice does not exist for an enrollee if an out of network provider was selected for or assigned to an enrollee by another provider or health benefit plan issuer or administrator. Further, a provider engages in coercion if the provider charges or attempts to charge a nonrefundable fee, deposit, or cancellation fee for the service or supply prior to the enrollee's election.

Third, if an out of network provider elects to balance bill an enrollee rather than participate in the claim dispute resolution process authorized by the Insurance Code Chapter 1467, the out of network provider or agent or assignee of the provider must provide the enrollee with the notice and disclosure statement specified in the later provisions of this rule prior to scheduling the non-emergency health care or medical service or supply. To be effective, the notice and disclosure statement must be signed and dated by the enrollee no less than 10 business days before the date the service or supply is performed or provided. The enrollee may rescind acceptance within five business days from the date the notice and disclosure statement was signed, as explained in the notice and disclosure statement form referenced in the later provisions of this rule.

Fourth, if the medical service or supply is provided and a balance bill is sent to the enrollee, each out of network provider, or the provider's agent or assignee, must maintain a copy of the notice and disclosure statement, signed and dated by the enrollee, for four years. The provider must provide the enrollee with a copy of the signed notice and disclosure statement on the same date the statement is received by the provider.

Finally, the Department adopted Form AH025 as the notice and disclosure statement to be used by out of network providers subject to the requirements of SB 1264. The proposal adopts this form by reference. Although Form AH025 may be accessed on the Department's website at www.tdi.texas.gov/forms, it is also being published elsewhere in this edition of the *Texas Register* as part of this proposal. The notice and disclosure statement may not be modified, including its format or font size, and must be presented to an enrollee as a standalone document and cannot incorporated into any other document.

A provider who seeks and obtains an enrollee's signature on a notice and disclosure statement is not eligible to participate in the claim dispute resolution process authorized by the Insurance Code Chapter 1467. This prohibition does not apply, however, if the enrollee's election is defective or rescinded by the enrollee.

Proposed amended §217.23(d) relates to the Board's complaint investigation and resolution. The Board is authorized under the Insurance Code §752.0003 to take disciplinary action against a licensee that violates a law that prohibits the licensee from billing an insured, participant, facility, or enrollee in an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition. Licensees may also be subject to additional consequences pursuant to the Insurance Code §752.0002. Complaints that do not involve delayed health care or medical care shall be assigned a Priority 4 status, as described in §213.13 of this title (relating to Complaint Investigation and Disposition). After its investigation has concluded, if the Board determines that a licensee has engaged in improper billing practices or bad faith participation or has committed a violation of the Nursing Practice Act, the Insurance Code Chapter 1467, or other applicable law, the Board will impose appropriate disciplinary action.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed

amendments will be in effect, there will be no change in the revenue to state and local government as a result of the enforcement or administration of the proposal. The proposed amendments do not add to or decrease state revenues or expenditures and local governments are not involved in enforcing or complying with the proposed amendments. Ms. Thomas does not anticipate any effect on local employment or the local economy as a result of the proposed amendments.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of a rule that implements the consumer protection provisions of SB 1264. Further, the proposed rules are consistent with the rules adopted by the Department.

There are some anticipated costs of compliance associated with the proposal. However, these anticipated costs of compliance apply only to those licensee providers that choose to engage in balance billing. For those licensee providers that do not balance bill, there will be no costs of compliance with the proposal. For those licensee providers that choose to balance bill, the associated costs of compliance are anticipated to be nominal.

First, there may be a potential increase in the administrative costs associated with providing enrollees the required notice and disclosure statements and maintaining signed notice and disclosure statements. However, the cost to provide and maintain these documents is expected to be negligible. Many licensee providers are not directly responsible for the billing of enrollees, as those duties are typically handled by facility admission staff or other provider groups. In those situations, it is anticipated that the notice and disclosure statements will be included as part of those entity's services. Some licensee providers may utilize billing companies or third party vendors to assist with billing, and it is anticipated that the notice and disclosure statements could be included as part of those company's services, as well. Independent licensee providers subject to the proposal's requirements will need to implement a system for providing and maintaining the notice and disclosure statements if they do not have a system already established to do so. However, providers already routinely provide patients with forms, questionnaires, disclosures, and billing information. Providers are also currently required to maintain health and billing records for patients. The new notice and disclosure statement forms developed by the Department and required by the proposal may be provided and stored in the most cost effective manner chosen by an individual provider. Further, while providers who choose to balance bill may incur nominal new costs associated with providing and storing notice and disclosure statements, these obligations are based in statute. Thus, any new administrative costs associated with the proposal are the direct result of the enactment of SB 1264.

Some providers may also experience a financial impact related to an inability to balance bill. However, the statutory prohibitions against balance billing were enacted by the Texas Legislature in SB 1264. As such, any resulting financial impact is due to statute and not the proposed rules. Further, providers may participate in the dispute resolution process authorized by SB 1264 based on their own estimate of final reimbursement if they do not engage in balance billing. The proposal does not impose any requirement of compliance in this regard.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses and Rural Communities. 2 The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses or micro businesses or rural communities, state agencies must prepare, as part of the rulemaking process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and communities and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule.

The Government Code §2006.001(a)(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated, and has fewer than 100 employees or less than $6 million in annual gross receipts. The Government Code §2006.001(a)(1) defines "micro business" similarly to "small business" but specifies that such a business may not have more than 20 employees. A rural community is defined as a municipality with a population of less than 25,000.

While there may be some associated costs of compliance, the proposal will only affect those licensee providers that choose to engage in balance billing. The proposal is not expected to affect rural communities. For those providers that choose not to engage in balance billing, there will be no costs of compliance. While a licensee provider may choose to utilize the dispute resolution process authorized by SB 1264 in lieu of balance billing, no licensee provider is required to do so, an any associated costs of compliance in that regard are a result of the enactment of SB 1264 and not this proposal. The costs outlined in the Public Benefit/Cost Note section of this proposal provide sufficient cost information for small or micro businesses to make an informed decision regarding whether to engage in balance billing and become subject to the proposal's requirements.

SB 1264 protects consumers from balance billing, except in a narrow set of circumstances. In the circumstance where a provider may balance bill, SB 1264 requires prior notice and disclosure to the enrollee so the enrollee can engage in informed decision making regarding the medical care, service, or supply. The proposed rules are consistent with the consumer protections of SB 1264. Further, the proposal mirrors rules recently adopted by the Department. Those rules further implement the requirements of SB 1264 by clearly articulating the manner in which notice and disclosure must be provided to an enrollee. Those rules also set a reasonable amount of time for an enrollee to be able to consider his/her options before electing to proceed with a non-covered medical service or supply subject to balance billing. Without these specific requirements, patients could be forced to make difficult financial and health related decisions in an extremely vulnerable state, potentially without even knowing they are entitled to balance billing protections under the law. Further, an enrollee may face significant health consequences if treatment is delayed or refused because of billing disputes between a patient and a provider. To ensure the balance billing protections of SB 1264 are properly implemented for the protection of Texas consumers, the Board finds it to be infeasible to exempt, change, or modify the proposed rules as they apply to small or micro businesses. To do so would come at the expense of the enrollees SB 1264 was intended to protect. Furthermore, establishing different requirements for licensee providers based upon their status as a small or micro business would cause confusion for enrollees and providers alike. Because of these reasons, the Board has determined there are no alternatives to the proposal that would be protective of the health, safety, and environmental and economic welfare of the state, as they relate to small or micro businesses.

Costs Under the Government Code §2001.0045. The Government Code §2001.0045 prohibits agencies from adopting a rule that imposes costs on regulated persons unless the agency repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule or amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the proposed rule. Pursuant to §2001.0045(c), this prohibition does not apply to a rule that is necessary to protect the health, safety, and welfare of the residents of this state or is necessary to implement legislation, unless the legislature specifically states §2001.0045 applies to the rule. The Insurance Code §752.003 and §1467.003 provide that the Government Code §2001.0045 does not apply to a rule proposed and adopted under those sections. Because these rules are proposed under the authority of the Insurance Code §752.003 and §1467.003, these rules are not subject to the requirements of the Government Code §2001.0045. Furthermore, even if §2001.0045 was applicable to these rules, the Board is not required to repeal or amend another rule because the proposed rules are necessary to implement the requirements of SB 1264 and to protect the health and financial welfare of the residents of this state, as previously explained in this preamble, and to implement the requirements of SB 1264.

Government Growth Impact Statement. The Board is required, pursuant to the Government Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) implementation of the proposal does not require the creation of new employee positions or the elimination of existing employee positions, as the proposal is not expected to have an effect on existing agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board, as the proposal is not expected to have an effect on existing agency positions; (iv) the proposal does not require an increase or decrease in fees paid to the Board; (v) the proposal implements the requirements of SB 1264, effective September 1, 2019; (vi) the proposal modifies an existing regulation; (vii) the proposal does not increase or decrease the number of individuals subject to the rule's applicability; and (viii) the proposal does not have an effect on the state's economy.

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

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted within thirty days of publication to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Insurance Code §752.0003(c) and §1467.003 and the Occupations Code §301.151.

Section 752.0003(a) provides that an appropriate regulatory agency that licenses, certifies, or otherwise authorizes a physician, health care practitioner, health care facility, or other health care provider to practice or operate in this state may take disciplinary action against the physician, practitioner, facility, or provider if the physician, practitioner, facility, or provider violates a law that prohibits the physician, practitioner, facility, or provider from billing an insured, participant, or enrollee in an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition. Section 752.0003(c) provides that a regulatory agency described by subsection (a) or the Commissioner may adopt rules as necessary to implement this section.

Section 1467.003(a) provides that the Commissioner, the Texas Medical Board, and any other appropriate regulatory agency shall adopt rules as necessary to implement their respective powers and duties under this chapter.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Cross Reference To Statute. The following statutes are affected by this proposal: the

Insurance Code §§752.0003, 1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, 1579.111, the Insurance Code Chapter 1467, and the Occupations Code §301.151.

§217.23. Balance Billing Notice and Disclosure Requirements [~~Dispute Resolution~~].

(a) Purpose. The purpose of this section is to implement the requirements of the Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111 and the Insurance Code Chapter 1467 and notify licensees of their responsibilities under those sections [~~that chapter~~].

(b) Definitions and Applicability of Section.

(1) Definitions. Terms defined in the Insurance Code §1467.001 have the same meanings when used in this section, unless the context clearly indicates otherwise. Additionally, for purposes of this section, a "balance bill" is a bill for an amount greater than an applicable copayment, coinsurance, and deductible under an enrollee's health benefit plan, as specified in the Insurance Code §§1271.157(c), 1271.158(c), 1301.164(c), 1301.165(c), 1551.229(c), 1551.230(c), 1575.172(c), 1575.173(c), 1579.110(c), or 1579.111(c).

(2) Applicability. This section only applies to a covered non-emergency health care or medical service or supply provided on or after January 1, 2020, by:

(A) a facility based provider that is not a participating provider for a health benefit plan, if the service or supply is provided at a health care facility that is a participating provider; or

(B) a diagnostic imaging provider or laboratory service provider that is not a participating provider for a health benefit plan, if the service or supply is provided in connection with a health care or medical service or supply provided by a participating provider. Further, this section is limited to providers that are subject to the Board's jurisdiction.

[(2) Applicability. This section applies to any facility-based provider or emergency care provider, as those terms are defined in the Insurance Code §1467.001, who bills an enrollee covered by a preferred provider benefit plan offered by an insurer under the Insurance Code Chapter 1301 or a health benefit plan, other than a health maintenance organization plan, under the Insurance Code Chapters 1551, 1575, or 1579, for out-of-network emergency care, health care, or medical service or supply provided on or after January 1, 2018. This section is limited to facility-based providers and emergency care providers that are subject to the Board's jurisdiction.]

(c) Responsibilities of Licensee.

(1) An out of network provider may not balance bill an enrollee receiving a non-emergency health care or medical service or supply, and the enrollee does not have financial responsibility for a balance bill, unless the enrollee elects to obtain the service or supply from the out of network provider knowing that the provider is out of network and the enrollee may be financially responsible for a balance bill. An enrollee's legal representative or guardian may elect on behalf of an enrollee.

[(1) Mediation.]

[(A) An enrollee, as that term is defined in the Insurance Code §1467.001(3), may request mediation of a settlement of an out-of-network health benefit claim if:]

[(i) the amount for which the enrollee is responsible to a facility-based or emergency care provider, after co-payments, deductibles, and co-insurance, including the amount unpaid by the administrator or insurer, is greater than $500; and]

[(ii) the health benefit claim is for:]

[(I) emergency care; or]

[(II) a health care or medical service or supply provided by a facility-based provider in a facility that is a preferred provider or that has a contract with the administrator.]

[(B) If an enrollee requests mediation under the Insurance Code Chapter 1467, the facility-based or emergency care provider or their representative must participate in the mediation.]

[(C) Prior to participation in a mediation, all parties, including the facility-based or emergency care provider, or their representative, must participate in an informal settlement teleconference not later than the 30th day after the date on which the enrollee submits the request for mediation. If the informal settlement teleconference is unsuccessful in resolving the matter, a mediation must be conducted in the county in which the health care or medical services were rendered.]

[(D) In a mediation under the Insurance Code Chapter 1467, the parties must:]

[(i) evaluate whether:]

[(I) the amount charged by the facility-based or emergency care provider for the health care or medical service or supply is excessive; and]

[(II) whether the amount paid by the insurer or administrator represents the usual and customary rate for the health care or medical service or supply or is unreasonably low; and]

[(ii) as a result of the amounts described by clause (i) of this subparagraph, determine the amount, after co-payments, deductibles, and co-insurance are applied, for which the enrollee is responsible to the facility-based or emergency care provider.]

[(E) The mediator's fees for a mediation under the Insurance Code Chapter 1467 shall be split evenly and paid by the facility-based or emergency care provider and the insurer or administrator.]

[(F) In the event a mediation is unsuccessful, the matter must be referred to a special judge, as set forth in the Insurance Code §1467.057.]

[(G) A facility-based provider will not be required to participate in mediation to mediate a billed charge if, prior to providing a health care service or supply, the facility-based provider makes a disclosure, as set forth in paragraph (2) of this subsection, and obtains the enrollee's written acknowledgment of that disclosure, so long as the billed amount is less than or equal to the maximum amount projected in the disclosure.]

(2) An enrollee elects to obtain a service or supply only if:

(A) the enrollee has a meaningful choice between a participating provider for a health benefit plan issuer or administrator and an out of network provider. No meaningful choice exists if an out of network provider was selected for or assigned to an enrollee by another provider or health benefit plan issuer or administrator;

(B) the enrollee is not coerced by a provider or health benefit plan issuer or administrator when making the election. A provider engages in coercion if the provider charges or attempts to charge a nonrefundable fee, deposit, or cancellation fee for the service or supply prior to the enrollee's election; and

(C) the out of network provider or the agent or assignee of the provider provides written notice and disclosure to the enrollee and obtains the enrollee's written consent, as specified in paragraph (3) of this subsection.

[(2) Billing Notices.]

[(A) Except in the case of an emergency, and if requested by an enrollee, an out-of-network facility-based provider must provide a complete disclosure to the enrollee, prior to providing the health care or medical service or supply, that:]

[(i) explains that the facility-based provider does not have a contract with the enrollee's health benefit plan;]

[(ii) discloses projected amounts for which the enrollee may be responsible; and]

[(iii) discloses the circumstances under which the enrollee would be responsible for those amounts.]

[(B) Each bill sent to an enrollee by a facility-based or emergency care provider for an out-of-network health benefit claim (balance bill) eligible for mediation under the Insurance Code Chapter 1467 must include a conspicuous, plain-language explanation of the mediation process available under Chapter 1467, as well as the information specified in §1467.0511.]

(3) If an out of network provider elects to balance bill an enrollee rather than participate in the claim dispute resolution process authorized by the Insurance Code Chapter 1467, the out of network provider or agent or assignee of the provider must provide the enrollee with the notice and disclosure statement specified in subparagraph (B) of this paragraph prior to scheduling the non-emergency health care or medical service or supply. To be effective, the notice and disclosure statement must be signed and dated by the enrollee no less than 10 business days before the date the service or supply is performed or provided. The enrollee may rescind acceptance within five business days from the date the notice and disclosure statement was signed, as explained in the notice and disclosure statement form referenced in subparagraph (B) of this paragraph.

(A) Each out of network provider, or the provider's agent or assignee, must maintain a copy of the notice and disclosure statement, signed and dated by the enrollee, for four years if the medical service or supply is provided and a balance bill is sent to the enrollee. The provider must provide the enrollee with a copy of the signed notice and disclosure statement on the same date the statement is received by the provider.

(B) The Texas Department of Insurance has adopted Form AH025 as the notice and disclosure statement to be used under this subsection. The notice and disclosure statement may not be modified, including its format or font size, and must be presented to an enrollee as a standalone document and not incorporated into any other document. The form is available from the Texas Department of Insurance by accessing its website at www.tdi.texas.gov/forms.

[(3) Collection Notices. On receipt of notice from the Texas Department of Insurance that an enrollee has made a request for mediation that meets the requirements of the Insurance Code Chapter 1467, the facility-based or emergency care provider may not pursue any collection efforts against the enrollee for amounts other than co-payments, deductibles, and co-insurance, before the earlier of the date the mediation is completed or the date the request to mediate is withdrawn.]

(4) A provider who seeks and obtains an enrollee's signature on a notice and disclosure statement under this subsection is not eligible to participate in the claim dispute resolution process authorized by the Insurance Code Chapter 1467. This prohibition does not apply if the election is defective or rescinded by the enrollee under paragraph (3) of this subsection.

(d) Complaint Investigation and Resolution. The Board is authorized under the Insurance Code §752.0003 to take disciplinary action against a licensee that violates a law that prohibits the licensee from billing an insured, participant, facility, or enrollee in an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition. Licensees may also be subject to additional consequences pursuant to the Insurance Code §752.0002. Complaints that do not involve delayed health care or medical care shall be assigned a Priority 4 status, as described in §213.13 of this title (relating to Complaint Investigation and Disposition). After investigation, if the Board determines that a licensee has engaged in improper billing practices or bad faith participation or has committed a violation of the Nursing Practice Act, the Insurance Code Chapter 1467, or other applicable law, the Board will impose appropriate disciplinary action.

[(1) Bad faith.]

[(A) Except for good cause shown, on a report of a mediator and appropriate proof of bad faith mediation, the Board shall impose an administrative penalty.]

[(B) The following conduct constitutes bad faith mediation:]

[(i) failing to participate in the mediation, if participation in the mediation was required;]

[(ii) failing to provide information the mediator believes is necessary to facilitate an agreement; or]

[(iii) failing to designate a representative participating in the mediation with full authority to enter into any mediated agreement.]

[(C) Failure to reach an agreement is not conclusive proof of bad faith mediation.]

[(2) Complaint process. A complaint may be filed with the Board by a mediator against a licensee for bad faith mediation or by an enrollee who is not satisfied with a mediated agreement. Complaints that do not involve delayed health care or medical care shall be assigned a Priority 4 status, as described in §213.13 of this title (relating to Complaint Investigation and Disposition). After investigation, if the Board determines that a licensee has engaged in improper billing practices or has committed a violation of the Nursing Practice Act, Chapter 1467, or other applicable law, the Board will impose appropriate disciplinary action.]

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

Filed with the Office of the Secretary of State on November 10, 2020.

TRD-202004771
Jena Abel
Deputy General Counsel
Texas Board of Nursing
Earliest possible date of adoption: December 27, 2020
For further information, please call: (512) 305-6822

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PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 337. DISPLAY OF LICENSE

22 TAC §337.1

The Texas Board of Physical Therapy Examiners proposes amending 22 Texas Administrative Code (TAC) §337.1. Display of License.

The amendment is proposed to require licensees who provide physical therapy services through telehealth, home visits, or other non-traditional modes to provide information on accessing the board's online license verification system.

Fiscal Note

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners (ECPTOTE), has determined that for the first five-year period these amendments are in effect there would be no increase or loss of revenue to the state. No fiscal implication to units of local government is anticipated as a result of enforcing or administering the rules.

Public Benefits and Costs

Mr. Harper has also determined that for the first five-year period these amendments are in effect the public benefit will be assurance that physical therapy services provided through telehealth, home visits, or other non-traditional modes are provided by an individual with a valid, unencumbered license.

Local Employment Economic Impact Statement

The amendments are not anticipated to impact a local economy, so a local employment economic impact statement is not required.

Small and Micro-Businesses and Rural Communities Impact

Mr. Harper has determined that there will be no costs or adverse economic effects to small or micro-businesses or rural communities; therefore, an economic impact statement or regulatory flexibility analysis is not required.

Government Growth Impact Statement

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rule amendments. For each year of the first five years the proposed amendment will be in effect, Mr. Harper has determined the following:

The proposed rule amendments will neither create nor eliminate a government program.

(2) The proposed rule amendments will neither create new employee positions nor eliminate existing employee positions.

(3) The proposed rule amendments will neither increase nor decrease future legislative appropriations to the agency.

(4) The proposed rule amendments will neither require an increase nor a decrease in fees paid to the agency.

(5) The proposed rule amendment revises an existing regulation by reformatting existing language and adding language to require licensees who provide physical therapy services through telehealth, home visits, or other non-traditional modes to provide information on accessing the board's online license verification system.

(6) The proposed rule amendments will neither repeal nor limit an existing regulation.

(7) The proposed rule amendments will neither increase nor decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule amendments will neither positively nor adversely affect this state's economy.

Takings Impact Assessment

The proposed rule amendments will not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

Requirement for Rule Increasing Costs to Regulated Persons

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule amendment.

Public Comment

Comments on the proposed amendment may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Occupation Code §453.102, which authorizes the Board to adopt rules necessary to implement chapter 453. Additionally, the amendment is proposed under Texas Occupation Code §453.212, which requires license holders to display their license.

Cross-reference to Statute

The proposed amendment implements provisions in Sec. 453.212, Occupations Code that pertains to the display of license by license holders. No other statutes, articles, or codes are affected by these amendments.

§337.1. Display of License.

(a) The original license must be displayed in the licensee's principal place of practice.

(b) For physical therapy services provided through telehealth, home visits, or other non-traditional modes, the licensee must provide information on accessing the board's online license verification system.

(c) Displayed reproduction of the original license is unauthorized.

(d) Reproduction of the original license is authorized for institutional file purpose only. [~~Displayed reproduction of the original license is unauthorized. The original license must be displayed in the principal place of practice. Reproduction of the original license is authorized for institutional file purpose only.~~]

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 November 16, 2020.

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Ralph A. Harper
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: December 27, 2020
For further information, please call: (512) 305-6900

22 TAC §337.2

The Texas Board of Physical Therapy Examiners proposes amending 22 Texas Administrative Code (TAC) §337.2, concerning Consumer Information Sign.

The amendment is proposed to require licensees who provide physical therapy services through telehealth, home visits, or other non-traditional modes to provide information on directing complaints regarding non-compliance with the Texas Physical Therapy Practice Act/Rules to the Texas Board of Physical Therapy Examiners.

Fiscal Note

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy & Occupational Therapy Examiners (ECPTOTE), has determined that for the first five-year period these amendments are in effect there would be no increase or loss of revenue to the state. No fiscal implication to units of local government is anticipated as a result of enforcing or administering the rules.

Public Benefits and Costs

Mr. Harper has also determined that for the first five-year period these amendments are in effect the public benefit will be assurance that consumers of physical therapy services provided through telehealth, home visits, or other non-traditional modes will have information on directing complaints regarding non-compliance with the Texas Physical Therapy Practice Act/Rules to the Texas Board of Physical Therapy Examiners.

Local Employment Economic Impact Statement

The amendments are not anticipated to impact a local economy, so a local employment economic impact statement is not required.

Small and Micro-Businesses and Rural Communities Impact

Mr. Harper has determined that there will be no costs or adverse economic effects to small or micro-businesses or rural communities; therefore, an economic impact statement or regulatory flexibility analysis is not required.

Government Growth Impact Statement

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rule amendments. For each year of the first five years the proposed amendment will be in effect, Mr. Harper has determined the following:

(1) The proposed rule amendments will neither create nor eliminate a government program.

(2) The proposed rule amendments will neither create new employee positions nor eliminate existing employee positions.

(3) The proposed rule amendments will neither increase nor decrease future legislative appropriations to the agency.

(4) The proposed rule amendments will neither require an increase nor a decrease in fees paid to the agency.

(5) The proposed rule amendment revises an existing regulation by adding language to require licensees who provide physical therapy services through telehealth, home visits, or other non-traditional modes to provide information on directing complaints regarding non-compliance with the Texas Physical Therapy Practice Act/Rules to the Texas Board of Physical Therapy Examiners.

(6) The proposed rule amendments will neither repeal nor limit an existing regulation.

(7) The proposed rule amendments will neither increase nor decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule amendments will neither positively nor adversely affect this state's economy.

Takings Impact Assessment

The proposed rule amendments will not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

Requirement for Rule Increasing Costs to Regulated Persons

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule amendment.

Public Comment

Comments on the proposed amendment may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Occupation Code §453.102, which authorizes the Board to adopt rules necessary to implement chapter 453. Additionally, the amendment is proposed under Texas Occupation Code §453.152, which requires license holders to provide a statement informing consumers that a complaint against a license holder can be directed to the board.

Cross-reference to Statute

The proposed amendment implements provisions in Sec. 453.152, Occupations Code that pertains to informing consumers that a complaint against a license holder can be directed to the board.

§337.2. Consumer Information Sign.

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

(c) For physical therapy services provided through telehealth, home visits, or other non-traditional modes, the licensee must provide information as described in subsection (b) of this section.

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 November 16, 2020.

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Ralph A. Harper
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: December 27, 2020
For further information, please call: (512) 305-6900

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CHAPTER 341. LICENSE RENEWAL

22 TAC §341.3

The Texas Board of Physical Therapy Examiners proposes amending 22 Texas Administrative Code (TAC) §341.3, Qualifying Continuing Competence Activities.

The amendments are proposed to clarify the documentation required for continuing competence approval of college or university courses in paragraph (2); to update language for completion of a residency or fellowship and required hours for mentorship of a resident or fellow to align with the standards set forth by the American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE) in paragraph (5)(C) and (D); and to add paragraph (7) which provides a means for licensees to claim continuing competence credit for engaging in non-work related voluntary charity care.

Fiscal Note

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy & Occupational Therapy Examiners (ECPTOTE), has determined that for the first five-year period these amendments are in effect there would be no increase or loss of revenue to the state. No fiscal implication to units of local government is anticipated as a result of enforcing or administering the rules.

Public Benefits and Costs

Mr. Harper has also determined that for the first five-year period these amendments are in effect the public benefit will be assurance that physical therapy licensees maintain their competence by engaging in a variety of qualifying continuing competence activities.

Local Employment Economic Impact Statement

The amendments are not anticipated to impact a local economy, so a local employment economic impact statement is not required.

Small and Micro-Businesses and Rural Communities Impact

Mr. Harper has determined that there will be no costs or adverse economic effects to small or micro-businesses or rural communities; therefore, an economic impact statement or regulatory flexibility analysis is not required.

Government Growth Impact Statement

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rule amendments. For each year of the first five years the proposed amendment will be in effect, Mr. Harper has determined the following:

(1) The proposed rule amendments will neither create nor eliminate a government program.

(2) The proposed rule amendments will neither create new employee positions nor eliminate existing employee positions.

(3) The proposed rule amendments will neither increase nor decrease future legislative appropriations to the agency.

(4) The proposed rule amendments will neither require an increase nor a decrease in fees paid to the agency.

(5) The proposed rule amendment revises an existing regulation with updated language and addition of a qualifying continuing competence category.

(6) The proposed rule amendments will neither repeal nor limit an existing regulation.

(7) The proposed rule amendments will neither increase nor decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule amendments will neither positively nor adversely affect this state's economy.

Takings Impact Assessment

The proposed rule amendments will not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

Requirement for Rule Increasing Costs to Regulated Persons

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule amendment.

Public Comment

Comments on the proposed amendments may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register.*

Statutory Authority

The amended sections are proposed under Texas Occupation Code §453.102, which authorizes the Board to adopt rules necessary to implement chapter 453. Additionally, the amendments are proposed under Texas Occupation Code §453.254, which authorizes the Board to require license holders to complete continuing competence activities specified by the Board.

Cross-reference to Statute

The proposed amendment implements provisions in Sec. 453.254, Occupations Code that pertains to continuing competence requirements for license holders. No other statutes, articles, or codes are affected by these amendments.

§341.3. Qualifying Continuing Competence Activities.

Licensees may select from a variety of activities to fulfill the requirements for continuing competence. These activities include the following:

(1) (No change.)

(2) College or university courses.

(A) Courses at regionally accredited US colleges or universities easily recognizable as pertinent to the physical therapy profession and in the areas of ethics, professional responsibility, clinical application, clinical management, behavioral science, science, or risk management.

(i) The course must be at the appropriate educational level for the PT or the PTA.

(ii) All courses in this paragraph [~~subsection~~] are subject to the following:

(I) One satisfactorily completed credit hour (grade of C or equivalent, or higher) equals 10 CCUs.

(II) Documentation required for consideration is the course syllabus for each course and a [~~an official~~] transcript indicating successful completion of the course.

(III) If selected for audit, the licensee must submit the approval letter from the board-approved organization.

(B) College or university sponsored CE programs (no grade, no official transcript) must comply with paragraph (1)(A) of this section [~~subsection~~].

(C) College or university courses that are part of a post-professional physical therapy degree program, or are part of a CAPTE-accredited program bridging from PTA to PT, are automatically approved and are assigned a standard approval number by the board-approved organization. If selected for audit, the licensee must submit a [~~an official~~] transcript indicating successful completion of the course.

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

(5) Advanced Training, Certification, and Recognition.

(A) - (B) (No change.)

(C) Residency or fellowship relevant to physical therapy. The residency or fellowship must be accredited by the American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE). [~~The Board will maintain and make available a list of recognized residencies and fellowships.~~] This activity type is automatically approved and is assigned a standard approval number by the board approved organization.

(i) - (ii) (No change.)

(iii) If selected for audit, the licensee must submit a copy of the certificate of graduation indicating [~~letter notifying the licensee of~~] completion of the fellowship or residency. [~~, and a copy of the fellowship certificate.~~]

(D) Mentorship [~~Supervision or mentorship~~] of a resident or fellow in an American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE) accredited [~~credentialed~~] residency or fellowship program. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) Mentorship [~~Clinical supervision~~] of a resident or a fellow for a minimum of 150 [~~1500~~] hours of 1:1 mentoring [~~or a fellow for a minimum of 1000 hours~~] is valued at 10 CCUs. The Board will consider partial credit for those mentors who provide mentorship for only a portion of the residency or fellowship.

(ii) (No change.)

(iii) If selected for audit, the licensee must submit a copy of a letter from the accredited [~~credentialed~~] residency or fellowship program confirming participation as a clinical mentor, with the dates and number of mentorship hours [~~length of time~~] served as a clinical mentor.

(E) (No change.)

(6) (No change.)

(7) Voluntary charity care. Providing physical therapy services for no compensation as a volunteer of a charitable organization as defined in §84.003 of the Texas Civil Practice and Remedies Code. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(A) Voluntary charity care must be non work-related.

(B) Proof of voluntary charity care can count toward up to one-half (1/2) of the continuing competence requirement.

(C) Ten (10) hours of voluntary charity care equals 1 CCU.

(D) If selected for audit, the licensee must submit a letter indicating the dates and number of hours of voluntary charity care on official charitable organization(s) letterhead.

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 November 16, 2020.

TRD-202004823
Ralph A. Harper
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: December 27, 2020
For further information, please call: (512) 305-6900

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 518. UNAUTHORIZED PRACTICE OF PUBLIC ACCOUNTANCY

22 TAC §518.5

The Texas State Board of Public Accountancy (Board) proposes an amendment to §518.5, concerning Unlicensed Entities.

Background, Justification and Summary

CPA firms not licensed in Texas may practice in Texas if the firm is licensed in another state. This amendment distinguishes between a firm practicing in Texas without a license and a firm practicing in Texas through a license issued by another state.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment clarifies that firms licensed in another state may practice in Texas without a Texas issued license so long as they are licensed in another state.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 28, 2020.

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

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§518.5. Unlicensed Entities.

(a) An unlicensed entity is permitted to state that it has an ownership interest and a business affiliation with a registered CPA firm provided each such statement complies with subsection (b) of this section.

(b) In any letterhead, or in any advertising or promotional statements by an unlicensed entity that refers to accounting, auditing or attest services or any derivative terms associated with those services, there must be a statement that such services are only performed by the affiliated registered CPA firm. This statement must be included in conspicuous proximity to the name of the unlicensed entity and be printed in type not less bold than that contained in the body of the letterhead, advertisement or promotional statement. If the advertisement is in audio format, the statement must be clearly declared in each such presentation.

(c) An unlicensed entity performing attest services is in the unauthorized practice of public accountancy and in violation of the Act and the board's rules except a firm authorized to practice in this state pursuant to §901.461 of the Act (relating to Practice by Certain Out-of-State Firms).

(d) Interpretative Comment: This section clarifies that the mere mention of a business and ownership affiliation with a registered CPA firm on the letterhead, or in advertising or promotional statements, of an unlicensed entity does not violate the Act when done in compliance with the provisions of this section. This section also clarifies that the letterhead, advertising or promotional statements of the unlicensed entity may refer to accounting, auditing or attest services, or any derivative terms associated with those services, without violating §901.453 of the Act (relating to Use of Other Titles or Abbreviations). It also clarifies that all attest services must still be performed exclusively by registered CPA firms in accordance with the Act and all board rules. The definition of "attest services" is set forth in §501.52 of this title (relating to Definitions).

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

Filed with the Office of the Secretary of State on November 12, 2020.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 27, 2020
For further information, please call: (512) 305-7842

22 TAC §518.6

The Texas State Board of Public Accountancy (Board) proposes an amendment to §518.6, concerning Administrative Penalty Guidelines for the Unauthorized Practice of Public Accountancy.

Background, Justification and Summary

The proposed amendment addresses the fact that the Board is not required to assess an administrative penalty for every Board rule violation.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will make it clear that the Board may choose to impose an administrative penalty or not for rule violations.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase

or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 28, 2020.

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

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§518.6. Administrative Penalty Guidelines for the Unauthorized Practice of Public Accountancy.

(a) The Board has the sole discretion in determining if a penalty will be assessed as well as the amount of the penalty. If assessed, the penalty [~~Any administrative penalty assessed under this chapter~~] will be in accordance with the following guidelines:

(1) an unlicensed individual who uses terms restricted for use by CPAs in violation of §§901.451, 901.452, 901.453 or 901.454 of the Act (relating to Use of Title or Abbreviation for "Certified Public Accountant"; Use of Title or Abbreviation for "Public Accountant"; Use of Other Titles or Abbreviations; and Title Used by Certain Out-of-State or Foreign Accountants) shall pay a penalty of no less than $1,000.00 and no more than $5,000.00 for a first offense; and no less than $5,000.00 and no more than $25,000.00 for two or more offenses;

(2) an unlicensed entity that uses terms restricted for use by licensed firms in violation of §901.351(a) of the Act (relating to Firm License Required) shall pay a penalty of no less than $5,000.00 and no more than $10,000.00 for a first offense; and no more than $25,000.00 for two or more offenses;

(3) an unlicensed individual who asserts an expertise in accounting through use of the term "accounting service" or any variation of that term shall pay a penalty of no less than $1,000.00 and no more than $5,000.00 for a first offense; and no more than $25,000.00 for two or more offenses;

(4) an unlicensed entity that asserts an expertise in accounting through use of the term "accounting service" or any variation of that term shall pay a penalty of no less than $5,000.00 and no more than $10,000.00 for a first offense; and no more than $25,000.00 for two or more offenses;

(5) an unlicensed individual who claims to provide attest services shall pay a penalty of no less than $5,000.00 and no more than $25,000.00;

(6) an unlicensed entity that claims to provide attest services shall pay a penalty of no less than $5,000.00 and no more than $25,000.00;

(7) an unlicensed individual who claims to be a CPA shall pay a penalty of no less than $5,000.00 and no more than $25,000.00; and

(8) an unlicensed entity that claims to be a CPA firm shall pay a penalty of no less than $5,000.00 and no more than $25,000.00.

(b) An offense is counted as a second or more offense when the person has been notified in writing by the board that the person's actions violate the Public Accountancy Act and the person fails to correct the violation(s) within the time required in the written notification.

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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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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CHAPTER 519. PRACTICE AND PROCEDURE
SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §519.4

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.4, concerning Conduct and Decorum.

Background, Justification and Summary

The proposed amendment is a grammatical change to revise the word from singular to plural verb.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will be a grammatically correct rule.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 28, 2020.

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

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§519.4. Conduct and Decorum.

(a) Every person, party, witness, attorney, or other representative appearing before the board, board committee or board staff shall comport himself in all proceedings with proper dignity, courtesy, and respect for the board, the executive director, and all other participants. Disorderly conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the State Bar of Texas.

(b) Any person engaging in disorderly conduct or communicating with board members in violation of the prohibitions on ex parte communications [~~communication~~] may be excluded from any board, committee or staff proceeding and treated as if defaulting on obligations to the board.

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

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §519.7

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.7, concerning Criminal Offenses that May Subject a Licensee or Certificate Holder to Discipline or Disqualify a Person from Receiving a License.

Background, Justification and Summary

The proposed revision is to add the misdemeanor offense of evading arrest to the list of criminal offenses that could result in a disciplinary action by the Board against a licensee.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will put the public on notice that the offense of evading arrest could result in disciplinary action.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with

the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 28, 2020.

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

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§519.7. Criminal Offenses that May Subject a Licensee or Certificate Holder to Discipline or Disqualify a Person from Receiving a License.

(a) Final conviction or placement on deferred adjudication for a felony, or final conviction or placement on deferred adjudication for the following misdemeanors may subject a licensee or certificate holder to disciplinary action pursuant to §501.90 of this title (relating to Discreditable Acts) or disqualify a person from receiving a license or certificate, or deny a person the opportunity to take the UCPAE pursuant to §511.70 of this title (relating to Grounds for Disciplinary Action of Applicants). Licensees and certificate holders are often placed in a position of trust with respect to client funds and assets. The public including the business community relies on the integrity of licensees and certificate holders in providing professional accounting services or professional accounting work. The board considers a conviction or placement on deferred adjudication for a felony or conviction or placement on deferred adjudication for the following misdemeanor offenses to be evidence of an individual lacking the integrity necessary to be trusted with client funds and assets. The repeated failure to follow state and federal criminal laws directly relates to the integrity required to practice public accountancy. The board has determined that the following list of misdemeanor offenses evidence violations of law that involve integrity and directly relate to the duties and responsibilities involved in providing professional accounting services or professional accounting work, pursuant to the provisions of Chapter 53 of the Occupations Code:

(1) dishonesty or fraud:

(A) Unlawful Use of Criminal Instrument;

(B) Unlawful Access to Stored Communications;

(C) Illegal Divulgence of Public Communications;

(D) Burglary of Coin-Operated or Coin Collection Machines;

(E) Burglary of Vehicles;

(F) Theft;

(G) Theft of Service;

(H) Tampering with Identification Numbers;

(I) Theft of or Tampering with Multichannel Video or Information Services;

(J) Manufacture, Distribution, or Advertisement of Multichannel Video or Information Services Device;

(K) Sale or Lease of Multichannel Video or Information Services Device;

(L) Possession, Manufacture, or Distribution of Certain Instruments Used to Commit Retail Theft;

(M) Forgery;

(N) Criminal Simulation;

(O) Trademark Counterfeiting;

(P) Stealing or Receiving Stolen Check or Similar Sight Order;

(Q) False Statement to Obtain Property or Credit or in the Provision of Certain Services;

(R) Hindering Secured Creditors;

(S) Fraudulent Transfer of a Motor Vehicle;

(T) Credit Card Transaction Record Laundering;

(U) Issuance of a Bad Check;

(V) Deceptive Business Practices;

(W) Rigging Publicly Exhibited Contest;

(X) Misapplication of Fiduciary Property or Property of Financial Institution;

(Y) Securing Execution of Document by Deception;

(Z) Fraudulent Destruction, Removal, or Concealment of Writing;

(AA) Simulating Legal Process;

(BB) Refusal to Execute Release of Fraudulent Lien or Claim;

(CC) Fraudulent, Substandard, or Fictitious Degree;

(DD) Breach of Computer Security;

(EE) Unauthorized Use of Telecommunications Service;

(FF) Theft of Telecommunications Service;

(GG) Publication of Telecommunications Access Device;

(HH) Insurance Fraud;

(II) Medicaid Fraud;

(JJ) Coercion of Public Servant or Voter;

(KK) Improper Influence;

(LL) Acceptance of Honorarium (by restricted government employees);

(MM) Gift to Public Servant by Person Subject to his Jurisdiction;

(NN) Offering Gift to Public Servant;

(OO) Perjury;

(PP) False Report to Police Officer or Law Enforcement Employee;

(QQ) Tampering with or Fabricating Physical Evidence;

(RR) Tampering with Governmental Record;

(SS) Fraudulent Filing of Financial Statement;

(TT) False Identification as Peace Officer;

(UU) Misrepresentation of Property;

(VV) Record of a Fraudulent Court;

(WW) Bail Jumping and Failure to Appear;

(XX) False Alarm or Report;

(YY) Engaging in Organized Criminal Activity;

(ZZ) Violation of Court Order Enjoining Organized Criminal Activity; [~~and~~]

(AAA) Failing to file license holder's own tax return; and

(BBB) Evading arrest;

(2) moral turpitude:

(A) Public Lewdness;

(B) Indecent Exposure;

(C) Enticing a Child;

(D) Improper Contact with Victim;

(E) Abuse of Corpse;

(F) Prostitution;

(G) Promotion of Prostitution;

(H) Obscene Display or Distribution;

(I) Obscenity;

(J) Sale, Distribution, or Display of Harmful Material to Minor; and

(K) Employment Harmful to Children;

(3) alcohol abuse or controlled substances:

(A) Possession of Substance in Penalty Group 3 (less than 28 grams), under the Texas Health and Safety Code;

(B) Possession of Substance in Penalty Group 4 (less than 28 grams), under the Texas Health and Safety Code;

(C) Manufacture, Delivery, or Possession with Intent to Deliver Miscellaneous Substances, under the Texas Health and Safety Code;

(D) Manufacture, Delivery, or Possession of Miscellaneous Substances, under the Texas Health and Safety Code;

(E) Delivery of Marijuana, under the Texas Health and Safety Code;

(F) Possession of Marijuana, under the Texas Health and Safety Code;

(G) Possession or Transport of Certain Chemicals with Intent to Manufacture Controlled Substance (for substance listed in a Schedule but not in a Penalty Group), under the Texas Health and Safety Code;

(H) Possession or Delivery of Drug Paraphernalia, under the Texas Health and Safety Code;

(I) Obstructing Highway or Other Passageway; and

(J) Any misdemeanor involving intoxication under the influence of alcohol or a controlled substance.

(4) physical injury or threats of physical injury to a person:

(A) Assault;

(B) Deadly Conduct;

(C) Terroristic Threat; and

(D) Leaving a Child in a Vehicle.

(b) A licensee or certificate holder is often placed in a position of trust with respect to client funds; and the public, including the business community, relies on the integrity of licensees and certificate holders in preparing reports and providing professional accounting services or professional accounting work. The board considers repeated violations of criminal laws to relate directly to a licensee or certificate holder providing professional accounting services or professional accounting work.

(c) A conviction or placement on deferred adjudication for a violation of any state or federal law that is equivalent to an offense listed in subsection (a)(1) - (4) of this section is considered to directly relate to a licensee or certificate holder providing professional account-

ing services or professional accounting work and may subject a certificate or registration holder to discipline by the board.

(d) Misdemeanor convictions in another state will be analyzed by the general counsel to determine if such out of state misdemeanor has an equivalency to Texas law prior to opening a complaint investigation.

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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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

SUBCHAPTER C. PROCEEDINGS AT SOAH

22 TAC §519.40

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.40, concerning General Provisions.

Background, Justification and Summary

Occasionally licensees fail to respond to the public and/or fail to the respond to the Board. When this occurs, the Board will seek a default judgment against the licensee. In those cases where this occurs regulatory expenses can be minimized by having the hearing conducted by the Executive Director.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will make the public aware of one of the steps in the Board's disciplinary process.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on December 28, 2020.

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

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§519.40. General Provisions.

(a) The board appoints SOAH or the executive director as provided for in §519.24(f) of this chapter (relating to Committee Recommendations) to be its finder of fact in contested cases pursuant to §901.508 of the Act (relating to Right to Hearing). The board does not delegate [~~to the ALJ~~] and retains for itself the right to determine the sanctions and make the final decision in any contested case.

(b) SOAH hearings of contested cases shall be conducted in accordance with the APA by an ALJ assigned by SOAH. Jurisdiction over the case is acquired by SOAH when the board staff files a request to docket case.

(c) For administrative hearings or proceedings covered by the APA a witness called by the board is entitled to receive reimbursement from the board for meals, lodging and mileage while going to and returning from the place of the hearing or proceeding if the hearing or proceeding is more than 25 miles from the place of residence of the witness, and such reimbursement will be at the rate:

(1) provided by law for state employees if the witness uses their personally owned or leased motor vehicle to attend the hearing or proceeding;

(2) provided by law for state employees if the witness does not use their personally owned or leased motor vehicle to attend the hearing or proceeding; and

(3) for meals and lodging provided by law for state employees.

(d) The board will pay the witness a $50.00 fee for each day or portion of day the witness appears on behalf of the board at a SOAH docketed administrative hearing or related proceeding the witness attends.

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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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 534. GENERAL ADMINISTRATION

22 TAC §534.7

The Texas Real Estate Commission (TREC) proposes the repeal of 22 TAC §534.7, Vendor Protest Procedures, in Chapter 534, General Administration. The proposed repeal of §534.7 eliminates the agency's use of vendor protest procedures adopted by the Texas Facilities Commission. TREC will replace these vendor protest procedures in rule with a new set of vendor protest procedures that better meet the agency's needs and provide greater transparency to both members of the public and parties seeking to protest.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the repeal. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed repeal. There is no significant economic cost anticipated for persons who are required to comply with the proposed repeal. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the repeal as proposed is in effect, the public benefits anticipated as a result of enforcing the repeal as proposed will be a process that is easier to follow and understand and that better addresses vendor protest situations that may arise in contracts for a licensing agency like TREC.

For each year of the first five years the proposed repeal is in effect the repeal will not:

-create or eliminate a government program;

-require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase or decrease in fees paid to the agency;

-create a new regulation;

-expand an existing regulation;

-increase or decrease the number of individuals subject to the rule's applicability; or

-positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Vanessa E. Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The repeal is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102, as well as Texas Occupations Code 1105.006, which grants the Texas Real Estate Commission authority to contract and do all other acts incidental to those contracts, and section 2255.076 of the Texas Government Code, which requires state agencies to adopt by rule vendor protest procedures.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101, 1102, and 1105. No other statute, code or article is affected by the proposed repeal.

§534.7. Vendor Protest 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.

Filed with the Office of the Secretary of State on November 13, 2020.

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Vanessa Burgess
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3284

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22 TAC §534.7

The Texas Real Estate Commission (TREC) proposes new 22 TAC §534.7, Vendor Protest Procedures, in Chapter 534, General Administration. The proposed new §534.7 creates new vendor protest procedures that better meet the agency's needs than

the previous version. This new rule also more clearly establishes the agency's protest review and appeal process and identifies the roles and requirements of both TREC staff and the protesting party.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed new rule. There is no significant economic cost anticipated for persons who are required to comply with the proposed new rule. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the new rule as proposed is in effect, the public benefits anticipated as a result of enforcing the new rule as proposed will be a process that is easier for both members of the public and protesting parties to follow and understand and is more in line with the types of procurements and contracts of a licensing agency like TREC.

For each year of the first five years the proposed new rule is in effect the new rule will not:

-create or eliminate a government program;

-require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase or decrease in fees paid to the agency;

-create a new regulation;

-expand an existing regulation;

-increase or decrease the number of individuals subject to the rule's applicability; or

-positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Vanessa E. Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The new rule is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102, as well as Texas Occupations Code 1105.006, which grants the Texas Real Estate Commission authority to contract and do all other acts incidental to those contracts, and section 2255.076 of the Texas Government Code, which requires state agencies to adopt by rule vendor protest procedures.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101, 1102, and 1105. No other statute, code or article is affected by the proposed new rule.

§534.7. Vendor Protest Procedures.

(a) The purpose of this section is to provide a procedure for vendors to protest purchases made by the Texas Real Estate Commission ("Commission") and the Texas Appraiser Licensing and Certification Board (collectively "the agency"). Protests of purchases made by the Texas Facilities Commission ("TFC") on behalf of the agency are addressed in 1 Texas Administrative Code Chapter 111, Subchapter C (relating to Complaints and Dispute Resolution). Protests of purchases made by the Department of Information Resources (DIR) on behalf of the agency are addressed in 1 Texas Administrative Code Chapter 201, §201.1 (relating to Procedures for Vendor Protests and the Negotiation and Mediation of Certain Contract Disputes and Bid Submission, Opening and Tabulation Procedures). Protests of purchases made by the Statewide Procurement Division of the Comptroller of Public Accounts ("CPA") on behalf of the agency are addressed in 34 Texas Administrative Code Chapter 20, Subchapter F, Division 3 (relating to Protests and Appeals). The rules of TFC, DIR, and the CPA are in the Texas Administrative Code, which is on the Internet website of the Office of the Secretary of State, Texas Register Division at: www.sos.state.tx.us/tac/index.shtml.

(b) Any actual or prospective bidder, offeror, or contractor who believes they are aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the agency. Such protests must be in writing and received in the office of the Director of Finance within ten working days after such aggrieved person knows, or should have known, of the occurrence of the action which is protested. Formal protests must conform to the requirements set forth in subsection (c) of this section. Copies of the protest must be mailed or delivered by the protesting party to all vendors who have submitted bids or proposals for the contract involved.

(c) A formal protest must be sworn and contain:

(1) a specific identification of the statutory provision(s) that the action complained of is alleged to have violated;

(2) a specific description of each act alleged to have violated the statutory provision(s) identified in paragraph (1) of this subsection;

(3) a precise statement of the relevant facts;

(4) an identification of the issue or issues to be resolved;

(5) argument and authorities in support of the protest; and

(6) a statement that copies of the protest have been mailed or delivered to other identifiable interested parties.

(d) The Director of Finance shall have the authority, prior to appeal to the Executive Director or his or her designee, to settle and resolve the dispute concerning the solicitation or award of a contract. The Director of Finance may solicit written responses to the protest from other interested parties.

(e) If the protest is not resolved by mutual agreement, the Director of Finance will issue a written determination on the protest.

(1) If the Director of Finance determines that no violation of rules or statutes has occurred, he or she shall so inform the protesting party and interested parties by letter which sets forth the reasons for the determination.

(2) If the Director of Finance determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, he or she shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and any appropriate remedial action.

(3) If the Director of Finance determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, he or she shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and any appropriate remedial action. Such remedial action may

include, but is not limited to, declaring the purchase void; reversing the award; and re-advertising the purchase using revised specifications.

(f) The Director of Finance's determination on a protest may be appealed by an interested party to the Executive Director or his or her designee. An appeal of the Director of Finance's determination must be in writing and must be received in the office of the Executive Director or his or her designee no later than ten working days after the date of the Director of Finance's determination. The appeal shall be limited to review of the Director of Finance's determination. Copies of the appeal must be mailed or delivered by the appealing party to other interested parties and must contain an affidavit that such copies have been provided.

(g) The General Counsel shall review the protest, Director of Finance's determination, and the appeal and prepare a written opinion with recommendation to the executive director or his designee. The executive director or his or her designee may, in his or her discretion, refer the matter to TREC at a regularly scheduled open meeting or issue a final written determination.

(h) When a protest has been appealed to the Executive Director or his or her designee under subsection (f) of this section and has been referred to the relevant Commission or Board of TREC by the Executive Director or his or her designee under subsection (g) of this section, the following requirements shall apply:

(1) Copies of the appeal, responses of interested parties, if any, and General Counsel recommendation shall be mailed to the TREC members and interested parties. Copies of the general counsel's recommendation and responses of interested parties shall be mailed to the appealing party.

(2) All interested parties who wish to make an oral presentation at TREC's open meeting are requested to notify the office General Counsel at least two working days in advance of the open meeting.

(3) TREC may consider oral presentations and written documents presented by staff, the appealing party, and interested parties. The chairman shall set the order and amount of time allowed for presentations.

(4) TREC's determination of the appeal shall be by duly adopted resolution reflected in the minutes of the open meeting and shall be final.

(i) Unless good cause for delay is shown or the Executive Director or his or her designee determines that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely will not be considered.

(j) In the event of a timely protest or appeal under this section, a protestor or appellant may request in writing that the agency not proceed further with the solicitation or with the award of the contract. In support of the request, the protestor or appellant is required to show why a stay is necessary and that harm to the agency will not result from the stay. If the Executive Director determines that it is in the interest of agency not to proceed with the contract, the Executive Director may make such a determination in writing and partially or fully suspend contract activity.

(k) A decision issued either by TREC in open meeting, or in writing by the Executive Director or his or her designee, shall constitute the final administrative action of the 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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CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER I. LICENSE RENEWAL

22 TAC §535.91

The Texas Real Estate Commission (TREC) proposes an amendment to 22 TAC §535.91, Renewal of a Real Estate License, in Chapter 535, General Provisions. The proposed amendment to §535.91 corrects a reference within the rule to include the appropriate subsection.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendment. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing this section as proposed will be improved clarity and precision of rule references for members of the public and license holders.

For each year of the first five years the proposed amendment is in effect the amendment will not:

-create or eliminate a government program;

-require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase or decrease in fees paid to the agency;

-create a new regulation;

-expand, limit or repeal an existing regulation;

-increase or decrease the number of individuals subject to the rule's applicability; or

-positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Vanessa E. Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendment is proposed under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and

ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this proposal is Texas Occupations Code, Chapters 1101. No other statute, code or article is affected by the proposed amendment.

§535.91. Renewal of a Real Estate License.

(a) Renewal application.

(1) A real estate license expires on the date shown on the face of the license issued to the license holder.

(2) If a license holder intends to renew an unexpired license, the license holder must, on or before the expiration date of the current license:

(A) file a renewal application through the online process on the Commission's website or on the applicable form approved by the Commission;

(B) submit the appropriate fee required by §535.101 of this title (relating to Fees);

(C) comply with the fingerprinting requirements under the Act; and

(D) except as provided for in subsection (g) of this section, satisfy the continuing education requirements applicable to that license.

(3) The Commission may request additional information be provided to the Commission in connection with a renewal application.

(4) A license holder is required to provide information requested by the Commission not later than the 30th day after the date the commission requests the information. Failure to provide information is grounds for disciplinary action.

(b) Renewal Notice.

(1) The Commission will deliver a license renewal notice to a license holder three months before the expiration of the license holder's current license.

(2) If a license holder intends to renew a license, failure to receive a license renewal notice from the Commission does not relieve a license holder from the requirements of this subsection.

(3) The Commission has no obligation to notify any license holder who has failed to provide the Commission with the person's mailing address and email address or a corporation, limited liability company, or partnership that has failed to designate an officer, manager, or partner who meets the requirements of the Act.

(c) Timely renewal of a license.

(1) A renewal application for an individual broker or sales agent is filed timely if it is received by the Commission, or postmarked, on or before the license expiration date.

(2) A renewal application for a business entity broker is filed timely if the application and all required supporting documentation is received by the Commission, or postmarked, not later than the 10th business day before the license expiration date.

(3) If the license expires on a Saturday, Sunday or any other day on which the Commission is not open for business, a renewal application is considered to be filed timely if the application is received or postmarked no later than the first business day after the expiration date of the license.

(d) Initial renewal of sales agent license. A sales agent applying for the first renewal of a sales agent license must:

(1) submit documentation to the Commission showing successful completion of the additional educational requirements of §535.55 of this chapter (relating to Education and Sponsorship Requirements for a Sales Agent License) no later than 10 business days before the day the sales agent files the renewal application; and

(2) fulfill the continuing education requirements of §535.92(a)(1) and (a)(2) of this subchapter and §535.92(a)(4) [~~§535.92(a)(3)~~] of this subchapter (relating to Continuing Education Requirements), if applicable.

(e) Renewal of license issued to a business entity. The Commission will not renew a license issued to a business entity unless the business entity:

(1) has designated a corporate officer, an LLC manager, an LLC member with managing authority, or a general partner who:

(A) is a licensed broker in active status and good standing with the Commission; and

(B) completes any applicable continuing education required under §535.92;

(2) maintains errors and omissions insurance with a minimum annual limit of $1 million per occurrence if the designated broker owns less than 10 percent of the business entity; and

(3) is currently eligible to transact business in Texas.

(f) Renewal and pending complaints.

(1) The Commission may renew the current license of a license holder that has a complaint pending with the Commission, provided the license holder meets all other applicable requirements of this section.

(2) Upon completion of the investigation of the pending complaint, the Commission may suspend or revoke the license, after notice and hearing in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001.

(g) Renewal with deferred continuing education.

(1) A license holder may renew an active license without completion of required continuing education and may defer completion of any outstanding continuing education requirements for an additional 60 days from the expiration date of the current license if the license holder:

(A) meets all other applicable requirements of this section; and

(B) pays the continuing education deferral fee required by §535.101 of this title at the time the license holder files the renewal application with the Commission.

(2) If after expiration of the 60 day period set out in paragraph (1) of this subsection, the Commission has not been provided with evidence that the license holder has completed all outstanding continuing education requirements, the license holder's license will be placed on inactive status.

(3) To activate an inactive license, the license holder must meet the requirements of Subchapter L of this Chapter.

(4) Credit for continuing education courses for a subsequent licensing period does not accrue until after all deferred continuing education has been completed for the current licensing period.

(h) Denial of Renewal. The Commission may deny an application for renewal of a license if the license holder is in violation of the terms of a Commission order.

(i) Renewal of license for military service member. A license holder on active duty in the United States armed forces is entitled to two years of additional time to renew an expired license without being subject to any increase in fee, any education or experience requirements or examination if the license holder:

(1) provides a copy of official orders or other official documentation acceptable to the Commission showing that the license holder was on active duty during the license holder's last renewal period; and

(2) pays the renewal application fee in effect when the previous license expired.

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 November 13, 2020.

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SUBCHAPTER Q. ADMINISTRATIVE PENALTIES

22 TAC §535.191

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.191, Schedule of Administrative Penalties, in Chapter 535, General Provisions. The proposed amendment corrects a reference within the agency's schedule of administrative penalties that corresponds to statutory changes enacted by the 86th Legislature in SB 624.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the sections as proposed are in effect, the public benefits anticipated as a result of enforcing this section as proposed will be improved clarity and greater transparency for members of the public and license holders, as well as requirements that are consistent with the statute and easier to understand, apply and process.

For each year of the first five years the proposed amendments are in effect the amendments will not:

-create or eliminate a government program;

-require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase or decrease in fees paid to the agency;

-create a new regulation;

-expand, limit or repeal an existing regulation;

-increase or decrease the number of individuals subject to the rule's applicability; or

-positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Vanessa E. Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.191. Schedule of Administrative Penalties.

(a) The Commission may suspend or revoke a license or take other disciplinary action authorized by the Act in addition to or instead of assessing the administrative penalties set forth in this section.

(b) The administrative penalties set forth in this section take into consideration all of the criteria listed in §1101.702(b) of the Act.

(c) An administrative penalty range of $100 - $1,500 per violation per day may be assessed for violations of the following sections of the Act and Rules:

(1) §1101.552;

(2) §1101.652(a)(3);

(3) §1101.652(a)(8);

(4) §1101.652(a-1)(3);

(5) §1101.652(b)(23);

(6) §1101.652(b)(29);

(7) §1101.652(b)(33);

(8) 22 TAC §535.21(a);

(9) 22 TAC §535.53;

(10) 22 TAC §535.65;

(11) 22 TAC §535.91(d);

(12) 22 TAC §535.121;

(13) 22 TAC §535.154;

(14) 22 TAC §535.155; and

(15) 22 TAC §535.300.

(d) An administrative penalty range of $500 - $3,000 per violation per day may be assessed for violations of the following sections of the Act and Rules:

(1) §§1101.652(a)(4) - (7);

(2) §1101.652(a-1)(2);

(3) §1101.652(b)(1);

(4) §§1101.652(b)(7) - (8);

(5) §1101.652(b)(12);

(6) §1101.652(b)(14);

(7) §1101.652(b)(22);

(8) §1101.652(b)(28);

(9) §§1101.652(b)(30) - (31);

(10) §1101.654(a);

(11) 22 TAC §531.18;

(12) 22 TAC §531.20;

(13) 22 TAC §535.2;

(14) 22 TAC §535.6(c) - (d);

(15) 22 TAC §535.16;

(16) 22 TAC §535.17; and

(17) 22 TAC §535.144.

(e) An administrative penalty range of $1,000 - $5,000 per violation per day may be assessed for violations of the following sections of the Act and Rules:

(1) §1101.351;

(2) §1101.366(d);

(3) §1101.557(b);

(4) §1101.558;

(5) §§1101.559(a) and (c);

(6) §1101.560;

(7) §1101.561(b);

(8) §1101.615;

(9) §1101.651;

(10) §1101.652(a)(2);

(11) §1101.652(a-1)(1);

(12) §§1101.652(b)(2) - (6);

(13) §§1101.652(b)(9) - (11);

(14) §1101.652(b)(13);

(15) §§1101.652(b)(15) - (21);

(16) §§1101.652(b)(24) - (27);

(17) §1101.652(b)(32);

(18) 22 TAC §535.141(f) [~~22 TAC §535.141(g)~~];

(19) 22 TAC §§535.145 - 535.148; and

(20) 22 TAC §535.156.

(f) The Commission may assess an additional administrative penalty of up to two times that assessed under subsections (c), (d) and (e) of this section, subject to the maximum penalties authorized under §1101.702(a) of the Act, if a person has a history of previous violations.

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 R. REAL ESTATE INSPECTORS

22 TAC §535.216

The Texas Real Estate Commission (TREC) proposes amendments to §535.216, Renewal of License, in Subchapter R of Chapter 535, General Provisions. The proposed amendments implement statutory changes enacted by the 83rd Legislature in HB 2911 stating that applicants for reinstatement of license under Chapter 1102 of the Texas Occupations Code who previously held the same license within the two years preceding the application date are eligible for reinstatement so long as they have completed the required continuing education hours for renewal and satisfy the agency's requirements for honesty, trustworthiness, and integrity. Applicants meeting those criteria are not required to retake the exam for licensure. Additionally, applicants for a real estate inspector license reinstatement must submit evidence of sponsorship by a professional inspector. The Texas Real Estate Inspector Committee recommends these proposed amendments.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of the changes is increased efficiency, improved clarity, and compliance with statute.

For each year of the first five years the proposed amendments are in effect the amendments will not:

-create or eliminate a government program;

-require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase or decrease in fees paid to the agency;

-create a new regulation;

-expand, limit or repeal an existing regulation;

-increase or decrease the number of individuals subject to the rule's applicability; or

-positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Vanessa E. Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102.

The statute affected by this proposal is Chapter 1102, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§535.216. Renewal of License.

(a) Renewal application.

(1) A license issued by the Commission under Chapter 1102, Occupations Code, expires on the date shown on the face of the license issued to the license holder.

(2) If a license holder intends to renew an unexpired license, the license holder must, on or before the expiration date of the current license:

(A) file a renewal application through the online process on the Commission's website or on the applicable form approved by the Commission;

(B) pay the appropriate fee as required by §535.210 of this title;

(C) comply with the fingerprinting requirements of Chapter 1102, Occupations Code;

(D) satisfy the applicable continuing education requirements of Chapter 1102, Occupations Code, and this subchapter; and

(E) provide proof of financial responsibility as required in Chapter 1102, Occupations Code, on a form approved by the Commission.

(3) An apprentice inspector or a real estate inspector must be sponsored by a licensed professional inspector in order to renew a license on an active status.

(b) Renewal Notice.

(1) The Commission will send a renewal notice to each license holder at least 90 days before the license expiration date.

(2) If a license holder intends to renew a license, failure to receive a renewal notice does not relieve the license holder from responsibility of applying for renewal as required in this section.

(c) Request for information.

(1) The Commission may request a license holder to provide additional information to the Commission in connection with a renewal application.

(2) A license holder must provide the information requested by the Commission within 30 days after the date of the Commission's request.

(3) Failure to provide the information requested within the required time is grounds for disciplinary action under Chapter 1102, Occupations Code.

(d) Renewal on inactive status.

(1) Licensed professional inspectors, real estate inspectors and apprentice inspectors may renew a license on inactive status.

(2) Inspectors are not required to complete continuing education courses as a condition of renewing a license on inactive status, but must satisfy continuing education requirements before returning to active status.

(e) Late Renewal.

(1) If a license has been expired for less than six months, a license holder may renew the license by:

(A) filing a renewal application through the online process on the Commission's website or on the applicable form approved by the Commission;

(B) paying the appropriate late renewal fee as required by §535.210 of this title (related to Fees);

(C) satisfying the applicable continuing education requirements; and

(D) providing proof of financial responsibility on a form approved by the Commission.

(2) To renew a license on active status without any lapse in active licensure, an apprentice or real estate inspector must also submit a Real Estate Apprentice and Inspector Sponsorship Form certifying sponsorship for the period from the day after the previous license expired to the day the renewal license issued, and for the period beginning on the day after the renewal license issued. The same inspector may be the sponsor for both periods. The Commission will renew the license on inactive status for the period(s) in which the apprentice or real estate inspector was not sponsored.

(f) License Reinstatement.

(1) If a license has been expired for more than six months [~~or more~~], a license holder may not renew the license.[~~, and must file an original application to reinstate the license and satisfy all requirements for licensure, except as provided in paragraph (3) of this subsection.~~]

(2) A license holder may reinstate an expired license if the license holder: [~~not continue to practice until the new license is received.~~]

(A) has held a professional inspector or real estate inspector license during the 24 months preceding the date the reinstatement application is filed;

(B) submits evidence satisfactory to the commission of successful completion of the continuing education hours required for the renewal of that license; and

(C) satisfies the commission as to the applicant's honesty, trustworthiness, and integrity.

(3) Applicants for a real estate inspector license must submit evidence of sponsorship by a professional inspector. [~~If an applicant for reinstatement has held a professional inspector or real estate inspector license during the 24 months preceding the date the application is filed, no examination is required.~~]

(4) An applicant for reinstatement is not required to take an examination.

(g) Denial of Renewal or Reinstatement. The Commission may deny an application for license renewal or reinstatement if a license holder is in violation of the terms of a Commission order.

(h) Renewal of license for military service member. A license holder on active duty in the United States armed forces is entitled to two years of additional time to renew an expired license without being subject to any increase in fee, any education or experience requirements or examination if the license holder:

(1) provides a copy of official orders or other official documentation acceptable to the Commission showing that the license holder was on active duty during the license holder's last renewal period; and

(2) pays the renewal application fee in effect when the previous license expired.

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 November 13, 2020.

TRD-202004810
Vanessa Burgess
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 27, 2020
For further information, please call: (512) 936-3284

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 19. LICENSING AND REGULATION OF INSURANCE PROFESSIONALS

SUBCHAPTER K. CONTINUING EDUCATION, ADJUSTER PRELICENSING EDUCATION PROGRAMS, AND CERTIFICATION COURSES

28 TAC §§19.1006, 19.1010, 19.1011, 19.1029

The Texas Department of Insurance (TDI) proposes to amend 28 Texas Administrative Code (TAC) §§19.1006, 19.1010, 19.1011, and 19.1029, concerning continuing education (CE) requirements of insurance professionals, including agents, adjusters, public insurance adjusters, and managing general agents. The amendments to §19.1029 implement Insurance Code §4004.202(b), concerning CE hours requirements for agents who sell annuities. TDI has also proposed amendments to §§19.1006, 19.1010, and 19.1011 to modernize and streamline the CE process for insurance professionals. Additionally, TDI proposes amendments to §§19.1006, 19.1011, and 19.1029 to reflect current TDI style guidelines.

EXPLANATION. In response to a TDI initiative to identify rules for updates and changes, stakeholders requested that TDI amend the CE rules to simplify existing requirements and add options for obtaining CE course credit. In response to this, the proposed amendments to §§19.1006, 19.1010, and 19.1011 update the rules to reflect best practices for the CE requirements of insurance professionals.

Amendments to §19.1006 update the CE course topics, providing more detail and choices to make it easier for insurance professionals to obtain individually tailored CE. Amendments to §19.1010 add ways to calculate CE hours and simplify credit hours to include only whole numbers, to align with industry best practices. And amendments to §19.1011 give providers more flexibility in administering a CE exam and makes clear that a CE provider may issue an electronic certificate for CE course completion directly to the insurance professional. These amendments will help ensure that insurance professionals acquire and maintain the expertise to properly serve Texas insureds.

Further, the Legislature amended Insurance Code §4004.202(b) in response to a TDI biennial report that called for additional CE requirements because of increased consumer complaints about complex insurance products. The proposed amendment to §19.1029 will bring the rule into compliance with Insurance Code §4004.202(b).

The proposed amendments to the sections are described in the following paragraphs.

Section 19.1006. Section 19.1006(a) is amended to expand and modernize the nonexclusive list of topics that may be covered as part of a certified continuing education course. The amended list contains 31 topics listed in new paragraphs (1) through (31), including new topics related to financial planning. Subsection (a) is further amended to clarify course content requirements for ethics and consumer protection credit by deleting current paragraphs (1) - (18) and inserting text that tracks those paragraphs into new paragraph (8)(A) - (R).

Section 19.1010. Section 19.1010(a)(1) and §19.1010(a)(2)(B) are amended by deleting the third and second sentences, respectively, referring to partial hour credit for CE courses. Section 19.1010(a)(2)(A) is amended by adding clauses (iii) and (iv), which describe new options for providers to calculate the number of credit hours per course. The options in new clauses (iii) and (iv) supplement the existing options in clauses (i) and (ii), and catchlines are also added to existing clauses (i) and (ii) to describe the content of those clauses.

Section 19.1011. Section 19.1011(d)(1) is amended by deleting the last two sentences of the existing paragraph, which mandate that at least 70% of examination questions or interactive inquiries be based at the application level, while the remainder may be at the knowledge level. The removal of this requirement in §19.1011(d)(1) will allow providers to offer more courses catered to educating novice insurance professionals.

Section 19.1011(e) is amended by deleting the last sentence of the existing subsection, which mandates that only CE course providers may prepare, print, or complete a CE course certificate of completion. Deleting the last sentence and making conforming amendments to the remainder of the subsection will ensure

that while providers must still prepare and complete the certificates of completion, the provider may award electronic certificates that may be printed by the insurance professional.

Section 19.1029. Section 19.1029 is amended to mirror the requirements of Insurance Code §4004.202(b). The existing section relates to CE hours regarding agents who sell annuities, and existing subsection (a) requires four hours of TDI-certified CE per year. Existing subsections (b) and (c) are deleted.

Existing §19.1029(a) is amended by adding a sentence to clarify that the exemptions provided in §19.1004(b) and (c) also apply to insurance professionals certified to sell annuities. The remainder of the existing text of the subsection is divided into new subsections (b) and (c). The text from existing subsection (a) that is incorporated into new subsection (b) is amended to require eight hours of TDI-certified continuing education hours every two years. The text from existing subsection (a) that is incorporated into new subsection (c) is amended to clarify that completion of the annuity certification course required by §19.1028 constitutes four hours of TDI-certified annuity continuing education in the license period during which the certification course is taken. These changes will align the section with the requirements in the Insurance Code and further simplify requirements for insurance professionals engaging in the annuities business.

In addition, the proposed amendments to §§19.1006, 19.1010, 19.1011, and 19.1029 include nonsubstantive editorial and formatting changes to conform the sections to the agency's current style and to improve the rule's clarity. These changes include replacing each instance of "department," replacing or deleting each instance of "shall," and revising the wording where administrative code sections are referenced. "Department" or "the department" is replaced by "TDI," "shall" is replaced by "must" or otherwise replaced or deleted as appropriate, and the words "chapter" and "subchapter" are changed to "title" where they appear in references to administrative code sections. In addition, punctuation and capitalization is revised throughout the existing text where necessary to correct existing errors and for consistency with TDI's current style.

TDI received comments on the CE rules in response to a TDI initiative requesting that stakeholders identify rules for updates or changes. TDI considered those comments when drafting this proposal.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Chris Herrick, deputy commissioner of the Customer Operations Division, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. Mr. Herrick made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Mr. Herrick does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. Herrick expects that administering the proposed amendments will have the public benefits of ensuring: (i) that TDI's rules conform to Insurance Code §4004.202, promoting increased compliance with CE requirements; (ii) clarification and modernization of existing CE requirements; and (iii) that insurance professionals acquire and maintain the expertise to properly serve Texas insureds.

Mr. Herrick expects that the proposed amendments will not increase the cost of compliance to regulated persons because insurance professionals will have more choices available for CE courses, CE course providers will have more options for calculating course hours, and there will be clearer CE requirements for insurance professionals regarding annuities. Additionally, the change from four annuity CE hours per year to eight annuity CE hours every two years gives the licensee more flexibility on timing while not requiring any additional hours. The increased number of choices and clarity in fulfilling CE requirements will be a cost saving for insurance professionals, insurers, and course providers, because complying with the CE requirements of Insurance Code, Chapter 4004 will become easier and simpler.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. Instead, the amendments provide more options for continued education credits, making compliance easier for all businesses, regardless of size. The amendments do not apply to rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that the proposed amendments do not impose a cost on regulated persons under Government Code §2001.0045. As discussed under the public benefit and cost note, TDI has determined that the proposed amendments to §§19.1006, 19.1010, 19.1011, and 19.1029 decrease the overall costs on regulated persons. Government Code §2001.0045(c)(2)(B) states that Government Code §2001.0045 does not apply to a rule that is amended to decrease regulated persons' cost for compliance with the rule.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;

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

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

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will expand, limit, or repeal an existing regulation;

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

- will not positively or adversely affect the Texas economy.

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

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on December 28, 2020. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m., central time, on December 28, 2020. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to §§19.1006, 19.1010, 19.1011, and 19.1029 under Insurance Code §§4004.001, 4004.103, 4004.104, 4004.203, and 36.001.

Insurance Code §4004.001 provides TDI with exclusive jurisdiction for all matters relating to the continuing education of agents licensed under the Insurance Code.

Insurance Code §4004.103 provides that the Commissioner may adopt rules establishing other requirements for continuing education program providers.

Insurance Code §4004.104 provides TDI with authority to establish the scope and type of continuing education requirements for each type of licensee.

Insurance Code §4004.203 provides that the Commissioner by rule adopt criteria for continuing education programs used to satisfy the requirements of §4004.202.

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

CROSS-REFERENCE TO STATUTE. Amendments to §§19.1006, 19.1010, and 19.1011 affect Insurance Code §§4004.051, 4004.054, 4004.055, 4004.101, 4004.103, and 4004.105. Amendments to §19.1029 affect Insurance Code §1115.056 and implement Insurance Code §4004.202.

§19.1006. Course Criteria.

(a) To be certified as a continuing education course, the course content must include topics that contribute substantive knowledge relating to the business of insurance and expand the competence of the licensee. [~~shall be designed to enhance the knowledge, understanding, and/or professional competence of the student as to one or more of the following topics: insurance principles and coverages; applicable laws, and rules; recent and prospective changes in coverages; technical policy provisions and underwriting guidelines and standards; law and the duties and responsibilities of the licensee; consumer protection; or insurance ethics. The course content may also include instruction on management of the licensee's insurance agency.~~] Ethics and consumer protection course credit, described in paragraph (8) of this subsection, applies [~~shall apply~~] equally to all license types. TDI will not approve a course if it does not relate specifically to the business of insurance. Given that restriction, approved topics include, but are not limited to, the following:

(1) actuarial mathematics, statistics, and probability;

(2) assigned risk;

(3) claims adjusting;

(4) courses leading to and maintaining insurance designations;

(5) employee benefit plans;

(6) errors and omissions;

(7) estate planning/taxation;

(8) ethics and consumer protection, only if the course also provides instruction consistent with one or more of the following topics:

(A) Insurance Code Chapter 541, concerning Unfair Methods of Competition and Unfair or Deceptive Acts or Practices;

(B) Insurance Code Chapter 547, concerning False Advertising by Unauthorized Insurers;

(C) Insurance Code Chapter 542, Subchapter A, concerning Unfair Claim Settlement Practices;

(D) Business and Commerce Code Chapter 17, Subchapter E, concerning Deceptive Trade Practices and Consumer Protection Act;

(E) analogous laws as specified by TDI, including:

(i) Insurance Code Chapter 1952, Subchapter G, concerning Repair of Motor Vehicles;

(ii) Insurance Code Chapter 542, Subchapter B, concerning Prompt Payment of Claims;

(iii) Insurance Code Chapter 542, Subchapter D, concerning Notice of Settlement of Claim Under Casualty Insurance Policy;

(iv) Insurance Code Chapter 542, Subchapter E, concerning Recovery of Deductible From Third Parties Under Certain Automobile Insurance Policies;

(v) §5.501 of this title (relating to Notice Requirements to Claimants Regarding Motor Vehicle Repairs); and

(vi) Penal Code Chapter 35, concerning Insurance Fraud;

(F) corporate ethics;

(G) ethical challenges of licensees;

(H) ethical behavior of an insurance company;

(I) ethical behavior of an agent or adjuster;

(J) duties of the licensee to company, client, and customer;

(K) duties of insurer/HMO to agents/clients;

(L) fiduciary responsibility;

(M) unfair marketing practices;

(N) difference between ethics and laws;

(O) confidentiality, privacy, and ethics;

(P) ethical analysis of the licensee's job;

(Q) philosophical approaches to ethics; or

(R) business ethics;

(9) fundamentals/principles of insurance;

(10) insurance accounting/actuarial considerations;

(11) insurance contract/policy comparison and analysis;

(12) insurance fraud;

(13) insurance laws, rules, regulations, and regulatory updates;

(14) insurance policy provisions;

(15) insurance product-specific knowledge;

(16) insurance rating/underwriting/claims;

(17) insurance tax laws;

(18) legal principles;

(19) long-term care/partnership;

(20) loss prevention, control, and mitigation;

(21) managed care;

(22) principles of risk management;

(23) proper uses of insurance products;

(24) real Estate Settlement Procedures Act;

(25) restoration -- addresses claims, loss control issues, and mitigation;

(26) retirement planning;

(27) securities;

(28) suitability in insurance products;

(29) surety bail bond;

(30) underwriting principles; and

(31) viaticals/life settlements.

[and the content for ethics and consumer protection topics shall be designed to relate to the business of insurance and provide instruction consistent with one or more of the following topics:]

[(1) Chapter 541 of the Insurance Code, entitled Unfair Methods of Competition and Unfair or Deceptive Acts or Practices;]

[(2) Chapter 547 of the Insurance Code, entitled False Advertising by Unauthorized Insurers;]

[(3) Chapter 542, Subchapter A, entitled Unfair Claim Settlement Practices;]

[(4) Chapter 17, Subchapter E, of the Business and Commerce Code, entitled Deceptive Trade Practices and Consumer Protection Act;]

[(5) Analogous laws as specified by the department, including:]

[(A) Chapter 1952, Subchapter G, of the Insurance Code, entitled Repair of Motor Vehicles;]

[(B) Chapter 542, Subchapter B, of the Insurance Code, entitled Prompt Payment of Claims;]

[(C) Chapter 542, Subchapter D, of the Insurance Code, entitled Notice of Settlement of Claim Under Casualty Insurance Policy;]

[(D) Chapter 542, Subchapter E, of the Insurance Code, entitled Recovery of Deductible From Third Parties Under Certain Automobile Insurance Policies;]

[(E) §5.501 of this title (relating to Notice Requirements to Claimants Regarding Motor Vehicle Repairs); and]

[(F) Insurance Fraud (Penal Code Chapter 35);]

[(6) Corporate ethics;]

[(7) Ethical challenges of licensees;]

[(8) Ethical behavior of an insurance company;]

[(9) Ethical behavior of an agent or adjuster;]

[(10) Duties of the licensee to company, client, and customer;]

[(11) Duties of insurer/HMO to agents/clients;]

[(12) Fiduciary responsibility;]

[(13) Unfair marketing practices;]

[(14) Difference between ethics and laws;]

[(15) Confidentiality, privacy, and ethics;]

[(16) Ethical analysis of the licensee's job;]

[(17) Philosophical approaches to ethics; or]

[(18) Business ethics.]

(b) To be certified as an adjuster prelicensing education course or program, the course content must enhance the student's knowledge, understanding, and/or professional competence regarding the subjects set forth in [§]§19.1017 and §19.1018 of this title (relating to Adjuster Prelicensing Education Course Content and Examination Requirements and Adjuster Prelicensing Examination Topics). Unless specifically stated otherwise, this subchapter applies [shall apply] equally to courses certified for continuing education and adjuster prelicensing purposes.

(c) To be certified as a long-term care partnership certification course, the course content must enhance the student's knowledge, understanding, and professional competence regarding the subjects specified in §19.1022 of this title [subchapter] (relating to Long-Term Care Partnership Certification Course). Unless specifically stated otherwise, this subchapter applies [shall apply] equally to courses certified for continuing education and long-term care partnership certification and long-term care partnership continuing education purposes.

(d) To be certified as a Medicare-related product certification course, the course content must enhance the student's knowledge, understanding, and professional competence regarding the subjects specified in §19.1024 of this title [subchapter] (relating to Medicare-Related Product Certification Course). Unless specifically stated otherwise, this subchapter applies [shall apply] equally to courses certified for continuing education, Medicare-related product certification, and Medicare-related product continuing education purposes.

(e) To be certified as a small employer health benefit plan specialty certification course, the course content must enhance the student's knowledge, understanding, and professional competence regarding the subjects specified in §19.1026 of this title [subchapter] (relating to Small Employer Health Benefit Plan Specialty Certification Course). Unless specifically stated otherwise, this subchapter applies [shall apply] equally to courses certified for continuing education and small employer health benefit plan specialty certification.

(f) To be certified as an annuity certification or continuing education course, the course content must enhance the student's knowledge, understanding, and professional competence regarding the subjects specified in §19.1028(g)(1) - (4) of this title [subchapter] (relating to Annuity Certification Course). Unless specifically stated otherwise, this section applies [shall apply] equally to courses certified for continuing education and annuity certification.

(g) The following course content is [shall] not [be considered] applicable to a licensee's continuing education requirements:

(1) meetings [Meetings] held in conjunction with the regular business of the licensee or courses or training relating to the marketing and business practices of a specific company;

(2) course [Course] content teaching general accounting, speed reading, other general business skills, computer use, or computer software application use;

(3) course [Course] content teaching motivation, goal-setting, time management, communication, sales, or marketing skills;

(4) course [Course] content providing for prelicensing training qualifying examination preparation;

(5) course [Course] content that does not meet the requirement of subsection (a) of this section; and

(6) course [Course] content that is substantially:

(A) a glossary, dictionary, or index of insurance terms without independent distinction as to the application of these terms to the business of insurance through case studies or analysis based on actual or hypothetical factual situations that apply to the business of insurance; or

(B) a recitation of statutes, rules, legal principles, or theories without independent distinction as to the application of these issues to the business of insurance through case studies or analysis based on actual or hypothetical factual situations that apply to the business of insurance.

(h) A single continuing education course may include both ethics and consumer protection credit topics with other topics meeting the requirements of subsection (a) of this section.

§19.1010. Hours of Credit.

(a) Credit hours for courses are determined by the methods set forth in paragraphs (1) - (7) of this subsection.[:]

(1) TDI will award credit for certified classroom courses at the rate of one hour for every 50 minutes of actual instruction contact time. All classroom courses must be at least one hour of credit in length. [TDI will award credit for additional partial hours of instruction contact time in half-hour increments with all periods of less than 25 minutes being awarded no additional credit and periods of less than 50 minutes being awarded one half-hour of additional credit.] Instruction contact time is considered the amount of time devoted to the actual course instruction and does not include breaks, lunch, dinner, introductions of speakers, explanatory or preparatory instructions, or evaluation of the course. TDI will not certify more than 24 credit hours for any one classroom course.

(2) TDI will award credit for certified classroom equivalent and self study courses as set forth in subparagraphs (A) - (D) of this paragraph.[:]

(A) The provider must determine the number of course hours by using one [either] of the methods described in the following clauses [set forth in clauses (i) or (ii) of this subparagraph].

(i) Average completion time. The provider may determine the number of course hours by calculating the average completion time of the individual course completion times of at least five licensees. If the provider uses this method to determine the number of credit hours, the provider must retain the names, current insurance license numbers, and completion times of all licensees that were used by the provider. A provider using this method may, at its discretion, issue certificates of completion in the number of hours certified by TDI to the licensees involved in the process and who completed the entire course.

(ii) Average number of credit hours assigned by other states. The provider may determine the number of course hours by calculating the average number of hours of the credit hours assigned by all other states in which the course is certified or approved. A provider may not use this method to determine the number of credit hours unless the course is approved in at least three other states. Providers may not include any hours allowed by other states for sales and marketing topics in calculating the average.

(iii) Word count/difficulty level. Providers using this method must designate the course as one of three difficulty levels: basic, intermediate, or advanced. A basic level course is designed for entry-level practitioners or practitioners new to the subject matter, an intermediate level course is designed for practitioners who have existing competence in the subject area and who seek to further develop and apply their skills, and an advanced course is designed for practitioners who have a strong foundation and high level of competence in the subject matter. Using these course difficulty definitions, the provider may then determine the number of course hours in the following manner. First, divide the total number of words by 180 to equal the documented average reading time. Second, divide the documented average reading time by 50 to equal the credit hours for a basic level course. Third, for intermediate and advanced courses, multiply the number of credit hours by 1.25 and 1.50, respectively, to reach the total number of credit hours for those respective courses. Fractional hours must be rounded up to the nearest whole number if .50 or above, and fractional hours must be rounded down to the nearest whole number if .49 or less.

(iv) Interactive course content. To use this method, the course must be interactive. An interactive course includes regularly occurring opportunities for student participation, engagement, and interaction with or in course activities and information. Examples include but are not limited to question and answer sessions, polling, games, sequencing, and matching exercises. The provider may determine the number of course hours of an interactive course by calculating the run time of the mandatory interactive elements, which include only those elements required to complete the course.

(B) All classroom equivalent and self study courses must be at least one hour of credit, 50 minutes, in length. [TDI will award additional partial credit hours in half-hour increments with all periods of less than 25 minutes being awarded no additional credit and periods of less than 50 minutes being awarded one half-hour of additional credit.]

(C) Providers may not use the final examination and pre-tests for determining course hours or calculating an average.

(D) TDI will not certify more than 24 credit hours for any one classroom equivalent course or 12 credit hours for any one self study course.

(3) TDI will grant continuing education classroom credit to licensees successfully completing qualifying college, law school, and university insurance classroom courses, as determined by the college, law school, or university. The number of classroom hours of continuing education credit for college, law school, and university insurance courses is the number of classroom instruction contact hours not including examinations, which may be no more than 24 credit hours per course.

(4) TDI will grant 12 self study credit hours to licensees successfully passing qualifying national designation certification program examinations. Should the licensee also participate in and success-

fully complete a certified or qualifying classroom or classroom equivalent course in preparation for the national designation certification program examination, the licensee must choose either the classroom presentation or the national designation certification program examination to count as credit towards the licensee's continuing education requirement.

(5) Licensees who teach any portion of a certified continuing education classroom course may receive hour for hour classroom credit up to the maximum number of credit hours for the course. Licensees who teach courses may also be awarded an equal number of self study hours as credit for course preparation.

(6) TDI will grant continuing education classroom credit to licensees successfully completing qualifying courses certified or approved for classroom, classroom equivalent, or participatory credit by the continuing education authority of a state bar association or state board of public accountancy on an hour for hour basis equal to the credit hours assigned to the course by the certifying state bar association or state board of public accountancy. The state bar association or state board of public accountancy must determine what constitutes successful completion of the course. TDI will not grant licensees self study credit for any course accepted by a state bar association or state board of public accountancy unless the self study course is offered through a registered provider in accordance with this subchapter.

(7) TDI will grant licensees continuing education credit for successfully completing courses certified or approved by the Federal Farm Credit Insurance Corporation on an hour for hour basis as assigned by the Farm Credit Insurance Corporation. The Farm Credit Insurance Corporation must determine what constitutes successful completion of the course.

(b) A provider must not issue certificates of completion to a licensee for partial credit of any course, except to an instructor teaching a portion of the course and who does not attend the full course.

(c) A licensee may not receive credit for teaching or completing the same continuing education course more than once within the same reporting period for compliance with the continuing education requirement.

(d) Providers may advertise and link courses as parts of a whole curriculum, but providers may not require a licensee to purchase more than one continuing education course to receive the credit hours approved for a single course.

§19.1011. Requirements for Successful Completion of Continuing Education Courses.

(a) Providers must [~~shall~~] use, at a minimum, actual attendance rosters to certify completion of a certified classroom or one-time-event continuing education course or a certified classroom certification course. TDI [~~The department~~] requires each student to attend at least 90% of the course. Providers must [~~shall~~] establish a means to ensure that each student attended at least 90% of the course. Attendance records must include, at a minimum, sign-in and sign-out sheets, and the legible names, addresses, and TDI license number of each student in attendance. Providers must [~~shall~~] use a written, online, or computer-based final examination to determine completion of all certified classroom certification courses that statutorily require an examination for successful completion of the certified classroom certification course. Providers may establish additional assessment measurements or any other completion requirements for successful completion of a classroom continuing education or classroom certification course, but those requirements must be fully disclosed in the registration materials before the student purchases the course. Providers must [~~shall~~] determine successful completion of these additional requirements.

(b) Providers must [~~shall~~] use the periodic interactive inquiries to determine completion of certified classroom equivalent continuing education or certification courses. A student must complete all inquiry sections with a minimum score of at least 70% for each section.

(c) Providers must [~~shall~~] use a written, online, or computer-based final examination as the means of completion for all certified self-study continuing education or certification courses. TDI [~~The department~~] does not require providers to monitor continuing education or certification self-study examinations. Course records for each examination attempt must include, at a minimum, the date the exam was taken, the final examination score, the examination version used, the legible name, address, and the TDI license number of each student.

(d) Self study examinations and classroom equivalent interactive inquiries must [~~shall~~] meet the criteria set forth in paragraphs (1) - (12) of this subsection:

(1) the [~~The~~] final examination or interactive inquiries must reasonably evaluate the student's understanding of the course content [~~. At least 70% of the examination questions or interactive inquiries must be based at the application level. The remainder of the questions may be based at the knowledge level~~];

(2) the [~~The~~] specific final examination questions and interactive inquiries may not be made available to the student until the test is administered, and providers must [~~. Providers shall~~] effect security measures to maintain the integrity of the examination;

(3) providers must [~~Providers shall~~] maintain a record of each student's final examination in the student's record for four years;

(4) an [~~An~~] authorized staff member or computer program must [~~shall~~] grade self study final examinations, and the [~~. The~~] interactive inquiry computer program must [~~shall~~] grade interactive inquiries;

(5) providers must [~~Providers shall~~] allow students to retake an examination at least one time if a score of 70% or higher is not achieved;

(6) providers must [~~Providers shall~~] revise and update self study final examinations and interactive inquiries consistent with the course update/revision;

(7) providers [~~Providers~~] requiring a monitored final examination must [~~shall~~] establish the rules under which the examination will [~~shall~~] be given;

(8) the [~~The~~] examination or interactive inquiry periods must consist of questions that do not give or indicate an answer or correct response and are of the following types:

(A) for self study courses:

(i) short essay questions requiring a response of five or more words;

(ii) fill in the blank questions requiring a response from memory and not from an indicated list of potential alternatives; or

(iii) multiple choice questions stemming from an inquiry with at least four appropriate potential responses and for which "all of the above" or "none of the above" is not an appropriate option;

(B) for interactive inquiry periods, multiple choice questions stemming from an inquiry with at least four appropriate potential responses and for which "all of the above" or "none of the above" is not an appropriate option;

(9) each [~~Each~~] interactive inquiry period must consist of at least five questions;

(10) each [~~Each~~] self study final examination must [~~shall~~] consist of at least 10 questions for each hour of credit up to a maximum requirement of 50 questions per course. Providers may, at their discretion, have a greater number of final examination questions;

(11) during [~~During~~] examinations and interactive inquiry periods, licensees may use course materials or personal notes, but may not use another person's notes, answers, or otherwise receive assistance in answering the questions from another person; and

(12) licensees must [~~Licensees shall~~] mail or deliver the completed self study examination directly to the provider.

(e) Providers must [~~shall~~] issue certificates of completion to students who successfully complete a certified course. The provider must prepare the certificate and issue it [~~the certificate~~] in a manner that [~~which shall~~] ensures that the student receiving the certificate is the student who took the course, issue the certificate within 30 days of completing the course, and complete the certificate to reflect the date the student took the course/examination. [~~Providers shall not allow a student, or any person or organization other than the provider giving the course, to prepare, print, or complete a certificate of completion.~~]

(f) Notwithstanding subsections (a) - (e) of this section, licensees must claim continuing education under §19.1020 of this title [~~chapter~~] (relating to State and National Association Credit) by sending to TDI [~~the department~~], or its designee, upon request, an affirmation acceptable to TDI [~~the department~~] containing:

(1) the licensee's name, address, telephone number, and licensee's TDI [~~department~~] license number;

(2) the name of the national designation or state or national insurance association providing educational materials or sponsoring educational presentations;

(3) the cumulative number of hours of credit claimed for reviewing the educational materials;

(4) the cumulative number of hours of credit claimed for attending the educational presentations;

(5) a statement that the licensee currently holds the national designation or is a member in good standing of the state or national insurance association; and

(6) A statement that the licensee completed at least the number of hours in these activities the licensee is claiming for continuing education credit.

(g) In addition to the affirmation provided under subsection (f) of this section, TDI [~~the department~~] may request a licensee claiming hours under §19.1020 of this title [~~chapter~~] to submit a sworn written affirmation to TDI [~~the department~~] confirming under oath the information in subsection (f) of this section. Failure to submit a sworn affirmation will result in denial of the claimed hours and may result in disciplinary action under §19.1015 of this title [~~subchapter~~] (relating to Failure to Comply) or the Insurance Code.

§19.1029. Annuity Continuing Education.

(a) Licensees who qualify for the exemption provided in §19.1004(b) or (c) of this title (relating to Licensee Exemption from and Extension of Time for Continuing Education) are exempt from the provisions of this section.

(b) During a licensee's two-year licensing period, [~~In addition to completing the annuity certification course required by §19.1028 of this subchapter (relating to Annuity Certification Course),~~] a licensee who sells, solicits, or negotiates a contract for an annuity or represents an insurer in relation to an annuity in this state, or intends to sell, solicit, or negotiate a contract for an annuity or represent an insurer in relation to an annuity in this state must complete at least eight [~~four~~] hours of TDI-certified [~~department certified~~] annuity continuing education in compliance with this section.

[~~(b) If a licensee completes the annuity certification course required by §19.1028 of this subchapter before the expiration of the 12th month of the licensee's licensing period, the continuing education required by this section must be completed by the end of the expiration of that licensing period. If a licensee completes the annuity certification course required by §19.1028 of this subchapter after the 12th month of the licensee's licensing period, the continuing education required by this section must be completed before the expiration of the 12th month in the licensing period following the licensing period in which the licensee completed the annuity certification course.~~]

(c) Completion of the annuity certification course required by §19.1028 of this title (relating to Annuity Certification Course) constitutes four hours of TDI-certified annuity continuing education in the license period during which the certification course is taken.

[~~(c) For each successive licensing period following the expiration of a licensee's license occurring on or after April 1, 2010, and after a licensee has completed the annuity certification course required by §19.1028 of this subchapter, a licensee subject to the requirements of this section must complete at least four hours of department certified annuity continuing education every twelve months, calculated from the date of the license renewal.~~]

(d) The TDI-certified [~~The department certified~~] continuing education required under subsection (b) [~~(a)~~] of this section must:

(1) comply with the requirements of §19.1006 of this title [~~subchapter~~] (relating to Course Criteria); and

(2) enhance the student's knowledge, understanding, and professional competence of [~~the student with regard to~~] one or more of the subjects described §19.1028(g)(1) - (4) of this title [~~subchapter~~].

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 November 13, 2020.

TRD-202004815
James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 27, 2020
For further information, please call: (512) 676-6584

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CHAPTER 21. TRADE PRACTICES
SUBCHAPTER T. SUBMISSION OF CLEAN CLAIMS

The Texas Department of Insurance proposes to amend 28 TAC §21.2821, concerning reporting requirements, and to repeal §21.2824, concerning applicability. The amendments to §21.2821 expand the claims-related data elements that a managed care carrier (MCC) must report to the department on a quarterly basis and require electronic reporting of these data elements in order to determine carrier compliance with Insurance Code §843.342 and §1301.137. The repeal of §21.2824 removes outdated rule language.

EXPLANATION. Under Insurance Code §843.342 and §1301.137, carriers are required to pay a penalty and applicable interest for the late payment of clean claims. The proposed amendments to §21.2821 expand the data reporting requirements under the prompt pay reporting system so that the department can adequately determine compliance, lower the frequency of some reporting to reduce the regulatory burden on carriers, and provide for the data to be entered directly into the department's new electronic database to improve efficiency and limit the possibility of data entry errors. The repeal of §21.2824 removes language regarding applicability that is outdated.

In order to verify that the amount paid is correct, the amended rule would require that the quarterly report from managed care carriers required under §21.2821(a) include the total number of reported late-paid claims and the dollar value corresponding to those claims. This dollar value would be submitted for each time frame (i.e., claims paid late between one and 45 days, claims paid late between 46 and 90 days, and claims paid late 91 days or greater). The rule also would require the carrier to submit a list of penalty and certain interest payments, with associated claim numbers, so that the department can verify the amounts and tie the penalty and interest payments to actual claims paid.

The amended rule also requires that carriers report the number of complaints received regarding failure to pay a clean claim timely. This report will gather the number of such complaints received by a managed care carrier, which may not have been submitted to the department as formal complaints. Complaint numbers can be an indication of the quality of a carrier's claims payment processes.

While the rule currently requires quarterly reporting of data, it does not address reporting of penalty and interest payments for late-paid claims. In practice, carriers have been reporting penalty and interest data monthly since the dissolution of the Texas Health Insurance Risk Pool and transfer of its obligations and authority to the department. With these proposed rule amendments, monthly reporting will no longer be necessary; carriers will begin reporting the data quarterly. The department expects that the reduction in frequency of reporting will reduce the carriers' burden of compliance over time.

The proposed amendments also require carriers to submit their quarterly reports electronically by entering the data directly into the department's new electronic prompt pay reporting database in order to reduce the possibility of data entry errors, enhance the department's oversight capabilities, and increase efficiency.

Without the requirements to report the claims' dollar value, provide the claims numbers from which the penalty amount is derived, and engage in electronic data entry by the reporter, the only verification of compliance that the department can perform is to spot-check claims and claims payments via market-conduct and quality-of-care examinations. The new requirements will allow the department to better determine compliance with Insurance Code §843.342 and §1301.137.

Section 21.2821. Reporting Requirements. Amendments to this section require the reporting of additional data elements relating to the late payment of clean claims.

An amendment to subsection (a) revises the subsection to specify that, in addition to submitting quarterly claims payment information, an MCC must submit related penalty and interest payment information and information regarding complaints.

Amendments to the section also add new subsection (e), which lists and describes the information that an MCC must provide in the report required by subsection (a) of the section to satisfy the expanded data reporting requirements. The information required by the new subsection includes the following:

- the total dollar amount of clean claims the MCC reported after the end of the applicable statutory claims payment period, broken down by relevant time period;

- the penalty dollar amount of each clean claim the MCC paid late to noninstitutional preferred providers, broken down by relevant time period;

- the penalty dollar amount of each clean claim the MCC paid late to institutional preferred providers, broken down by relevant time period;

- the amount of interest, based on the penalty dollar amount, that the MCC paid to the department for certain late-paid clean claims that the MCC paid to a noninstitutional preferred provider;

- a list of each claim number the MCC paid late and the associated penalty dollar amount;

- a list of each claim number and the associated amount of interest paid to the department for certain late-paid clean claims; and

- the total number of complaints received by an MCC for failure to pay a claim.

The amendments to the section add a new subsection (f), which requires that the quarterly report required by subsection (a) of the section be submitted electronically in a format acceptable to the department as specified on the department's website.

Finally, the amendments to the section add a new subsection (g), which provides that the new reporting requirements in subsections (e) and (f) apply to reports submitted under §21.2821(a) beginning with the report required to be submitted by May 15, 2021, for the months of January, February, and March of that year.

Section 21.2824. Applicability. The department proposes the repeal of §21.2824. The repeal of §21.2824 removes outdated provisions regarding applicability.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Debra Diaz-Lara, associate commissioner, Life and Health Division, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. Ms. Diaz-Lara made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Diaz-Lara does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Diaz-Lara expects that the proposed amendments will have the public benefits of ensuring that the department can better evaluate compliance with §843.342 and §1301.137, conserving agency resources, and reducing the regulatory burden and costs imposed on MCCs with the expansion of electronic reporting and the submission of claims-related information on a quarterly rather than a monthly basis. The proposed amendments will

also benefit the public by enabling the department, through the analysis of complaints reported electronically to the department, to better identify problems associated with a carrier's failure to pay clean claims timely.

Ms. Diaz-Lara expects that the proposed amendments will impose an initial economic cost on MCCs that must implement the expanded reporting in compliance with the proposed rule. The initial cost will involve reprogramming computer systems to provide for reporting of the additional claims-related data required by the proposed amendments. Carriers are already collecting the additional data elements to be reported. Once the systems are reprogrammed, the burden of reporting claims-related data to comply with the rule on an ongoing basis is expected to remain static.

It is not feasible for the department to ascertain the actual cost of reprogramming computer systems to comply with the proposed amendments; MCCs are better suited to determine them. Every carrier has unique internal processes, resources, and technical capabilities that are not feasible for the department to evaluate. The exact method of compliance is a business decision, including the decision to employ staff or contract for some of these services.

Approximately 136 MCCs electronically report their monthly claims-related data to the department. Fewer than five carriers submit their reports by mail. While there may be initial costs to implement electronic reporting for those carriers currently reporting by mail, those costs are expected to be minimal and to involve reporting electronically through a spreadsheet system.

Though costs to each carrier will depend on the volume and degree of complexity of the claims-related information the carrier reports to the department, the department estimates the following possible needs: individual employee compensation for an administrative assistant at $16.82 per hour, computer programmer at $41.59 per hour, and a computer and information systems manager at $71.34 per hour for one to 20 hours of work to revise an insurer's internal procedures. The department also estimates individual employee compensation for an administrative assistant at $16.82 per hour and a computer programmer at $41.59 per hour for one to 20 hours of work to create, modify, and test the code and scripts to run computer applications. These wages are based on the latest State Occupational Employment and Wage Estimates for Texas published by the U.S. Department of Labor (DOL, May 2019) at www.bls.gov/oes/current/oes_tx.htm.

Once carriers have made the programming changes, the reporting system will be automated and repetitive for each quarterly report. The reduction in reporting frequency from monthly to quarterly is expected to significantly reduce the compliance burden for carriers, which the department anticipates will more than offset initial programming costs, resulting in an overall reduction in costs for compliance with the rule.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The department has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses or on rural communities. The new amendments will not create an increase in cost of compliance. Although insurers may have initial programming costs associated with the rule change, the department expects the decreased frequency of reporting will more than offset those initial costs, as discussed in the Public Benefit and Cost Note section. As a result, and in accordance with Government Code §2006.002(c), the department is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. The department has determined that while this proposal may impose an initial cost on regulated persons, these initial costs will be more than offset by savings that result from a reduction in reporting frequency. Additionally, under Government Code §2001.0045(c)(2), the department is not required to repeal or amend another rule because the proposed rule amendments will reduce the burden or responsibilities imposed on regulated persons.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create a government program;

- will not require the creation of new employee positions;

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

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will expand an existing regulation;

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

- will not positively or adversely affect the Texas economy.

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

REQUEST FOR PUBLIC COMMENT. The department will consider any written comments on the proposal that are received by the department no later than 5:00 p.m., central time, on December 28, 2020. Send your comments to ChiefClerk@tdi.texas.gov, or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m., central time, on December 28, 2020. If the department holds a public hearing, the department will consider written and oral comments presented at the hearing.

28 TAC §21.2821

STATUTORY AUTHORITY. The department proposes amendments to §21.2821 under Insurance Code §§843.151, 1301.007, and 36.001.

Insurance Code §843.151 provides that the Commissioner may adopt reasonable rules as necessary and proper to implement Chapter 843.

Insurance Code §1301.007 requires that the Commissioner adopt rules as necessary to implement Chapter 1301 and to ensure reasonable accessibility and availability of preferred provider services to residents of this state.

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

CROSS-REFERENCE TO STATUTE. The proposed amendments to 28 TAC §21.2821 implement Insurance Code §843.151 and §1301.007.

§21.2821. Reporting Requirements.

(a) An MCC must submit to the department quarterly claims payment and related penalty and interest payment information, and information regarding complaints, in compliance with the requirements of this section.

(b) The MCC must submit the report required by subsection (a) of this section to the department on or before:

(1) May 15th for the months of January, February, and March of each year;

(2) August 15th for the months of April, May, and June of each year;

(3) November 15th for the months of July, August, and September of each year; and

(4) February 15th for the months of October, November, and December of each preceding calendar year.

(c) The report required by subsection (a) of this section must include, at a minimum, the following information:

(1) number of claims received from noninstitutional preferred providers;

(2) number of claims received from institutional preferred providers;

(3) number of clean claims received from noninstitutional preferred providers

(4) number of clean claims received from institutional preferred providers;

(5) number of clean claims from noninstitutional preferred providers paid within the applicable statutory claims payment period;

(6) number of clean claims from noninstitutional preferred providers paid on or before the 45th day after the end of the applicable statutory claims payment period;

(7) number of clean claims from institutional preferred providers paid on or before the 45th day after the end of the applicable statutory claims payment period;

(8) number of clean claims from noninstitutional preferred providers paid on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period;

(9) number of clean claims from institutional preferred providers paid on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period;

(10) number of clean claims from noninstitutional preferred providers paid on or after the 91st day after the end of the applicable statutory claims payment period;

(11) number of clean claims from institutional preferred providers paid on or after the 91st day after the end of the applicable statutory claims payment period;

(12) number of clean claims from institutional preferred providers paid within the applicable statutory claims payment period;

(13) number of claims paid under the provisions of §21.2809 of this title (relating to Audit Procedures);

(14) number of requests for verification received under §19.1719 of this title (relating to Verification for Health Maintenance Organizations and Preferred Provider Benefit Plans);

(15) number of verifications issued under §19.1719 of this title;

(16) number of declinations of requests for verifications under §19.1719 of this title;

(17) number of certifications of catastrophic events sent to the department;

(18) number of calendar days business was interrupted for each corresponding catastrophic event;

(19) number of electronically submitted, affirmatively adjudicated pharmacy claims received by the MCC;

(20) number of electronically submitted, affirmatively adjudicated pharmacy claims paid within the 18-day statutory claims payment period;

(21) number of electronically submitted, affirmatively adjudicated pharmacy claims paid on or before the 45th day after the end of the 18-day statutory claims payment period;

(22) number of electronically submitted, affirmatively adjudicated pharmacy claims paid on or after the 46th day and before the 91st day after the end of the 18-day statutory claims payment period; and

(23) number of electronically submitted, affirmatively adjudicated pharmacy claims paid on or after the 91st day after the end of the 18-day statutory claims payment period.

(d) An MCC must annually submit to the department, on or before August 15th, at a minimum, information related to the number of declinations of requests for verifications from July 1st of the prior year to June 30th of the current year, in the following categories:

(1) policy or contract limitations:

(A) premium payment time frames that prevent verifying eligibility for a 30-day period;

(B) policy deductible, specific benefit limitations, or annual benefit maximum;

(C) benefit exclusions;

(D) no coverage or change in membership eligibility, including individuals not eligible, not yet effective, or for whom membership is canceled;

(E) preexisting condition limitations; and

(F) other;

(2) declinations due to an inability to obtain necessary information to verify requested services from the following persons:

(A) the requesting physician or provider;

(B) any other physician or provider; and

(C) any other person.

(e) In addition to the information reported under subsection (c) of this section, the report required by subsection (a) of this section must also include, at a minimum, the following information:

(1) the total dollar amount of the claims described in each of the following subparagraphs:

(A) clean claims from noninstitutional preferred providers paid on or before the 45th day after the end of the applicable statutory claims payment period;

(B) clean claims from institutional preferred providers paid on or before the 45th day after the end of the applicable statutory claims payment period;

(C) clean claims from noninstitutional preferred providers paid on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period;

(D) clean claims from institutional preferred providers paid on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period;

(E) clean claims from noninstitutional preferred providers paid on or after the 91st day after the end of the applicable statutory claims payment period; and

(F) clean claims from institutional preferred providers paid on or after the 91st day after the end of the applicable statutory claims payment period;

(2) the penalty dollar amount that the MCC paid to an institutional preferred provider for each clean claim that the MCC paid to the institutional preferred provider:

(A) on or before the 45th day after the end of the applicable statutory claims payment period;

(B) on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period; and

(C) on or after the 91st day after the end of the applicable statutory claims payment period;

(3) the penalty dollar amount that the MCC paid to a noninstitutional provider for each clean claim that the MCC paid to the noninstitutional preferred provider:

(A) on or before the 45th day after the end of the applicable statutory claims payment period;

(B) on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period; and

(C) on or after the 91st day after the end of the applicable statutory claims payment period:

(4) the amount of interest, based on the penalty dollar amount, that the MCC paid to the department for each clean claim that the MCC paid to the noninstitutional preferred provider on or after the 91st day after the end of the applicable statutory claims payment period;

(5) a list of each claim number and the associated penalty dollar amount as reported under subsection (e), paragraphs (2) and (3) of this section;

(6) a list of each claim number and the associated amount of interest paid as reported under subsection (e)(4) of this section; and

(7) the total number of complaints received by the MCC for failure to pay a clean claim timely.

(f) The quarterly report required in subsection (a) of this section must be submitted electronically as specified on the department's website.

(g) Subsections (e) and (f) of this section apply to reports submitted under subsection (a) of this section beginning with the report required to be submitted by May 15, 2021, for the months of January, February, and March of that 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.

Filed with the Office of the Secretary of State on November 12, 2020.

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James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 27, 2020
For further information, please call: (512) 676-6587

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28 TAC §21.2824

STATUTORY AUTHORITY. The department proposes the repeal of §21.2824 under Insurance Code §36.001.

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

CROSS-REFERENCE TO STATUTE. The proposed repeal of §21.2824 implements Insurance Code §36.001.

§21.2824. Applicability.

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 November 12, 2020.

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General Counsel
Texas Department of Insurance
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PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 180. MONITORING AND ENFORCEMENT

SUBCHAPTER A. GENERAL RULES FOR ENFORCEMENT

28 TAC §180.1

The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes an amendment to §180.1, Definitions. The purpose of this amendment is to align the rule with Texas Labor Code §408.0043, Professional Specialty Certification Required for Certain Review, as amended by Senate Bill (SB) 1742, 86th Legislature, Regular Session (2019), effective September 1, 2019. The Legislature added subparagraph (c) to §408.0043 to require that when a health care service is requested, ordered, provided, or to be provided by a physician, a physician performing a peer review, utilization review, or independent review must be of the same or a similar specialty as that physician.

EXPLANATION. Amended §180.1(4) adds to the definition of appropriate credentials the language from Labor Code §408.0043(c) that requires a physician who performs a peer review, utilization review, or independent review of health care services to have the same or similar specialty as the physician that requests or performs the health care services. Amended §180.1(4) cites the credential requirements for dentists under Labor Code §408.0044 and chiropractors under Labor Code §408.0045. An insurance carrier, independent review organization, or utilization review agent must determine on a case-by-case basis whether a physician reviewer's credentials are consistent with the specialty of the physician who requested or performed the health care service under review and the type of health care service that is under review. The required comparison of the requesting physician's credentials to the reviewing physician's credentials is consistent with existing Texas Department of Insurance (TDI) requirements in 28 Texas Administrative Code §12.202 for independent review and 28 TAC §19.1706 for utilization review of group health services.

The amendment is limited to certain reviews of physician-requested or physician-provided health care services by physicians performing utilization review, independent review, or peer reviews. The amendment does not alter the appropriate credentials for utilization review, independent review, or peer review of health care services requested or provided by other types of health care providers. In these situations, existing DWC and TDI rules governing medical necessity disputes (28 TAC §133.308), peer reviewers (28 TAC §180.22(g)), and utilization review personnel (28 TAC §19.2006) continue to apply. In these situations, the reviewer must continue to have the appropriate credentials, including the "certifications, education, training, and experience to provide the health care that an injured employee is receiving or is requesting to receive." In addition, this amendment does not alter the appropriate credentials for designated doctors, doctors performing required medical examinations, or doctors serving as members of the medical quality review panel.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner of Health & Safety, Matthew Zurek, has determined that, for each year of the first five years the amended rules will be in effect, there will be no measurable fiscal impact to state and local governments as a result of enforcement or administration of the amendment. There will be no measurable effect on local employment or the local economy because of the amendment.

The amendment to §180.1 reflects the statutory changes SB 1742 made to Labor Code §408.0043 and does not impose any additional requirements that could produce a fiscal impact.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendment is in effect, Deputy Commissioner Zurek expects that it will have the public benefit of improved matching of reviewers with the same or similar credentials as the requesting physician, which may result in fewer disputes about the approval or denial of health care services.

ANTICIPATED COSTS TO COMPLY WITH THE PROPOSAL. Deputy Commissioner Zurek anticipates that, for each of the first five years the proposed amendment is in effect, there will be indeterminate costs to those required to comply with the proposal. Any costs resulting from the proposed amendment would be a direct result of the statutory change.

Government Code §2001.0045 requires a state agency to offset any costs on regulated individuals associated with a proposed rule. However, DWC has determined that this proposed rule will impose indeterminate costs on system participants as a result of the statutory change. Under §2001.045(c)(9), this requirement does not apply to a rule necessary to implement legislation.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Under Government Code §2006.002(c), if a proposed rule may have an adverse economic effect on small businesses, micro businesses, or rural communities, state agencies must prepare, as part of the rulemaking process, an economic impact statement that assesses the potential impact of the proposed rule and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. DWC has determined that the proposed amendment will not have an adverse economic effect on small or micro businesses or rural communities because it simply implements statutory requirements. Therefore, DWC is not required to prepare a regulatory flexibility analysis.

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each of the first five years that the proposed amendment is in effect, the proposed rule will not:

- create or eliminate a government program;

- require the creation of new employee positions or the elimination of existing employee positions;

- require an increase or decrease in future legislative appropriations to DWC;

- require an increase or decrease in fees paid to DWC;

- create a new regulation;

- limit or repeal an existing regulation; or

- positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. If you would like to comment on the proposal or request a public hearing, you must submit your comments or hearing request by 5:00 p.m., Central time, on December 28, 2020. Email your comments or hearing requests to RuleComments@tdi.texas.gov or mail them to Cynthia Guillen, Texas Department of Insurance, Division of Workers' Compensation, DWC Legal Services, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. If DWC holds a hearing, DWC will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. DWC proposes amended §180.1 under the following statutory authority:

Labor Code §401.011 provides general definitions of the Texas Workers' Compensation Act.

Labor Code §402.00111 provides that the commissioner of workers' compensation will exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner will administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation will adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

Labor Code §408.021 provides that the injured employee is entitled to all health care reasonably required by the injury that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the injured employee's ability to return to or retain employment.

Labor Code §408.027 provides how the health care provider must submit a claim for payment and how the carrier must pay, reduce, deny, or determine to audit the health care provider's requests for health care services.

Labor Code §408.0043 outlines the professional specialty certification requirements of doctors, other than chiropractors or dentists, to perform health care services, including utilization reviews, independent reviews, or peer reviews.

Insurance Code §4201.054 provides that the commissioner of workers' compensation regulates all persons who perform utilization review of medical benefits and has rulemaking authority to implement such regulation under Title 5 of the Labor Code.

§180.1. Definitions.

The following words and terms, when used in this chapter, will [~~shall~~] have the following meanings:

(1) Act--The Texas Workers' Compensation Act, Labor Code, Title 5, Subtitle A.

(2) Administrative violation--A violation, failure to comply with, or refusal to comply with the Act, or a rule, order, or decision of the commissioner. This term is synonymous with the terms "violation" or "violate."

(3) Agent--A person who [~~with whom~~] a system participant uses [~~utilizes~~] or contracts with for the purpose of providing claims service or fulfilling duties under the Labor Code Title 5 and rules. The system participant who uses [~~utilizes~~] or contracts with the agent may also be responsible for the administrative violations of that agent.

(4) Appropriate credentials--The certifications[~~certification(s)~~], education, training, and experience to provide the health care that an injured employee is receiving or is requesting to receive. Under Texas Labor Code §408.0043, a physician who performs a peer review, utilization review, or independent review of health care services requested, ordered, provided, or to be provided by a physician must be of the same or similar specialty as the physician who requested, ordered, provided, or will provide the health care service. A dentist must meet the requirements of Texas Labor Code §408.0044. A chiropractor must meet the requirements of Texas Labor Code §408.0045.

(5) Commissioner--The commissioner of workers' compensation.

(6) Complaint--A written submission to the division alleging a violation of the Act or rules by a system participant.

(7) Compliance Audit (also Performance Review)--An official examination of compliance with one or more duties under the Act and rules. A compliance audit does not include monitoring or review activities involving the Medical Advisor or the Medical Quality Review Panel.

(8) Conviction or convicted--

(A) A system participant is considered to have been convicted when:

(i) a judgment of conviction has been entered against the system participant in a federal, state, or local court;

(ii) the system participant has been found guilty in a federal, state, or local court;

(iii) the system participant has entered a plea of guilty or nolo contendere (no contest) that has been accepted by a federal, state, or local court;

(iv) the system participant has entered a first offender or other program and judgment of conviction has been withheld; or

(v) the system participant has received probation or community supervision, including deferred adjudication.

(B) A conviction is still a conviction until and unless overturned on appeal even if:

(i) it is stayed, deferred, or probated;

(ii) an appeal is pending; or

(iii) the system participant has been discharged from probation or community supervision, including deferred adjudication.

(9) Department--Texas Department of Insurance.

(10) Division--Texas Department of Insurance, Division of Workers' Compensation.

(11) Emergency--As defined in §133.2 of this title (relating to Definitions). This definition does not apply to "emergency" as used in the term "ex parte emergency cease and desist orders."

(12) Frivolous--That which does not have a basis in fact or is not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(13) Frivolous complaint--A complaint that does not have a basis in fact or is not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(14) Immediate post-injury medical care--That health care provided on the date that the injured employee first seeks medical attention for the workers' compensation injury.

(15) Notice of Violation (NOV)--A notice issued to a system participant by the division when the division has found that the system participant has committed an administrative violation and the division seeks to impose a sanction in accordance with Labor Code, Title 5 or division rules.

(16) Peer Review--An administrative review by a health care provider performed at the insurance carrier's request without a physical examination of the injured employee.

(17) Remuneration--Any payment or other benefit made directly or indirectly, overtly or covertly, in cash or in kind, including, but not limited to, forgiveness of debt.

(18) Rules--The division's rules adopted under Labor Code, Title 5.

(19) Sanction--A penalty or other punitive action or remedy imposed by the commissioner on an insurance carrier, representative, injured employee, employer, or health care provider, or any other person regulated by the division under the Act, for an administrative violation.

(20) SOAH--The State Office of Administrative Hearings.

(21) System Participant--A person or their agent subject to the Act or a rule, order, or decision of the commissioner.

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 November 10, 2020.

TRD-202004769
Kara Mace
Deputy Commissioner of Legal Services
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: December 27, 2020
For further information, please call: (512) 804-4703

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER D. CLAIMS PROCESSING--PAYROLL

34 TAC §5.36

The Comptroller of Public Accounts proposes the repeal of §5.36, concerning deductions for paying membership fees to certain law enforcement employee organizations.

The repeal of §5.36 is being proposed because it is being amended into §5.46 in a separate proposal. Other than the types of employee organizations to which §5.36 and §5.46 apply, these two sections contain similar provisions.

Tom Currah, Chief Revenue Estimator, has determined that repeal of the rule will have no significant fiscal impact to the state government, units of local government, or individuals. There would be no significant anticipated economic cost to the public.

Mr. Currah also has determined during the first five years that the proposed rule repeal is in effect, the repeal: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. The repeal of §5.36 is being proposed because it is being amended into §5.46 in a separate proposal.

The proposed rule repeal would have no fiscal impact on small businesses or rural communities.

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 repeal is proposed under Government Code, §659.110, which authorizes the comptroller to adopt rules to administer the eligible state employee organization membership fee deduction program authorized by Government Code, Chapter 659, Subchapter G, concerning supplemental deductions.

The repeal implements Government Code, §§659.101 and 659.1031 - 659.110.

§5.36. Deductions for Paying Membership Fees to Certain Law Enforcement Employee Organizations.

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 November 16, 2020.

TRD-202004824
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: December 27, 2020
For further information, please call: (512) 475-0387

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34 TAC §5.46

The Comptroller of Public Accounts proposes amendments to §5.46, concerning deductions for paying membership fees to employee organizations.

In response to Attorney General Opinion No. KP-0310 (2020), the amendments in subsection (b) require forms authorizing or canceling payroll deductions for state employee organization membership fees to be submitted directly to the employer by the state employee and not by the state employee organization; in subsection (e), add consent language to the authorization form to ensure the employee's consent is voluntary; and, in subsection (i)(3), authorize a state agency, upon receipt of a timely submitted reconciling items report, to provide a state employee organization with personal contact information for each employee identified in the reconciling items report for whom the organization does not already have personal contact information.

The amendments also incorporate into this section the provisions of §5.36, concerning deductions for paying membership fees to certain law enforcement employee organizations. Other than the types of employee organizations to which §5.36 and §5.46 apply, these two sections contain similar provisions. Section 5.36 is being proposed for repeal in a separate proposal.

Additionally, the amendments change the section title to "Deductions for Paying Membership Fees to Certain State Employee Organizations"; update the section's language to make it easier to read, remove unnecessary language, and correct citations; revise the "employer" and "fiscal year" definitions in subsection (a)(3) and (4) respectively; delete the "pay identification number" definition in subsection (a)(10); in subsection (a)(13), revise the "state agency" definition to better mirror the definitions

in Government Code, §403.0165 and §659.101, and add the citation for the Position Classification Act; add a "Texas identification number" definition in new subsection (a)(15); require a state employee to submit a cancellation form or notice, as well as the authorization form, to the employer's human resource officer or payroll officer in subsections (b)(1)-(3), and (e)(1); provide that the comptroller and a state agency are not responsible for providing a state employee's membership information to a state employee organization in subsection (b)(1)(E); combine the requirements for authorization and cancellation forms or notices into subsection (b)(2); in subsection (b)(2)(D), require a state agency to inform the applicable eligible organization if a state employee member submits a cancellation form or notice; provide in subsections (c)(1)(E) and (d)(1)(E) that an eligible organization's receipt of the authorization form, cancellation form, or cancellation notice is not a prerequisite to the authorization or cancellation becoming effective; in subsection (e), require all authorization forms to contain the employee's consent for the employer to provide certain personal information to the organization only for the purpose of informing the employee organization about the payroll deduction, remove the size requirement for cancellation forms, and add submission instructions to authorization and cancellation forms; in subsection (f)(2)(E), require an organization to specify whether it requests certification under Government Code, §403.0165 or §659.1031; delete subsection (f)(2)(F) because the statute addresses the withholding of administrative fees; change "payee identification number" to "Internal Revenue Service employer identification number" in subsection (f)(2)(H); in new subsection (g)(2), add language from §5.36 regarding the certification of a state employee organization under Government Code, §659.1031; remove the requirement that notices and detail reports must be sent by mail in subsections (g)(3)(A), (i) and (l); in subsection (i), require the reconciling items report, personal contact information, and detail report to be submitted in a secure manner under new subsection (i)(3)(B), and subsections (i)(3)(D)(v) and (l)(3)(A); require the comptroller to transmit deducted membership fees to an eligible organization by electronic funds transfer, and delete language concerning payment made by warrants; change "head" to "chief administrator" in subsection (j); require an eligible organization to notify the comptroller if there is a change to the organization's electronic funds transfer information in new subsection (k)(2)(E); change "payee identification number" to "Texas identification number" in subsection (k)(4) to use current terminology; in subsection (l), combine subsection (l)(3)(C) and (D) because they contain the same requirements.

If these amendments become effective, a state employee with an existing authorization for a payroll deduction under the current section will not be required to submit a new authorization form. However, a state employee who authorizes a payroll deduction under this section on or after the date these amendments become effective will be required to submit a properly completed authorization form in accordance with the requirements of the amended section.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposal is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that the proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amendment would benefit the public by improving the clarity and implementation of the section. There would be no significant anticipated economic cost to the public. The proposed amendment would have no fiscal impact on small businesses or rural communities.

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 amendments are proposed under Government Code, §403.0165, which authorizes the comptroller to adopt rules to administer payroll deductions for certain state employee organizations, and Government Code, §659.110, which authorizes the comptroller to adopt rules to administer the eligible state employee organization membership fee deduction program authorized by Government Code, Chapter 659, Subchapter G, concerning supplemental deductions.

The amendments implement Government Code, §§403.0165, 659.101, and 659.1031-659.110.

§5.46. Deductions for Paying Membership Fees to Certain State Employee Organizations.

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

(1) Comptroller--The Comptroller of Public Accounts for the State of Texas.

(2) Eligible organization--A state employee organization that the comptroller has certified in accordance with this section and whose certification has not been terminated.

(3) Employer--A state agency that employs a [~~one or more~~] state employee who authorizes a deduction under this section [~~employees~~].

(4) Fiscal year--The accounting period for the state government which begins on September 1 and ends on August 31 [~~fiscal year of the State of Texas~~].

(5) Holiday--A state or national holiday as specified by [~~the~~] Government Code, §§662.001-662.010. The term does not include a holiday that the General Appropriations Act prohibits state agencies from observing.

(6) Include--Is a term of enlargement and not of limitation or exclusive enumeration. The use of the term does not create a presumption that components not expressed are excluded.

(7) Institution of higher education--Has the meaning assigned by [~~the~~] Education Code, §61.003.

(8) May not--Is a prohibition. The term does not mean "might not" or its equivalents.

(9) Membership fee--The dues or fee that a state employee organization requires a state employee to pay to maintain membership in the organization.

[~~(10) Payee identification number--The 14-digit number that the comptroller assigns to each direct recipient of a payment made by the comptroller for the State of Texas.~~]

(10) [~~(11)~~] Salary or wage leveling agreement--A contract or other agreement between a state employee and the [~~employee's~~] employer that requires the employer to pay the employee's total annual salary or wages over 12 months even though the employee is not scheduled to work each of those months.

(11) [~~(12)~~] Salary or wages--Base salary or wages, longevity pay, or hazardous duty pay.

(12) [~~(13)~~] State agency--A department, commission, [~~council,~~] board, office, agency, or other entity of Texas state government, including an institution of higher education.

(13) [~~(14)~~] State employee--An employee of a [~~Texas~~] state agency. The term includes an elected or appointed official, a part-time employee, an hourly employee, a temporary employee, an employee who is not covered by Government Code, Chapter 654 (the Position Classification Act) [~~of 1961~~], and a combination of the preceding. The term excludes an independent contractor and an [~~the~~] employee of an independent contractor.

(14) [~~(15)~~] State employee organization--An association, union, or other organization that advocates the interests of state employees concerning grievances, compensation, hours of work, or other conditions or benefits of employment.

(15) Texas identification number--The 14-digit number that the comptroller assigns to each direct recipient of a payment made by the comptroller.

(16) Workday--A calendar day other than Saturday, Sunday, or a holiday.

(b) Deductions.

(1) Authorization of deductions.

(A) A state employee may authorize one or more monthly deductions from the employee's salary or wages to pay membership fees to eligible organizations.

(B) Neither a [~~No~~] state agency nor a [~~or~~] state employee organization may state or imply that a state employee is required to authorize a deduction under this section.

(C) A state employee may provide an authorization only if the employee:

(i) properly completes an authorization form; and

(ii) submits the form to the employer's human resource officer or payroll officer [~~eligible organization to which the membership fees will be paid~~].

(D) Neither the comptroller nor a state agency is liable or responsible for any damages or other consequences resulting from a state employee's authorization of [~~employee authorizing~~] an incorrect amount of a deduction under [~~authorized by~~] this section.

(E) Except as provided in subsection (i)(3) of this section, neither the comptroller nor a state agency is responsible for providing a state employee's membership information to an eligible organization.

(2) Change [~~Manual change~~] in the amount of a deduction or cancellation of a deduction.

(A) At any time, a state employee may authorize a change in the amount to be deducted under this section from the employee's salary or wages or cancel a deduction under this section.

(B) A state employee may authorize a change in the amount of a deduction or a cancellation of a deduction under this section only if the employee:

(i) properly completes an authorization form, cancellation form, or cancellation notice, as appropriate; and

(ii) submits the form or notice to the employer's human resource officer or payroll officer [~~affected eligible organization~~].

(C) Neither the comptroller nor a state agency is liable or responsible for any damages or other consequences resulting from a state employee's change of [~~employee changing~~] the amount of a deduction or cancellation of a deduction under [~~authorized by~~] this section.

(D) If a state employee submits a cancellation form or cancellation notice to the employer's human resource officer or payroll officer, the state agency must notify the affected eligible organization.

(3) Automatic change in the amount of a deduction.

(A) An [~~A state employee may authorize the employee's~~] employer may [~~to~~] change the amount of a deduction under this section from the employee's salary or wages without requiring the employee to submit a new [~~first submitting an~~] authorization form only if: [~~for the change.~~]

(i) the employee's current authorization form authorizes the employer to change the amount of a deduction under this section from the employee's salary or wages without requiring the employee to submit a new authorization form; and

(ii) the change is needed because the eligible organization to which the employee authorized a deduction has changed the amount of membership fees it charges to state employees.

[~~(B) A state employee may provide an authorization under subparagraph (A) of this paragraph only for a change that is needed because an eligible organization has changed the amount of membership fees it charges to state employees. An employee may not provide the authorization for a change that is needed because the employee's salary or wages have increased or decreased.~~]

(B) [~~(C)~~] Even if a state employee provides the authorization under subparagraph (A) of this paragraph, the [~~employee's~~] employer may require the employee to submit a properly completed authorization form to the employer before the employer changes the amount of a deduction under this section from the employee's salary or wages.

(C) [~~(D)~~] A state employee may provide the authorization under subparagraph (A) of this paragraph only if the employee:

(i) properly completes an authorization form that enables state employees to provide the authorization; and

(ii) submits the form to the employer's human resource officer or payroll officer [~~affected eligible organization~~].

(D) [~~(E)~~] When an eligible organization wants to change the amount of membership fees it charges to state employees that are authorized under subparagraph (A) of this paragraph, the organization must provide prior written notification of the change to the comptroller. If the comptroller receives the notification on the first calendar day of a month, [~~then~~] the change is effective for the salary or wages paid to state employees on the first workday of the second month following the month in which the comptroller receives the notification. If the comptroller receives the notification after the first calendar day of a month, [~~then~~] the change is effective for the wages and salaries paid to state employees on the first workday of the

third month following the month in which the comptroller received the notification.

(4) Sufficiency of salary or wages to support a deduction.

(A) A state employee is solely responsible for ensuring that the employee's salary or wages are sufficient to support a deduction authorized by this section.

(B) If a state employee's salary or wages are sufficient to support only part of a deduction authorized by this section, [~~then~~] no part of the deduction may be made.

(C) The amount that could not be deducted from a state employee's salary or wages because they were insufficient to support the deduction may not be made up by deducting the amount from subsequent payments of salary or wages to the employee.

(5) Timing of deductions.

(A) Except as provided in subparagraph (B) of this paragraph, a deduction authorized by this section must be made from the salary or wages that are paid on the first working day of a month.

(B) If a state employee does not receive a payment of salary or wages on the first working day of a month, [~~then~~] the employer [~~of the employee~~] may designate the payment of salary or wages to the employee from which a deduction authorized by this section will be made. A deduction authorized by this section may be made only once each month.

(6) Regularity of deductions.

(A) This subparagraph applies to a state employee who is scheduled by the [~~employee's~~] employer to work each month of a year. A deduction authorized by this section must be calculated so that the total membership fee paid by a state employee per year is spread evenly over 12 monthly deductions.

(B) This subparagraph applies to a state employee who is not scheduled by the [~~employee's~~] employer to work each month of a year.

(i) If a state employee has entered into a salary or wage leveling agreement, [~~then~~] a deduction authorized by this section must be calculated so that the total membership fee paid by the employee per year is spread evenly over the months the employee will be paid under the agreement.

(ii) If a state employee has not entered into a salary or wage leveling agreement, [~~then~~] a deduction authorized by this section must be calculated so that the total membership fee paid by the employee per year is spread evenly over the months the employee will be paid.

[~~(C) The eligible organization to which a state employee authorizes a deduction under this section is responsible for calculating the deduction amount in accordance with this paragraph. The eligible organization is also responsible for instructing the state employee about how to enter the correct deduction amount on the authorization form.~~]

(7) Retroactive deductions.

(A) In this paragraph, "retroactive deduction" means a deduction authorized by this section to the extent the purpose of the deduction is:

(i) to correct an error made in a previous month that resulted in the amount of money deducted being less than the amount authorized by a state employee; or

(ii) to catch up on the amount of membership fees owed by a state employee to an eligible organization because a deduction authorized by this section was not made in one or more previous months.

(B) A retroactive deduction is prohibited unless:

(i) an error described in subparagraph (A)(i) of this paragraph was committed by the employer [~~of the employee~~]; and

(ii) the eligible organization that received the erroneous deduction consents to the retroactive deduction.

[~~(8) Cancellation of deductions.~~]

[~~(A) A state employee may cancel at any time a deduction authorized by this section.~~]

[~~(B) A state employee may cancel a deduction authorized by this section to an eligible organization only if the employee:~~]

[~~*(i)* properly completes a cancellation form and submits the form to the organization or the employee's employer; or~~]

[~~*(ii)* provides other written notice of the cancellation to the organization or the employee's employer.~~]

[~~(C) If a state employee submits a cancellation form or other written notice of cancellation to the employee's employer, then the agency must include a copy of the form or notice with the next detail report that the agency sends to the affected eligible organization.~~]

[~~(D) Neither the comptroller nor a state agency is liable or responsible for any damages or other consequences resulting from a state employee cancelling a deduction authorized by this section.~~]

(8) [~~(9)~~] Interagency transfers of state employees. A state employee who transfers from one state agency to a second state agency must be treated by the second state agency as if the employee has not yet authorized any deductions under this section.

(c) Effectiveness of authorization forms.

(1) Effective date of authorization forms.

(A) This subparagraph applies if a state agency receives a state employee's properly completed authorization form on the first calendar day of a month.

(i) The first deduction authorized by this section must be made from the employee's salary or wages that are paid on the first workday of the first month following the month in which the agency receives the form.

(ii) If an authorization form is submitted to change the amount of a deduction authorized by this section, [~~then~~] the change is effective with the deduction made on the first workday of the first month following the month in which the agency receives the form.

(B) This subparagraph applies if a state agency receives a state employee's properly completed authorization form after the first calendar day of a month.

(i) The first deduction authorized by this section must be made from the employee's salary or wages that are paid on the first workday of the second month following the month in which the agency receives the form. However, the agency may consent for the first deduction to occur from the salary or wages that are paid on the first workday of the first month following the month in which the agency receives the form.

(ii) If an authorization form is submitted to change the amount of a deduction authorized by this section, [~~then~~] the change is effective with the deduction made on the first workday of the sec-

ond month following the month in which the agency receives the form. However, the agency may consent for the change to be effective with the deduction made on the first workday of the first month following the month in which the agency receives the form.

(C) If the first calendar day of a month is not a workday, [~~then~~] the first workday following the first calendar day is the deadline for the receipt of properly completed authorization forms.

(D) A state employee is [~~Eligible organizations are~~] solely responsible for ensuring that a properly completed authorization form is [~~forms are~~] received by the employer by the deadline.

(E) An eligible organization's receipt of the authorization form is not a prerequisite to the authorization becoming effective.

(2) Return of authorization forms.

(A) A state agency shall return an authorization form to the state employee who [~~eligible organization that~~] submitted the form if:

(i) the form is incomplete, contains erroneous data, or is otherwise insufficient; and

(ii) a deficiency listed in clause (i) of this subparagraph makes it impossible for the agency to establish the deduction in accordance with the form.

[~~(B) A state agency shall return an authorization form to the eligible organization that submitted the form if the form is for an individual who is not employed by the agency.~~]

(B) [~~(C)~~] A state agency may either accept an authorization form from or return an authorization form to the state employee who [~~eligible organization that~~] submitted the form when the form postpones the first deduction authorized by this section beyond the effective date determined under paragraph (1) of this subsection. If the agency accepts the authorization form, [~~then~~] the agency may not make the deduction effective before the effective date specified on the form.

(C) [~~(D)~~] A state agency shall state in writing the reason for the return of an authorization form. The statement must be attached to the form being returned.

[~~(3) Copies of authorization forms. An eligible organization is solely responsible for making a copy of each authorization form before the organization submits the form to the appropriate state agency.~~]

(d) Effectiveness of cancellation forms and cancellation notices.

(1) Effective date of cancellation forms and cancellation notices.

(A) This subparagraph applies if a state agency receives a state employee's properly completed cancellation form or cancellation notice on the first calendar day of a month. A state employee's cancellation of a deduction authorized by this section is effective for the salary or wages paid to the employee on the first workday of the first month following the month in which the agency receives the cancellation form or cancellation notice.

(B) This subparagraph applies if a state agency receives a state employee's properly completed cancellation form or cancellation notice after the first calendar day of a month. A state employee's cancellation of a deduction authorized by this section is effective for the salary or wages paid to the employee on the first workday of the:

(i) [~~for the salary or wages paid to the employee on the first workday of the~~] second month following the month in which the agency receives the cancellation form or cancellation notice; or

(ii) [~~for the salary or wages paid to the employee on the first workday of the~~] first month following the month in which the agency receives the cancellation form or cancellation notice if the agency consents to this effective date.

(C) If the first calendar day of a month is not a workday, [~~then~~] the first workday following the first calendar day is the deadline for the receipt of properly completed cancellation forms or cancellation notices.

(D) A state employee is solely [~~State employees and eligible organizations are~~] responsible for ensuring that properly completed cancellation forms and cancellation notices are received by the deadline.

(E) An eligible organization's receipt of the cancellation form or cancellation notice is not a prerequisite to the cancellation becoming effective.

(2) Return of cancellation forms and cancellation notices.

(A) A state agency shall return a cancellation form or cancellation notice to the state employee who [~~or the eligible organization that~~] submitted the form or notice if:

(i) the form or notice is incomplete, contains erroneous data, or is otherwise insufficient; and

(ii) a deficiency listed in clause (i) of this subparagraph makes it impossible for the agency to cancel the deduction in accordance with the form or notice.

[~~(B) A state agency shall return a cancellation form or cancellation notice to the state employee or the eligible organization that submitted the form or notice if the form or notice is for an individual who is not employed by the agency.~~]

[~~(C) If a state agency returns a cancellation form or cancellation notice to an eligible organization, then the agency must promptly mail or deliver a copy of the returned form or notice to the state employee who completed it.~~]

(B) [~~(D)~~] A state agency shall state in writing the reason for the return of a cancellation form or cancellation notice. The statement must be attached to the form being returned.

[~~(3) Copies of cancellation forms and cancellation notices. A state employee or eligible organization is responsible for making a copy of the employee's cancellation form or cancellation notice before the employee or organization submits the form to the employee's employer.~~]

(e) Authorization and cancellation forms.

(1) The comptroller's approval of authorization and cancellation forms.

(A) An eligible organization may not distribute or provide an authorization or cancellation form to a state employee until the organization has received the comptroller's written approval of the form.

(B) As a condition for retaining its eligibility, an eligible organization must produce an authorization form and a cancellation form that comply with the comptroller's requirements and this section. The organization must produce the forms within a reasonable time after the organization receives its certification from the comptroller.

(C) The comptroller may approve an eligible organization's authorization form if the form:

(i) clearly informs state employees that a properly completed authorization form must be submitted to the employer's human resource officer or payroll officer to authorize a deduction;

(ii) clearly informs state employees that a copy of the properly completed authorization form should be provided to the organization to notify the organization that the employee has authorized a deduction;

(iii) contains the following statement: "I understand that I cannot be compelled to be a member of a state employee organization or to pay dues to a state employee organization as a condition of employment with the state. I also understand that I may change or cancel this authorization at any time by providing written notice to my employer. I voluntarily authorize a monthly payroll deduction in the amount shown above from my salary or wages for membership fees to the state employee organization listed above and agree to comply with the comptroller's rules concerning this deduction. Additionally, I agree that my name, social security number, personal contact information, and the amount of my payroll deduction for membership fees may be provided to the state employee organization listed above only for the purpose of informing the state employee organization about the payroll deduction."; and

(iv) complies with this section and the comptroller's other requirements for format and substance.

(D) [~~(C)~~] The comptroller may [~~not~~] approve the [~~authorization or~~] cancellation form of an eligible organization if the form [~~unless~~]:

(i) clearly informs state employees that a properly completed cancellation form must be submitted to the employer's human resource officer or payroll officer to cancel the deduction [~~the form is at least 8 1/2 inches wide~~];

(ii) clearly informs state employees that a copy of the properly completed cancellation form should be provided to the organization to notify the organization that the employee has cancelled the deduction; [~~the form is at least 11 inches long; and~~]

(iii) [~~the cancellation form~~] clearly informs state employees that they are not required to state a reason for a cancellation; and

(iv) [~~the form~~] complies with the comptroller's other requirements for format and substance.

(E) [~~(D)~~] An eligible organization must revise an authorization or cancellation form upon request from the comptroller. The organization may not distribute or otherwise make available to state employees a revised form until the organization has received the comptroller's written approval of the form.

(2) Distribution of authorization or cancellation forms.

(A) An eligible organization must provide an authorization or cancellation form to a state employee or state agency promptly after receiving:

(i) an oral or written request for the form from the employee or agency; or

(ii) an oral or written request to provide the form to the employee from the comptroller or the [~~employee's~~] employer.

(B) A state agency may maintain a supply of cancellation forms and distribute the forms to its state employees upon request. An eligible organization shall promptly provide the forms to the agency upon request.

(f) Procedural requirements for certifying state employee organizations.

(1) Request for certification.

(A) The comptroller may not certify a state employee organization under this section unless the comptroller receives a written request for certification from an individual who is authorized by the organization to make the request.

(B) The comptroller may not certify a state employee organization under this section if the comptroller receives the organization's request for certification after June 2nd of a fiscal year.

(2) Requirements for requests for certification. A request for certification submitted to the [~~The~~] comptroller by [~~may not certify~~] a state employee organization must contain [~~unless the organization's request for certification includes~~]:

(A) the organization's complete name;

(B) the street address of the headquarters of the organization;

(C) the mailing address of the headquarters of the organization, if different from the street address;

(D) the full name, title, telephone number, and mailing address of the organization's primary contact;

(E) a specific request for certification as an eligible organization, specifying whether the organization is requesting certification under Government Code, §403.0165 or §659.1031;

~~[(F) a specific agreement to pay the administrative fees charged by the comptroller under this section;]~~

(F) [~~(G)~~] a specific acceptance of the requirements of this section as they exist at the time the request is made or as adopted or amended thereafter;

(G) [~~(H)~~] the organization's Internal Revenue Service employer [~~payee~~] identification number [~~of the organization~~]; and

(H) [~~(I)~~] any [~~the~~] other information that the comptroller deems necessary.

(g) Substantive requirements for certifying state employee organizations. The comptroller may certify a state employee organization under this section if the organization satisfies the requirements of paragraph (1) or (2) of this subsection.

(1) Certification of a state employee organization under Government Code, §403.0165 [~~Membership~~].

(A) The comptroller may [~~not~~] certify a state employee organization if the organization: [~~unless it submits persuasive evidence to the comptroller that the organization had a membership of at least 4,000 state employees throughout the 18 months preceding the month in which the comptroller receives the organization's request for certification.~~]

(i) [~~(B)~~] submits persuasive evidence to the comptroller that the organization had a membership of at least 4,000 state employees throughout the 18 months preceding the month in which the comptroller receives the organization's request for certification (an [~~An~~] example of the evidence that the comptroller may review is a membership roster containing the name of each state employee who is a member of the organization, the date each employee joined the or-

ganization, and the date through which each employee's membership fees are paid); [.]

(ii) [~~(2) Statewide activities. The comptroller may not certify a state employee organization unless it~~] demonstrates to the comptroller that the organization conducts activities on a statewide basis (an [~~. A state employee~~] organization may satisfy this requirement by submitting any relevant evidence, including newsletters, news articles, correspondence, and membership rosters containing the names and addresses of the organization's members);[.]

(iii) demonstrates[~~(3) Membership fee structure. (A) The comptroller may not certify a state employee organization unless it proves~~] to the comptroller that the organization had a membership fee structure for state employees throughout the 18 months preceding the month in which the comptroller receives the organization's request for certification (an [~~. A state employee~~] organization may satisfy this requirement by submitting relevant evidence, including dated enrollment forms from state employees, documentation about the fees structure, and financial records);[.]

(iv) [~~(B) The comptroller may not certify a state employee organization unless it~~] demonstrates to the comptroller that the membership fees collected from state employees will be equal to an average of at least one-half of the membership fees received by the organization nationwide (an [~~. A state employee~~] organization may satisfy this requirement by submitting financial records that compare the membership fees to be received from state employees with the membership fees received from other individuals throughout the nation); and[.]

(v) [~~(4) Electronic funds transfers. The comptroller may not certify a state employee organization unless: (A) the organization~~] has submitted to [~~a request to be paid through electronic funds transfers under rules adopted by~~] the comptroller a completed direct deposit form for the organization.[~~; and~~]

[~~(B) the comptroller has approved the request.~~]

[~~(5) Exception.~~]

(B) [~~(A)~~] The comptroller shall certify a state employee organization under this paragraph that demonstrates to the satisfaction of the comptroller that the organization had a membership of at least 4,000 state employees on April 1, 1991. The organization is not required to satisfy any of the other substantive requirements of this paragraph [~~subsection~~] except for subparagraph (A)(v) [~~paragraph (4)~~] of this paragraph. A state employee organization may demonstrate that the organization had a membership of at least 4,000 state employees on April 1, 1991, only by submitting to the comptroller: [~~subsection.~~]

[~~(B) A state employee organization may demonstrate that the organization had a membership of at least 4,000 state employees on April 1, 1991, only by:~~]

(i) [~~submitting~~] a membership roster containing the name of each state employee who was a member of the organization on April 1, 1991;

(ii) the date each employee joined the organization; and

(iii) the date through which each employee's membership fees were paid as of April 1, 1991.

(2) Certification of a state employee organization under Government Code, §659.1031. The comptroller may certify a state employee organization if the organization:

(A) submits persuasive evidence to the comptroller that the organization had a membership of at least 2,000 active or retired state employees who hold or have held certification from the Texas Commission on Law Enforcement under Occupations Code, Chapter 1701, Subchapter G; and

(B) has submitted a completed direct deposit form for the organization to the comptroller.

(3) [~~(6)~~] Notifications.

(A) The comptroller shall notify [~~mail a notice to~~] a state employee organization about the comptroller's approval or disapproval of the organization's request for certification by no later than the 30th day after the comptroller receives the request if the request is complete in all respects.

(B) The comptroller shall notify each state agency of the comptroller's certification of a state employee organization by no later than the 30th day after the comptroller makes the certification.

(h) Effective date of certification. The first deduction to pay a membership fee to an eligible organization may be made from salary or wages paid on the first workday of the second month following the month in which the comptroller certifies the organization.

(i) Payments of deducted membership fees.

(1) Payments by the comptroller through electronic funds transfers. The comptroller shall pay deducted membership fees to an eligible organization by electronic funds transfer [~~unless it is infeasible to do so~~].

[~~(2) Payments through warrants issued by the comptroller.~~]

[~~(A) This paragraph applies only if it is infeasible for the comptroller to pay deducted membership fees to an eligible organization by electronic funds transfer.~~]

[~~(B) The comptroller shall pay deducted membership fees by warrant.~~]

[~~(C) The comptroller must issue one warrant for each combination of state agency, eligible organization, and payroll voucher submitted by the agency if the agency has at least one state employee from whose salary or wages a deduction is made under this section. The comptroller must make the warrant payable to the organization.~~]

[~~(D) The comptroller must make each warrant available for pick-up by the state agency whose employees' membership fees are being paid by the warrant. The agency must mail or deliver the warrant to the payee of the warrant by no later than the 10th calendar day of the month. If the 10th calendar day of a month is not a workday, then the first workday following the 10th calendar day is the deadline for the mailing or delivery of warrants.~~]

(2) [~~(3)~~] Payments by institutions of higher education.

(A) This paragraph applies only to membership fees in eligible organizations that have been deducted from salaries or wages that the comptroller does not pay directly to state employees of institutions of higher education.

(B) An institution of higher education shall pay deducted membership fees to an eligible organization by electronic funds transfer unless it is infeasible to do so.

(C) If it is infeasible for an institution of higher education to pay deducted membership fees to an eligible organization by electronic funds transfer, then the institution shall pay the fees by check. The check must be mailed or delivered to the organization by no later than the 20th calendar day of the month following the month when the salary or wages from which the deductions were made were earned. If the 20th calendar day of a month is not a workday, then the

first workday following the 20th calendar day is the deadline for the mailing or delivery of checks.

(3) [~~(4)~~]Reconciliation [~~Payment reconciliation and discrepancies~~].

(A) An eligible organization shall reconcile the detail report provided by a state agency under subsection (l)(3) of this section with:

(i) the amount of membership fees paid to the organization under this subsection; and [~~.~~]

(ii) the organization's membership information.

(B) An eligible organization must submit to the agency, in a secure manner, a reconciling items report, which identifies: [~~all~~]

(i) any discrepancies between the detail report provided by a state agency under subsection (l)(3) of this section and the actual amount of membership fees received under this subsection; and [~~.~~]

(ii) the name of any employee listed in the detail report provided by a state agency under subsection (l)(3) of this section for whom the organization does not already have personal contact information.

(C) The organization must ensure that the agency receives the organization's reconciling items report [~~of the discrepancies~~] by no later than the 60th calendar day after the day on which the agency submitted [~~mailed~~] the detail report to the organization. If the 60th calendar day is not a workday, [~~then~~] the first workday following the 60th calendar day is the deadline.

(D) [~~(C)~~] A state agency that receives a reconciling items report [~~of discrepancies~~] from an eligible organization shall investigate the reconciling items described in the organization's reconciling items report, [~~discrepancy~~] and notify the organization of the action to be taken to eliminate the reconciling items [~~discrepancy~~]. A reconciling item [~~discrepancy~~] may be eliminated by:

(i) making a retroactive deduction if it is authorized by subsection (b)(7) of this section;

(ii) recovering an excessive payment to an eligible organization of amounts deducted under this section from a subsequent payment to the organization;

(iii) recovering an excessive payment to an eligible organization of amounts deducted under this section by obtaining a refund from the organization in accordance with subsection (k)(7) of this section; [~~or~~]

(iv) the agency making corrections to the detail report if the report is incorrect; or[~~.~~]

(v) providing the organization, in a secure manner, with personal contact information for each employee identified in the reconciling items report for whom the organization does not already have personal contact information.

(4) [~~(5)~~] Subordinate units of eligible organizations.

(A) A chapter or other subordinate unit of an eligible organization may receive directly from the comptroller or an institution of higher education a payment of deducted membership fees if the fees were deducted under authorization forms that authorized the payment of the fees to the chapter or other subordinate unit of the organization.[~~:~~]

[(i) ~~the fees were deducted under authorization forms that authorized the payment of the fees to the organization; and~~]

[(ii) ~~the organization is credited on the accounting records of the State of Texas for the payment.~~]

(B) A request to pay deducted membership fees to a chapter or subordinate unit instead of the parent eligible organization must be submitted to the comptroller by the organization.

(C) The comptroller may grant a request under subparagraph (B) of this paragraph only if the membership fee structure of the chapter or subordinate unit is the same as the membership fee structure of the parent eligible organization.

(D) The comptroller's granting of a request under subparagraph (B) of this paragraph is not a certification of the chapter or subordinate unit as an eligible organization.

(E) The comptroller may require an eligible organization to submit proof that an entity is a chapter or other subordinate unit of the organization before a payment of deducted membership fees is paid directly to the entity. The comptroller may periodically require the organization to submit proof that the entity is still a chapter or other subordinate unit of the organization as a condition for continuing to pay deducted membership fees directly to the entity.

(j) Solicitation. This section does not prohibit [~~Nothing in this section prohibits~~] the chief administrator [~~head~~] of a state agency from permitting or prohibiting solicitation by eligible organizations on the premises of the agency.

(k) Responsibilities of eligible organizations.

(1) Disseminating information.

(A) An eligible organization is solely responsible for the dissemination of relevant information to its representatives and employees.

(B) An eligible organization must ensure that its representatives and employees comply with the requirements of this section.

(2) Notification to the comptroller. An eligible organization must notify the comptroller in writing immediately after a change occurs to:

(A) the organization's name;

(B) the street address of the headquarters of the organization;

(C) the mailing address of the headquarters of the organization, if different from the street address; [~~ or~~]

(D) the full name, title, telephone number, or mailing address of the organization's primary contact; or[~~.~~]

(E) the organization's electronic funds transfer information.

(3) Primary contact. The individual that a state employee organization designates as its primary contact must represent the organization for the purposes of:

(A) communicating with the comptroller, including receiving and responding to correspondence from the comptroller; and

(B) disseminating information, including information about the requirements of this section, to representatives of the organization.

(4) Texas [~~Payee~~] identification number. The Texas [~~payee~~] identification number of an eligible organization must appear on all correspondence from the organization to the comptroller or a state agency.

(5) Acceptance [~~and submission~~] of authorization forms. A state agency must accept an authorization form from a state employee if a refusal to accept the form would violate a law of the United States or the State of Texas.

[~~(A) An eligible organization must accept an authorization form from a state employee if a refusal to accept the form would violate a law of the United States or the State of Texas.~~]

[~~(B) An eligible organization must make a reasonable effort to ensure that the appropriate state agency receives the original of a state employee's authorization form within a reasonable time after the organization receives the form.~~]

(6) Acceptance [~~and submission~~] of cancellation forms and cancellation notices. A state agency must accept a cancellation form or cancellation notice from a state employee unless:

[~~(A) An eligible organization must accept a cancellation form or cancellation notice from a state employee unless:~~]

(A) [~~(i)~~] the employee is not a member of the organization; or

(B) [~~(ii)~~] the employee did not properly complete the cancellation form.

[~~(B) An eligible organization must make a reasonable effort to ensure that the appropriate state agency receives the original of a state employee's cancellation form or cancellation notice within a reasonable time after the organization receives the form or notice.~~]

(7) Refunding excessive payments of amounts deducted under this section.

(A) An eligible organization shall refund a payment of amounts deducted under this section to the extent the amount exceeds the amount that should have been paid to the organization if:

(i) the organization receives a written request for the refund from a state agency;

(ii) the agency provides reasonable evidence of the overpayment to the organization; and

(iii) no subsequent payments of amounts deducted under this section are anticipated to be made to the organization.

(B) If a refund is required by subparagraph (A) of this paragraph, the organization must ensure that the appropriate state agency receives the refund by no later than the 30th calendar day after the later of:

(i) the date on which the organization receives the agency's written request for the refund; and

(ii) the date on which the organization receives the agency's reasonable evidence of the overpayment.

(l) Responsibilities of state agencies.

(1) Reports of violations. A state agency may report to the comptroller a violation of this section that the agency believes an eligible organization or its representatives or employees might have committed. A report must be made in writing, and a copy of the report must be mailed to the organization at the same time that the original of the report is mailed to the comptroller.

(2) Authorization forms. A state agency:

(A) may accept authorization forms only if they comply with this section;

(B) must ensure that the identifying information for an eligible organization on an authorization form is the same as the identifying information on the notification document received from the comptroller under subsection (g)(3)(B) [~~(g)(6)(B)~~] of this section; and

(C) may not accept an authorization form that contains an obvious alteration without the state employee's written consent to the alteration.

(3) Detail reports to eligible organizations.

(A) [~~This subparagraph applies to the employer of one or more state employees from whose salary or wages deductions authorized by this section are made.~~] An employer must submit, in a secure manner, a detail report each month to each eligible organization that receives the deductions. [~~The report must be submitted in the manner required by the organizations unless the employer is incapable of complying with the requirement.~~]

(B) A detail report to an eligible organization for a month must contain [~~include~~]:

(i) the name, in alphabetical order, and social security number of each state employee from whose salary or wages a deduction was authorized by this section for the month, regardless of whether the deduction was actually made; and

(ii) the amount of the deduction made for each employee.

(C) An employer [~~This subparagraph applies when the comptroller or an institution of higher education pays membership fees to an eligible organization by warrant or check. The appropriate state agency~~] must submit [~~mail~~] the detail report for the payment to the organization by no later than the 20th calendar day of the month in which the payment was made. If the 20th calendar day is not a workday, then the first workday following the 20th calendar day is the deadline for submitting [~~mailing~~] the report.

[~~(D) This subparagraph applies when the comptroller or an institution of higher education pays membership fees to an eligible organization by electronic funds transfer. The appropriate state agency must mail the detail report for the payment to the organization by no later than the 20th calendar day of the month in which the payment was made. If the 20th calendar day is not a workday, then the first workday following the 20th calendar day is the deadline for mailing the report.~~]

(m) Termination of certification.

(1) Termination by the comptroller.

(A) The comptroller may terminate the certification of an eligible organization only if the organization violates subsection (e)(1) of this section.

(B) The comptroller may determine the effective date of a termination under this paragraph. No deduction authorized by this section may be made to an eligible organization on or after the effective date of a termination under this paragraph.

(C) When the comptroller terminates the certification of an eligible organization, the comptroller shall send written notice of the termination to the organization via certified mail, return receipt requested.

(2) Termination by eligible organizations.

(A) An eligible organization may terminate its participation in the deduction program authorized by this section only by terminating its certification.

(B) An eligible organization may terminate its certification by providing written notice of termination to the comptroller. However, an organization may not provide written notice of termination to the comptroller until the organization has provided written notice of termination to each state employee from whose salary or wages a membership fee to the organization is being deducted.

(C) An eligible organization's termination of its certification is effective beginning with the salary or wages that are paid on the first workday of the third month following the month in which the comptroller receives the organization's proper notice of termination.

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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Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 806. PURCHASES OF PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES

The Texas Workforce Commission (TWC) proposes amendments to Chapter 806, relating to Purchases of Products and Services from People with Disabilities, as follows:

Subchapter A. General Provisions Regarding Purchases of Products and Services from People with Disabilities, §806.2

Subchapter D. Community Rehabilitation Programs, §806.41

Subchapter E. Products and Services, §806.53

TWC proposes new sections to Chapter 806, relating to Purchases of Products and Services from People with Disabilities, as follows:

Subchapter B. Advisory Committee Responsibilities, Meeting Guidelines, §806.23

Subchapter D. Community Rehabilitation Programs, §806.42

TWC proposes adding new Subchapter J to Chapter 806, relating to Purchases of Products and Services from People with Disabilities, as follows:

Subchapter J. Transition and Retention Plans, §§806.100 - 806.104

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the amendments to the Chapter 806 rules is to:

--implement Senate Bill (SB) 753, 86th Texas Legislature, Regular Session (2019); and

--provide program clarification and improvement opportunities.

Senate Bill 753

SB 753 amended the Texas Human Resources Code, Chapter 122, relating to the Purchasing from People with Disabilities (PPD) program, by adding the following sections:

--Section 122.0075, which requires Community Rehabilitation Programs (CRPs) that participate in the PPD program and that pay subminimum wage to develop, with the assistance of TWC, a Transition and Retention Plan (TRP) to increase the wages of their workers with disabilities to the federal minimum wage by September 1, 2022, and to address specifically how they will retain workers after the increase in wages to at least the federal minimum wage.

--Section 122.0076, which requires all CRPs that participate in the PPD program to pay each worker with a disability at least the federal minimum wage.

Transition and Retention Plan

Texas Human Resources Code, §122.0075 requires TWC to assist CRPs that currently pay subminimum wage in developing their TRPs and to provide:

--information about certified benefits counselors to ensure that workers are informed of work incentives and the potential impact that the increase in wages may have on a worker's eligibility for pertinent federal or state benefit programs; and

--a referral to a certified benefits counselor to any worker with a disability who requests a referral.

Texas Human Resources Code, §122.0075 requires the TRP to ensure, to the fullest extent possible, that each worker with a disability is retained by the CRP after the program increases wages to at least the federal minimum wage. The section also requires CRPs that cannot retain all workers with a disability after the wage increase to work with TWC and other relevant governmental entities to obtain job training and employment services to help the workers find other employment that pays at least the federal minimum wage. The section further allows TWC, at the worker's request, to help the worker who is not retained by the CRP to secure employment that pays at least the federal minimum wage.

Additionally, Texas Human Resources Code, §122.0075(f) allows, but does not require, TWC to extend the period for compliance with the minimum wage requirements in Texas Human Resources Code, §122.0076 for not more than 12 months if the CRP:

--requests the extension by March 1, 2022;

--has demonstrated to TWC that an extension would be in the best interest of the CRP's employees with disabilities;

--has worked with TWC to develop a TRP and made meaningful progress toward meeting the minimum wage requirements; and

--submits a revised plan to TWC detailing how the extension will allow the CRP to meet the minimum wage requirements.

TWC must decide on the request for an extension no later than May 1, 2022. The requirements of Texas Human Resources Code, §122.0075 expire on September 1, 2023.

CRP Minimum Wage Requirements

Texas Human Resources Code, §122.0076(a) requires all CRPs participating in the PPD program to pay each worker with a disability at least the federal minimum wage for any work relating to products or services purchased by the CRP through the PPD program. Texas Human Resources Code, 122.0076(d) states that the minimum wage requirement does not apply to a CRP's eligibility before the later of:

--September 1, 2022; or

--the date of the extension granted by TWC under Texas Human Resources Code, §122.0075(f).

Texas Human Resources Code, §122.0076(b) allows, but does not require, TWC to exempt a CRP worker with a disability from the minimum-wage requirements if TWC determines, based on the worker's circumstances, that requiring the minimum wage would result in the:

--CRP not being able to retain the worker with a disability;

--worker not being successful in obtaining work with a different employer; and

--worker not being able to obtain employment at a higher wage than the CRP could pay.

Program Clarification and Improvement Opportunities

Workforce Innovation and Opportunity Act Referrals to CRPs

The Chapter 806 rule amendments address issues related to the percent of a CRP's direct labor hours that must be performed by individuals with disabilities, particularly in relation to Workforce Innovation and Opportunity Act (WIOA) of 2014 referrals.

Texas Human Resources Code, §122.013(c)(3) requires TWC to establish, by rule, the minimum percentage of employees with disabilities that an organization must employ to be considered a CRP for the PPD program. Section 806.53 requires CRPs to certify compliance with the requirement that, for each contract, individuals with disabilities perform 75 percent of each CRP's total hours of direct labor that are necessary to deliver services and products.

WIOA and its implementing regulations established that employment outcomes in the Vocational Rehabilitation (VR) program must be in competitive integrated employment (CIE). The components of a CIE setting are defined further in 34 Code of Federal Regulations (CFR) Part 361. Successful employment outcomes that are reported by state VR agencies under WIOA must meet the definition of CIE.

Based on these WIOA provisions, an employer that must meet a requirement that 75 percent of its direct labor hours be performed by individuals with disabilities will have difficulty meeting the integrated location criteria in WIOA. The VR program may not refer customers to PPD CRPs for employment opportunities unless the opportunities meet WIOA requirements.

Similarly, the 75 percent requirement limits a CRP's options to offer CIE opportunities to workers with disabilities who wish to work in an integrated setting.

Chapter 806 will maintain the 75 percent of direct hours requirement. However, these rule amendments allow the Commission to approve a percentage different from 75 percent at the time of the CRP's initial certification and subsequent re-certifications for a CRP that proposes to participate in the PPD program and offer employment opportunities for individuals with disabilities that meet the WIOA definition of CIE or such other reasons.

Other Program Clarification and Improvement Opportunities

The Chapter 806 rule amendments also address:

--CRP's compliance with state law and regulations;

--communication with the PPD Advisory Committee;

--Commission approval of products and services;

--determination of a worker with a disability;

--use of contract labor; and

--clarifying appreciable contribution and value added by individuals with disabilities.

Rule Review

Texas Government Code, §2001.039 requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency. TWC has assessed whether the reasons for adopting or readopting the rules continue to exist. TWC finds that the rules in Chapter 806 are needed, reflect current legal and policy considerations, and reflect current TWC procedures. The reasons for initially adopting the rules continue to exist; therefore, TWC proposes to readopt Chapter 806, Purchases of Products and Services from People with Disabilities, with the amendments described in this proposed rulemaking.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS REGARDING PURCHASES OF PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES

TWC proposes amendments to Subchapter A, as follows:

§806.2. Definitions

Section 806.2 is amended to add the following definitions:

Individual with Disabilities is defined as an individual with a disability recognized under the Americans with Disabilities Act and employed by a CRP or an entity selected by a CRP.

Minimum wage is defined as the wage under Section 6, Fair Labor Standards Act of 1938 (29 USC §206).

SUBCHAPTER B. ADVISORY COMMITTEE RESPONSIBILITIES, MEETING GUIDELINES

TWC proposes amendments to Subchapter B, as follows:

§806.23. Submitting Reports and Input to the Commission

Current §806.21 addresses the role of the PPD Advisory Committee and requires the committee to provide input and recommendations to the Commission on the PPD program. However, the section does not address how the PPD Advisory Committee's advice, activity, or recommendations that result from its meetings will be communicated to the Commission.

New §806.23 establishes requirements for the PPD Advisory Committee for submitting reports and input to the Commission. The new section requires the PPD Advisory Committee to:

--meet semiannually, with at least one meeting each fiscal year to review and, if necessary, recommend changes to program objectives, performance measures, and criteria established under §806.21(b); and

--prepare and submit to the Commission a report containing any findings and recommendations within 60 days of the completion of the meeting.

SUBCHAPTER D. COMMUNITY REHABILITATION PROGRAMS

TWC proposes amendments to Subchapter D, as follows:

§806.41. Certification and Recertification of Community Rehabilitation Programs

Several provisions of §806.41 are amended relating to the certification and recertification of CRPs.

Compliance with State Laws and Regulations

Section 806.41 is amended to add the requirement that CRPs maintain compliance with Unemployment Insurance tax, wage claims, and state licensing, regulatory, and tax requirements.

New §806.41(q) requires CRPs to:

--be clear of any debts related to Unemployment Insurance taxes or wage claims; and

--meet the state licensing, regulatory, and tax requirements applicable to the CRP.

Additionally, §806.41(e) is amended to add a reference to this new requirement and add that failure to maintain compliance shall result in revocation of the CRP's certification to participate in the PPD program. Section 806.41(i) is also amended to add a reference to this requirement for continuation in the program.

Determinations of an Individual with a Disability

Section 806.41(e)(2) requires CRPs to provide documentation of approved disability determinations. However, Chapter 806 does not address the qualifications of individuals who make the determination that a worker has a disability. As a result, standards are inconsistent among CRPs regarding the determination of an individual who qualifies as a worker with a disability. Additionally, some CRPs make their own determination of whether an individual meets the definition of a worker with a disability.

Section 806.41(e)(5) is added to require that a CRP must ensure that disability determinations are conducted by:

--an individual meeting the qualifications necessary to make such determinations; and

--an independent, non-CRP entity.

The intent of this change is to require that a determination that a worker has a disability be made by an independent, non-CRP entity or individual, including a medical professional, a VR counselor, or another individual who has expertise in diagnosing or providing services to individuals with disabilities.

Direct Labor Hours

Section 806.41(f)(9) is amended to include in the CRP's notarized statement that the CRP will comply with the Commission's approved percentage different from 75 percent of the CRP's total direct labor hours. Section 806.41(f)(9) is also amended to remove the waiver provisions of the 75 percent requirement as a waiver is no longer necessary if the CRP requests and is approved for a different percentage.

Section 806.41(f)(10) is added to state that if the CRP intends to seek a required minimum percentage other than the 75 percent of the CRP's total hours of direct labor for a contract, the CRP must submit the request with their application for approval. The request must include a rationale consistent with one or more criteria in §806.53(a)(4) and (b)(3) as applicable.

Section 806.41(i) is amended to include the requirements of §806.41(f)(10) in the recertification process.

Other Changes

Additionally, new §806.41(e)(6) adds the requirement that a CRP must provide all communication, training, and planning materials to employees in an accessible format.

§806.42. Minimum Wage and Exemption Requirements

New §806.42 sets forth the requirements of Texas Human Resources Code, §122.0076(b) (as added by SB 753) related to the minimum wage. Texas Human Resources Code, §122.0076(b) allows, but does not require, TWC to exempt a CRP worker with a disability from the minimum wage requirements if TWC determines, based on the worker's circumstances, that requiring the minimum wage would result in the:

--CRP not being able to retain the worker with a disability;

--worker not being successful in obtaining work with a different employer; and

--worker not being able to obtain employment at a higher wage than the CRP is able to pay.

SB 753 prohibited the minimum wage requirement from applying to a CRP's eligibility to participate in the PPD program before the later of:

--September 1, 2022; or

--the date an extension of the minimum wage as allowed under the new §806.103.

New §806.42 reflects the requirements of SB 753.

New §806.42(a) requires that a CRP participating in the PPD program shall pay each worker with a disability employed by the program at least the minimum wage for any work relating to any products or services purchased from the CRP through the program.

New §806.42(b) allows TWC to exempt a CRP from the requirements of §806.42 with respect to a worker with a disability if TWC determines an exemption is warranted. TWC may consider the following factors in making the determination:

--requiring the CRP to pay the worker at the minimum wage would result in:

---the CRP not being able to retain the worker with a disability;

---the worker would not have success obtaining work with a different employer;

---the worker, based on the worker's circumstances, would not be able to obtain employment at a higher wage than the CRP would be able to pay the worker, notwithstanding the requirements of §806.42;

---the CRP's efforts to retain the worker;

---the CRP's efforts to asset the worker in finding other employment, including other employment at a higher wage than the CRP will pay;

---whether the exemption is temporary or indefinite; and

---whether employment services provided by other entities that serve individuals who have significant intellectual or developmental disabilities are available and could assist the worker to obtain employment at or above minimum wage.

New 806.43(c) states that the minimum wage requirements do not apply to a CRP's eligibility to participate before the later of:

--September 1, 2022; or

--the date an extension granted under §806.103.

SUBCHAPTER E. PRODUCTS AND SERVICES

TWC proposes amendments to Subchapter E, as follows:

§806.53. Recognition and Approval of Community Rehabilitation Program Products and Services

Approval of Products and Services

Section 806.53(a) is amended to remove the requirement that the Commission approve a CRP's products and services. The amended section assigns the approval of products and services to TWC's executive director or deputy director.

The intent of the rule change is to streamline and shorten the period for review and approval and support timelier deployment of a CRP's products and services. The Commission will continue to provide guidance on products and services but will delegate the actual approval of a CRP's products and services to the executive director or deputy executive director.

Direct Labor Hours

Section 806.53(a) and (b) are amended to allow the Commission to establish a percentage different from 75 percent after considering factors including, but not limited to, a CRP's proposal to participate in the PPD program and offer employment opportunities for individuals with disabilities that meet the WIOA definition of CIE at the time of the CRP's initial certification and subsequent re-certifications.

Clarifying Appreciable Value Added by Individuals with Disabilities

Section 806.2(1) defines appreciable contribution as "...the substantial work effort contributed by individuals with disabilities in the reforming of raw materials, assembly of components or packaging of bulk products in more saleable quantities, by which value is added into the final product offered for sale or through which the individuals with disabilities develop new job skills that have not been previously attained through other jobs."

Section 806.2(11) defines value added as "The labor of individuals with disabilities applied to raw materials, components, goods purchased in bulk form resulting in a change in the composition or marketability of component materials, packaging operations, and/or the servicing tasks associated with a product. Pass-throughs are not allowed; therefore, solely affixing a packaging label to a commodity does not qualify."

Section 806.53(b)(2) states that "Appreciable contribution and value added to the product by individuals with disabilities must be determined to be substantial on a product-by-product basis, based on requested documentation provided to the Agency upon application for a product to be approved for the state use program."

Section 806.53(e) is added to provide criteria for determining if duties performed by individuals with disabilities qualify as value added as required under §806.53(b)(2). New §806.53(e) requires that before the inclusion of a product or service in the program, a CRP must describe the product or service that will be provided though the program in sufficient detail for TWC to determine the item's suitability for inclusion in the program.

Rule language further states that TWC may consider those factors deemed necessary to the determination of the program suitability of a product or service, including, but not limited to, state and federal statutes governing state agencies, geographic saturation of CRPs providing like products and services, and whether the products and services will generate sufficient demand to provide employment for individuals with disabilities.

SUBCHAPTER J. Transition and Retention Plans

TWC proposes adding new Subchapter J, as follows:

New Subchapter J sets forth rules for Transition and Retention Plans (TRPs) required by SB 753.

§806.100. Scope and Purpose

New §806.100 provides the scope and purpose of Subchapter J.

New §806.100(a) states that the purpose of the subchapter is to set forth the rules relating to a CRP's TRP, as required by Texas Human Resources Code, §122.0075, to meet the minimum wage requirements of Texas Human Resources Code, §122.0076.

New §806.100(b) states that the subchapter applies to a CRP that is participating in the state use program and pays workers with disabilities employed by the CRP wages that are less than the federal minimum wage under Section 6, Fair Labor Standards Act of 1938.

New §806.100(c) includes the expiration date of September 1, 2023, for the subchapter, which mirrors the expiration date of Texas Human Resources Code, §122.0075.

§806.101. Requirements for Transition and Retention Plans

SB 753 requires TWC to assist CRPs in developing the TRP by providing workers with information about and referrals to VR counselors to ensure that workers are informed of work incentives as well as the potential impact that the increase in wages may have on eligibility for federal and state benefit programs.

However, SB 753 did not specify requirements for the TRP regarding the milestones, documentation, resources, or reports needed to demonstrate that the CRP is making progress toward meeting the minimum wage and staff retention requirements--a necessary component of granting extensions, as discussed in new §806.102.

New §806.101 includes due dates and other requirements of the TRP.

New §806.101(a) requires that a CRP subject to Subchapter J shall submit a TRP no later than sixty days from the effective date of these rules.

New §806.101(b) requires that the TRP include the full transition goal, including full retention of workers, placement of workers in job training, and fully assisting workers in need of placement goal to meet the wage requirements no later than January 1, 2022.

It is the intent of the Commission that CRPs have full retention of workers with disabilities at the minimum wage or above the placement of workers in job training, or full assistance to workers in need of placement. CRPs not meeting this goal should consider requesting an extension.

New §806.101(c) requires that the TRP contain the following elements:

--Worker Assessment (Employee Receiving Subminimum Wages), including:

---Wage difference / Minimum Wage pay gap

---Line of business employed

---Current skills

---Person-Centered Planning and Career Counseling

---Disability Benefits Impact Analysis based on wage increase

---Opportunities to transfer skills to other state use contract with CRP

---Participation in the assessment by the employee's VR counselor, if the employee is a participant in the VR program at the time of the assessment.

--Goals, including:

---Raise wages for worker paid subminimum wage to Federal minimum wage or more by September 1, 2022

---Retain workers of the CRP as the CRP moves through the transition plan

--Milestones: Achieved by reporting progress in reaching specific actions in the TRP through benchmarks and strategies:

---Benchmarks to include the following:

---Number and percentage of workers provided wage increases by a designated point in time

---Number and percentage of workers provided assessment and counseling by a certain date

---Number and percentage of workers entering and completing training

--Strategies necessary to achieve goals including:

---CRP evaluation of existing line of business for price and added value adjustment consider increasing price to pay for increase in wages

---Requesting assistance from WorkQuest in developing new lines of business to provide employment opportunities to workers receiving sub minimum wage

---CRP pursuing partnerships to expand lines of business and increase wages of workers paid subminimum wages.

---Reports: Monthly or quarterly

---Retention status

---Progress on benchmarks and strategies

---Wages

---Hours Worked

In accordance with Texas Human Resources Code, §122.0075(b)(2), new §806.101(d) requires TWC to assist the CRP in developing the TRP by providing information about certified benefits counselors and by providing a referral to a certified benefits counselor for any CRP employee who requests a referral.

New §806.101(e) requires TWC to review the progress of each TRP at intervals established by TWC and provide technical assistance as necessary and upon request from the CRP.

§806.102. Extensions for Transition and Retention Plans

SB 753 allows, but does not require, TWC to extend the deadline for compliance with the minimum wage requirements for no more than 12 months if the CRP requests the extension by March 1, 2022, and TWC approves by May 1, 2022.

For TWC to grant an extension, SB 753 requires that the CRP:

--has demonstrated to TWC that an extension would be in the best interest of the CRP's employees with disabilities;

--has worked with TWC to develop a TRP and made meaningful demonstrable progress toward meeting the minimum wage requirements; and

--has submitted a revised plan to TWC detailing how the extension will allow the CRP to meet the minimum wage requirements.

Extensions may not be for more than 12 months; therefore, the Commission has the option to grant extensions of fewer than 12 months or grant extension dates specifically requested by a CRP. To ensure consistent implementation of TRPs, the Commission may grant a standard 12-month extension from May 1, 2022, to April 30, 2023, to CRPs requesting and meeting the requirements for an extension.

New §806.102(a) contains the statutory requirement that no later than March 1, 2022, a CRP may request an extension of the TRP.

New §806.102(b) requires TWC to approve or deny all extension requests no later than April 1, 2022. The April 1 date is chosen to allow a CRP to request a reconsideration of a denial, and to have the denial decision resolved, by the statutorily required date of May 1, 2022.

New §806.102(c) states the requirements for granting an extension as required in SB 753, namely that the CRP shall:

--demonstrate that an extension would be in the best interest of the CRP's employees with disabilities;

--have requested assistance and worked with the TWC before requesting an extension;

--have made meaningful progress toward meeting the minimum wage requirement; and

--have submitted a revised TRP to the TWC detailing how the extension will allow the CRP to meet the minimum wage requirements.

Finally, SB 753 does not address whether a CRP may appeal if TWC does not grant an extension. TWC's Chapter 823 Integrated Complaints, Hearings, and Appeals rules do not apply to the PPD program.

New §806.102(d) establishes a separate informal reconsideration process to grant a CRP additional time to demonstrate that an extension is warranted. The new rule language allows a CRP to request that TWC reconsider extension denials provided the request is made no later than April 10, 2022.

New §806.102(e) requires the TWC executive director to review and make a determination on reconsideration requests.

New §806.102(f) requires TWC to make a final decision on all reconsideration requests no later than May 1, 2022.

§806.103. Withdrawal from the Program

New §806.103 provides the requirements for a CRP to notify TWC of its intent to withdraw from the PPD program if a CRP does not intend to meet the minimum wage requirements and determines that it will not seek any exemptions under Texas Human Resources Code, §122.0076, if eligible.

New §806.103(a) states that a CRP shall notify TWC no later than March 1, 2022, if the CRP intends to voluntarily withdraw from the program.

New §806.103(b) states that any CRP that has not withdrawn voluntarily from the program, does not have an extension or approved exemptions in place and is not meeting the minimum wage requirements on September 1, 2022, or by the granted extension date, will be involuntarily removed by revocation of the CRP's certification to participate in the program.

The effective date of the withdrawals will be September 1, 2022, which is the statutory deadline for CRPs to meet the minimum wage requirement. This time frame allows for a transition period for transferring contracts under the PPD.

§806.104. New CRPs during the TRP Period

Texas Human Resources Code, §122.0076(d) states that the requirement in Texas Human Resources Code, §122.0076(a) that all CRPs pay at least the minimum wage does not apply to a CRP's eligibility to participate in the PPD program before September 1, 2022, or to the extension date granted by TWC, whichever date is later. However, any entity applying for CRP certification before September 1, 2022, during the TRP period must either pay at or above the minimum wage or have a plan to pay at or above the minimum wage by September 1, 2022, unless the workers employed by the CRP are eligible for an exemption, as described §806.102.

CRPs paying subminimum wage and entering the PPD program after the proposed implementation start date in July 2020 will have less time to transition and retain workers effectively to meet the September 1, 2022, statutory deadline.

New §806.104 requires all CRPs not meeting minimum wage requesting certification after the date to request an extension pursuant to §806.102(a)--March 1, 2022--shall be required to meet the minimum wage requirements no later than September 1, 2022.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking. Additionally, Texas Labor Code, §352.101 requires the Commission to adopt rules necessary to integrate the vocational rehabilitation programs, including recommending adopting rules to implement the integration. Therefore, the exception identified in Texas Government Code, §2001.0045(c)(9) also applies.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to:

--implement SB 753; and

--provide program clarification and improvement opportunities.

The proposed rulemaking action will not create any additional burden on private real property. The proposed rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the amendments will be in effect:

--the rules will not create or eliminate a government program;

--implementation of the rules will not require the creation or elimination of employee positions;

--implementation of the rules will not require an increase or decrease in future legislative appropriations to TWC;

--the rules will not require an increase or decrease in fees paid to TWC;

--the rules will not create a new regulation;

--the rules will not expand, limit, or eliminate an existing regulation;

--the rule will not change the number of individuals subject to the rules; and

--the rule will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rules will not have an adverse economic impact on small businesses or rural communi-

ties, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Cheryl Fuller, Director, Vocational Rehabilitation Division, 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 rules will be to implement SB 753; and provide program clarification and improvement opportunities.

PART IV. COORDINATION ACTIVITIES

In the development of this rulemaking for publication and public comment, TWC sought the involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the Policy Concept regarding the rulemaking to the Boards for consideration and review on July 14, 2020. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to *TWCPolicyComments@twc.texas.gov*. Comments must be received no later than 30 days from the date this proposal is published in the *Texas Register.*

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

SUBCHAPTER A. GENERAL PROVISIONS REGARDING PURCHASES OF PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES

40 TAC §806.2

The amendments are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed amendments implement the requirements of newly enacted Texas Human Resources Code, §122.075 and §122.076 and enable increased opportunities for competitive integrated employment as defined by 34 CFR §361.5(c)(9).

§806.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. "Agency" and "Commission" are defined in §800.2 of this title[,] (relating to Definitions).

(1) Appreciable contribution--The term used to refer to the substantial work effort contributed by individuals with disabilities in the reforming of raw materials, assembly of components, or packaging of bulk products in more saleable quantities, by which value is added into the final product offered for sale or through which the individuals with disabilities develop new job skills that have not been previously attained through other jobs.

(2) Advisory committee--The Purchasing from People with Disabilities Advisory Committee, established by the Commission, as described in Texas Human Resources Code, §122.0057.

(3) Central nonprofit agency (CNA)--An entity designated as a central nonprofit agency under contract pursuant to Texas Human Resources Code, §122.019.

(4) Chapter 122--Texas Human Resources Code, Chapter 122 [~~of the Texas Human Resources Code~~], relating to Purchasing from People with Disabilities.

(5) Community rehabilitation program (CRP)--A government or nonprofit private program operated under criteria established by the Commission and under which individuals with severe disabilities produce products or perform services for compensation.

(6) Comptroller--The Comptroller of Public Accounts.

(7) Direct labor--All work required for preparation, processing, and packaging of a product, or work directly relating to the performance of a service, except supervision, administration, inspection, or shipping products.

(8) Disability--A disability recognized under the Americans with Disabilities Act [~~A mental or physical impairment, including blindness~~] that impedes a person who is seeking, entering, or maintaining gainful employment.

(9) Exception--Any product or service approved for the state use program purchased from a vendor other than a CRP because the state use product or service does not meet the applicable requirements as to quantity, quality, delivery, life cycle costs, and testing and inspection requirements pursuant to Texas Government Code, §2155.138 and §2155.069 or as described in Texas Human Resources Code, §122.014 and §122.016.

(10) Individual with Disabilities--An individual with a disability recognized under the Americans with Disabilities Act and employed by a CRP or an entity selected by a CRP.

(11) Minimum wage--The wage under Section 6, Fair Labor Standards Act of 1938 (29 USC §206).

(12) [~~(10)~~] State use program--The statutorily authorized mandate requiring state agencies to purchase, on a noncompetitive basis, the products made and services performed by individuals with disabilities, which have been approved by the Agency pursuant to Texas Human Resources Code, Chapter 122 and which also meet the requirements of Texas Government Code, §2155.138 and §2155.069. This program also makes approved products and services available to be purchased on a noncompetitive basis by any political subdivision of the state.

(13) [~~(11)~~] Value added--The labor of individuals with disabilities applied to raw materials, components, goods purchased in bulk form resulting in a change in the composition or marketability of component materials, packaging operations, and/or the servicing tasks associated with a product. Pass-throughs are not allowed; therefore, solely affixing a packaging label to a commodity does not qualify.

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 November 10, 2020.

TRD-202004764

Dawn Cronin
Director, Workforce Program Policy
Texas Workforce Commission
Earliest possible date of adoption: December 27, 2020
For further information, please call: (512) 689-9855

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SUBCHAPTER B. ADVISORY COMMITTEE RESPONSIBILITIES, MEETING GUIDELINES

40 TAC §806.23

The new rule is proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed new rule implements the requirements of newly enacted Texas Human Resources Code, §122.075 and §122.076 and enable increased opportunities for competitive integrated employment as defined by 34 CFR §361.5(c)(9).

§806.23. Submitting Reports and Input to the Commission.

(a) The advisory committee shall meet semiannually, with at least one meeting each fiscal year to review and, if necessary, recommend changes to program objectives, performance measures, and criteria established under §806.21(b) of this subchapter.

(b) The advisory committee shall prepare and submit to the Commission a report containing any findings and recommendations under subsection (a) of this section within 60 days of the completion of the meeting.

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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Dawn Cronin
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SUBCHAPTER D. COMMUNITY REHABILITATION PROGRAMS

40 TAC §806.41, §806.42

The amended rule and new rule are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed amendments and new rule implement the requirements of newly enacted Texas Human Resources Code, §122.075 and §122.076 and enable increased opportunities for competitive integrated employment as defined by 34 CFR §361.5(c)(9).

§806.41. Certification and Recertification of Community Rehabilitation Programs.

(a) No applicant for certification may participate in the state use program prior to the approval of certification.

(b) The Commission may recognize programs that are accredited by nationally accepted vocational rehabilitation accrediting organizations and approve CRPs that have been approved by a state's habilitation or rehabilitation agency.

(c) The Commission may delegate the administration of the certification process for CRPs to a CNA.

(d) An applicant for CRP certification must be a government or nonprofit private program operated under criteria established by the Commission and under which individuals with severe disabilities produce products or perform services for compensation.

(e) A certified CRP must:

(1) maintain payroll, human resource functions, accounting, and all relevant documentation showing that the employees who produce products or perform services under the state use program are individuals with disabilities;

(2) ensure that documentation includes approved disability determination forms that are signed by the individual and document the relevant disability, in addition to determining program eligibility, and that shall be subject to review at the request of the Agency or the CNA under authority from the Commission, with adherence to privacy and confidentiality standards applicable to such CRP and employee records; [~~and~~]

(3) maintain and dispose of records or documents required by the Agency, including contracts with other entities, in accordance with generally accepted accounting principles, and all laws relevant to the records;[~~.~~]

(4) maintain compliance with requirements in subsection (q) of this section, related to Unemployment Insurance tax, wage claims, state licensing, regulatory, and tax requirements. Failure to maintain compliance shall result in revocation of the CRP's certification to participate in the PPD program;

(5) ensure that disability determinations conducted under paragraph (2) of this subsection are conducted by:

(A) an individual meeting the qualifications necessary to make such determinations; and

(B) an independent, non-CRP entity; and

(6) provide all communication, training, and planning materials to employees in an accessible format.

(f) An applicant for certification must submit a completed application and the required documents to the Agency through the CNA for the state use program. Upon receipt, the CNA will verify the completeness and accuracy of the application. No application will be considered without the following documents:

(1) Copy of the IRS nonprofit determination under §501(c), when required by law;

(2) Copy of the Articles of Incorporation issued by the Secretary of State, when required by law;

(3) List of the board of directors and officers with names, addresses, and telephone numbers;

(4) Copy of the organizational chart with job titles and names;

(5) Proof of current insurance coverage in the form of a certificate of insurance specifying each and all coverages for the CRP's liability insurance, auto insurance for vehicles owned or leased by the CRP for state use contract purposes, and workers' compensation insurance coverage or legally recognized equivalent coverage, if applicable. Such insurance shall be carried with an insurance company authorized to do business in the State of Texas, and written notice of cancellation or any material change in insurance coverage will be provided to the CNA 10 business days in advance of cancellation or change;

(6) Fire inspection certificate issued within one year of the formal consideration of the CRP application, if required by city, county, or state regulations, for each location where customers will be served or where individuals with disabilities will be employed, or a statement of unavailability from the appropriate city, county, or state entity;

(7) Copy of the building inspection certificate or certificate of occupancy, if required by city, county, or state regulations, for each location where customers will be served or where individuals with disabilities will be employed, or a statement of unavailability from the appropriate city, county, or state entity;

(8) Copy of the wage exemption certificate (WH-228) if below minimum wages will be paid to customers or to individuals with disabilities who will be employed, and a statement of explanation of circumstances requiring subminimum wages;

(9) Notarized statement that the CRP agrees to maintain compliance with either the 75 percent minimum percentage or other approved minimum percentage approved by the Commission. The required percentage being that percentage [~~the requirement that at least 75 percent~~] of the CRP's total hours of direct labor, for each contract, necessary to perform services or reform raw materials, assemble components, manufacture, prepare, process and/or package products that will be performed by individuals with documented disabilities consistent with the definition set forth in this chapter[~~. If a CRP intends to seek a waiver from the 75 percent requirement of the CRP's total hours of direct labor for a contract, the waiver request must be submitted with the application for approval~~]; [~~and~~]

(10) If a CRP intends to seek a required minimum percentage other than the 75 percent of the CRP's total hours of direct labor for a contract, the CRP must submit the request, which shall include a rationale consistent with one or more criteria in §806.53(a)(4) and (b)(3) of this chapter as applicable, with their application for approval; and

(11) [~~(10)~~] An applicant for certification must attest that it either has already developed or will develop, within 90 days of certification, a person-centered plan for each individual with a disability it employs that clearly documents attainable employment goals and describes how the CRP will:

(A) help the individual reach his or her [~~their~~] employment goals; and

(B) match the individual's skills and desires with the task(s) being performed for the CRP.

(g) The Agency shall review each complete application and all required documentation and, if acceptable, forward its recommendations to the Commission for approval. Once approved, the Agency will notify the CRP in writing and assign the CRP a certification number.

(h) A CRP may protest a recommendation of non-approval pursuant to the Agency's appeal process in §806.61 of this chapter.

(i) To continue in the program, each CRP must be recertified by the Commission every three years. The recertification process requires submission of all previously requested documentation, a review of reports submitted to the CNA, and a determination that the CRP has maintained compliance with the stated requirements of the state use program, including requirements described in subsection (q) of this section relating to compliance with unemployment taxes, wage claims, and state licensing, regulatory, and tax requirements. If a CRP intends to seek a required minimum percentage other than the 75 percent of the CRP's total hours of direct labor, the CRP must submit the request, which shall include a rationale consistent with one or more criteria in §806.53(a)(4) and (b)(3) of this chapter as applicable, with their recertification. The Commission shall establish a schedule for the recertification process and the CNA shall assist each CRP as necessary to attain recertification. The CRP, after notification, shall submit within 30 days the application for recertification and required documents to the CNA. If the CRP fails to do so, the Agency may request a written explanation and/or the appearance of a representative of the CRP before the Agency. If the CRP fails to respond in a timely manner, the Agency may consider the suspension of all state use program contracts until the recertification process has been completed and approval has been attained.

(j) The CRP shall submit quarterly wage and hour reports to the CNA. These reports are due no later than the last day of the month following the end of the quarter. If the CRP fails to submit reports on time, the Agency may request a representative of the CRP to appear before the Agency. The Agency may consider the suspension of the CRP's state use program contracts if compliance is not achieved in a consistent and timely manner.

(k) CRPs shall maintain compliance with the state use program regarding percentage requirements related to administrative costs, supply costs, wages, and hours of direct labor necessary to perform services and/or produce products. Compliance will be monitored by the CNA and/or the Agency, and violations will be reported promptly to the Agency. A violation will result in a warning letter from the CNA or Agency, which will then offer assistance as needed to achieve compliance. A CRP that fails to meet compliance requirements, without a waiver from the Agency, for two quarters in any four-quarter period, shall submit a written explanation and a representative of the CRP will be requested to appear before the Agency. State use program contracts may be suspended and/or certification revoked if compliance is not immediately and consistently maintained. To attain reinstatement, the CRP must apply for recertification following the procedures outlined in this chapter.

(l) The Agency may review or designate a CNA or third party to review any CRP participating in the state-use program to verify compliance with the requirements outlined in this chapter.

(m) A CRP must not serve, in whole or part, as an outlet or front for any entity whose purpose is not the employment of individuals with disabilities.

(n) A CRP shall report to the Agency any state agency that is not using the program to benefit individuals with disabilities.

(o) A CRP shall promptly report any conflict of interest or receipt of benefit or promise of benefit to the Agency. The Agency will consider such reports on an individual basis. Verified instances of conflict of interest by a CRP may result in suspension of the CRP's eligibility to participate in the state use program and/or revocation of certification.

(p) The Commission, the Agency, individual members, the State of Texas, or any other Texas state agency will not be responsible for any loss or losses, financial or otherwise, incurred by a CRP should its product or services not be approved for the state use program as provided by law.

(q) A CRP shall:

(1) be clear of any debts related to Unemployment Insurance taxes or wage claims; and

(2) meet the state licensing, regulatory, and tax requirements applicable to the CRP.

§806.42. Minimum Wage and Exemption Requirements.

(a) A CRP participating in the program administered under this chapter shall pay each worker with a disability employed by the program at least the federal minimum wage for any work relating to any products or services purchased from the CRP through the program administered under this chapter.

(b) The Agency may exempt a CRP from the requirements of this section with respect to a worker with a disability if the Agency determines an exemption is warranted. The Agency may consider the following factors in making the determination:

(1) whether requiring the CRP to pay the worker at the minimum wage would result in:

(A) the CRP not being able to retain the worker with a disability;

(B) the worker not having success obtaining work with a different employer;

(C) the worker, based on the worker's circumstances, not being able to obtain employment at a higher wage than the CRP would be able to pay the worker, notwithstanding the requirements of this section;

(2) the CRP's efforts to retain the worker;

(3) the CRP's efforts to assist the worker in finding other employment, including other employment at a higher wage than the CRP will pay;

(4) whether the exemption is temporary or indefinite;

(5) whether employment services provided by other entities that serve individuals who have significant intellectual or developmental disabilities are available and could assist the worker to obtain employment at or above minimum wage.

(c) Subsection (a) of this section does not apply to a CRP's eligibility to participate in the state use program before the later of:

(1) September 1, 2022; or

(2) the date an extension is granted under §806.103 of this chapter.

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

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Dawn Cronin
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Texas Workforce Commission
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For further information, please call: (512) 689-9855

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SUBCHAPTER E. PRODUCTS AND SERVICES

40 TAC §806.53

The amendments are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed amendments implement the requirements of newly enacted Texas Human Resources Code, §122.075 and §122.076 and enable increased opportunities for competitive integrated employment as defined by 34 CFR §361.5(c)(9).

§806.53. Recognition and Approval of Community Rehabilitation Program Products and Services.

(a) A CRP desiring to provide services under the state use program must comply with the following requirements to obtain approval from the Agency's executive director or deputy executive director [~~Commission~~]:

(1) A minimum of 35 percent of the contract price of the service must be paid to the individuals with disabilities who perform the service in the form of wages and benefits;

(2) Supply costs for the service must not exceed 20 percent of the contract price of the service;

(3) Administrative costs allocated to the service must not exceed 10 percent of the contract price for the service. The minimum percentage required by the Agency [~~At least 75 percent~~] of the hours of direct labor for each contract[~~,~~] necessary to perform a service[~~,~~] must be performed by individuals with disabilities;

(4) The Commission [~~Agency~~] may establish a different percentage other than 75 percent for each CRP at the time of initial certification or subsequent re-certifications if the Commission [~~Agency~~] determines that a percentage other than 75 percent [~~greater than the 75 percent~~] for the offered service is reasonable based on consideration of factors, including, but not limited to:

(A) past practices in a particular area;

(B) whether other CRPs providing the same or similar services have required or achieved a different percentage [~~the 75 percent~~] requirement; [~~and~~]

(C) whether the Commission has established a policy goal to encourage employment of individuals with disabilities in a particular field; and

(D) the CRP proposes to offer employment opportunities for individuals with disabilities that meet the WIOA definition of CIE;

(5) Any necessary subcontracted services shall be performed to the maximum extent possible by other CRPs and in a manner that maximizes the employment of individuals with disabilities; and

(6) A detailed report will be submitted to the Agency providing breakdown of 100 percent of contract dollars for services.

(b) A CRP must comply with the following requirements to obtain approval [~~from the Commission~~] for state use products:

(1) Either 75 percent or the minimum percentage required by the Commission [~~At least 75 percent~~] of the hours of direct labor, for each contract, necessary to reform raw materials, assemble components, manufacture, prepare, process, and/or package a product, must be performed by individuals with disabilities;

(2) Appreciable contribution and value added to the product by individuals with disabilities must be determined to be substantial

on a product-by-product basis, based on requested documentation provided to the Agency upon application for a product to be approved for the state use program; [and]

(3) The Commission [Agency] may establish a different percentage from 75 percent for each CRP at the time of initial certification or subsequent re-certifications if the Commission [Agency] determines that a percentage different from [greater than] the 75 percent for the offered product is reasonable based on consideration of factors, including, but not limited to:

(A) past practices in a particular area;

(B) whether other CRPs providing the same or similar products have required or achieved a different percentage [the 75 percent] requirement;

(C) whether the Commission has established a policy goal to promote workplace integration for individuals with disabilities;

(D) whether the Commission has established a policy goal to encourage employment of individuals with disabilities in a particular field; [and]

(E) the CRP proposes to offer employment opportunities for individuals with disabilities that meet the WIOA definition of CIE; and

(4) A detailed report will be submitted to the Agency providing breakdown of 100 percent of contract dollars for products.

(c) The rules governing the approval of products to be offered by a CRP apply to all items that a CRP proposes to offer to state agencies or political subdivisions, regardless of the method of acquisition by the agency, whether by sale or lease. A CRP must own any product it leases. A proposal by a CRP to rent or lease a product to a state agency is a proposal to offer a product, not a service, and the item offered must meet the requirements of these rules. If the product is offered for lease by the CRP, the unit cost of the product, for purposes of applying the standards set forth in these rules, is the total cost to the state agency of leasing the product over its expected useful life.

(d) Raw materials or components may be obtained from companies operated for profit, but a CRP must own any product that it offers for sale to state agencies or political subdivisions through the state use program and make an appreciable contribution to the product that accounts for a substantial amount of the value added to the product.

(e) Prior to the inclusion of a product or service in the program, a CRP must describe the product or service that will be provided through the program in sufficient detail for the Agency to determine the item's suitability for inclusion in the program. The Agency may consider those factors deemed necessary to the determination of the program suitability of a product or service, including, but not limited to, state and federal statutes governing state agencies, geographic saturation of CRPs providing like products and services, and whether the products and services will generate sufficient demand to provide employment for individuals with disabilities.

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

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SUBCHAPTER J. TRANSITION AND RETENTION PLANS

40 TAC §§806.100 - 806.104

The new rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed new rules implement the requirements of newly enacted Texas Human Resources Code, §122.075 and §122.076 and enable increased opportunities for competitive integrated employment as defined by 34 CFR §361.5(c)(9).

§806.100. Scope and Purpose.

(a) The purpose of this subchapter is to set forth the rules relating to a CRP's Transition and Retention Plan (TRP), as required by Texas Human Resources Code, §122.0075, to meet the minimum wage requirements of Texas Human Resources Code, §122.0076.

(b) This subchapter applies to a CRP that is participating in the state use program and pays workers with disabilities employed by the CRP wages that are less than the federal minimum wage under Section 6, Fair Labor Standards Act of 1938.

(c) This subchapter expires September 1, 2023.

§806.101. Requirements for Transition and Retention Plans.

(a) A CRP subject to this subchapter shall submit a TRP no later than sixty days from the effective date of these rules.

(b) The TRP shall include the full transition goal, including full retention of workers, placement of workers in job training, and fully assisting workers in need of placement goal, to meet the wage requirements no later than January 1, 2022.

(c) The TRP shall contain the following elements:

(1) Worker Assessment (Employee Receiving Subminimum Wages) including the following:

(A) Wage difference/Minimum Wage pay gap;

(B) Line of business employed;

(C) Current skills;

(D) Person-Centered Planning and Career Counseling;

(E) Disability Benefits Impact Analysis based on wage increase;

(F) Opportunities to transfer skills to other state use contracts with CRP; and

(G) Participation in the assessment by the employee's Vocational Rehabilitation counselor, if the employee is a participant in the Vocational Rehabilitation program at the time of the assessment.

(2) Goals, including the following:

(A) Raise wages for workers paid subminimum wage to the federal minimum wage, or more, by September 1, 2022.

(B) Retain CRP workers as the CRP moves through the transition plan.

(3) Milestones: Achieved by reporting progress in reaching specific actions in the TRP through benchmarks and strategies:

(A) Benchmarks, including the following:

(i) Number and percentage of workers provided wage increases by a designated point in time;

(ii) Number and percentage of workers provided assessment and counseling by a certain date; and

(iii) Number and percentage of workers entering and completing training.

(B) Strategies necessary to achieve goals, including:

(i) CRP evaluation of existing line of business for price and added value adjustment consider increasing the price to pay for increase in wages;

(ii) Requesting assistance from WorkQuest in developing new lines of business to provide employment opportunities to workers receiving subminimum wage; and

(iii) CRP pursuing partnerships to expand lines of business and increase wages of workers who are paid subminimum wages.

(C) Reports: Monthly or quarterly:

(i) Retention status;

(ii) Progress on benchmarks and strategies;

(iii) Wages;

(iv) Hours worked.

(d) The Agency shall assist the CRP in developing the TRP by providing information about certified benefits counselors and by providing a referral to a certified benefits counselor for any CRP employee who requests a referral.

(e) The Agency shall review the progress of each TRP based on intervals established by the Agency, and provide technical assistance as necessary and upon request from the CRP.

§806.102. Extensions for Transition and Retention Plans.

(a) No later than March 1, 2022, a CRP may request an extension of the TRP.

(b) The Agency shall approve or deny all extension requests no later than April 1, 2022.

(c) To be granted an extension, the CRP shall:

(1) demonstrate that an extension would be in the best interest of the CRP's employees with disabilities;

(2) have requested assistance and worked with the Agency prior to requesting an extension;

(3) have made meaningful progress toward meeting the minimum wage requirements; and

(4) have submitted a revised TRP to the Agency detailing how the extension will allow the CRP to meet the minimum wage requirements.

(d) No later than April 10, 2022, a CRP may request that the Agency reconsider an extension denial.

(e) The Agency executive director shall review and make a determination on reconsideration requests.

(f) The Agency shall make the final decision on all reconsideration requests no later than May 1, 2022.

§806.103. Withdrawal from the Program.

(a) A CRP shall notify the Agency no later than March 1, 2022, if the CRP intends to voluntarily withdraw from the program.

(b) Any requirements on September 1, 2022, or by the granted extension date, will be involuntarily removed by revocation of the CRP's certification to participate in the program.

§806.104. New CRPs during the TRP Period.

A CRP not meeting the minimum wage requirement that requests certification after the date to request an extension pursuant to §806.102(a) of this subchapter shall be required to meet the minimum wage requirements no later than September 1, 2022.

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 Workforce Commission
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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.31

The Texas Ethics Commission (the Commission) adopts amendments to Texas Ethics Commission rules in Chapter 18. Specifically, the Commission amends §18.31, regarding Adjustments to Reporting Thresholds. The amendment is adopted with changes to the proposed text as published in the July 31, 2020, issue of the *Texas Register* (45 TexReg 5267). The rule will be republished.

Section 571.064(b) of the Government Code requires the Commission to annually adjust reporting thresholds upward to the nearest multiple of $10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The laws under the Commission's authority that include reporting thresholds are Title 15 of the Election Code (campaign finance law), Chapter 305 of the Government Code (lobby law), Chapter 572 of the Government Code (personal financial statements), Chapters 302 and 303 of the Government Code (speaker election, governor for a day, and speaker's reunion day ceremony reports), and Section 2155.003 of the Government Code (reporting requirements applicable to the comptroller).

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2021, to apply to contributions and expenditures that occur on or after that date.

The only change to this rule from the proposed version is to change a column heading in Figure 4 from "Current Threshold Amount" to "Original Threshold Amount."

No public comments were received on this amended rule.

The amended rule is adopted under Texas Government Code Section 571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The amended rule affects Title 15 of the Election Code.

§18.31. Adjustments to Reporting Thresholds.

(a) Pursuant to section 571.064 of the Government Code, the reporting thresholds are adjusted as follows:

Figure 1: 1 TAC §18.31(a)

Figure 2: 1 TAC §18.31(a)

Figure 3: 1 TAC §18.31(a)

Figure 4: 1 TAC §18.31(a)

(b) The changes made by this rule apply only to conduct occurring on or after the effective date of this rule.

(c) The effective date of this rule is January 1, 2021.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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J.R. Johnson
General Counsel
Texas Ethics Commission
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CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

The Texas Ethics Commission (the Commission) adopts amendments to Texas Ethics Commission rules in Chapter 20. Specifically, the Commission adopts amendments to §20.62, regarding Reporting Staff Reimbursement, and §20.65, regarding Reporting No Activity; §20.217, regarding Modified Reporting, §20.219, regarding Content of Candidate's Sworn Report of Contributions and Expenditures, §20.220, regarding Additional Disclosure for the Texas Comptroller of Public Accounts, and §20.221, regarding Special Pre-Election Report by Certain Candidates; §20.275, regarding Exception from Filing Requirement for Certain Local Officeholders, and §20.279, regarding Contents of Officeholder's Sworn Report of Contributions and Expenditures; §20.301, regarding Thresholds for Campaign Treasurer Appointment, §20.303, regarding Appointment of Campaign Treasurer, §20.313, regarding Converting to a General-Purpose Committee, §20.329, regarding Modified Reporting, §20.331, regarding Contents of Specific-Purpose Committee Sworn Report of Contributions and Expenditures, and §20.333, regarding Special Pre-Election Report by Certain Specific-Purpose Committees; §20.401, regarding Thresholds for Appointment of Campaign Treasurer by a General-Purpose Committee, §20.405, regarding Campaign Treasurer Appointment for a General-Purpose Committee, §20.433, regarding Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures, §20.434, regarding Alternate Reporting Requirements for General-Purpose Committees, and §20.435, regarding Special Pre-Election Reports by Certain

General-Purpose Committees; §20.553, regarding County Executive Committee Accepting Contributions or Making Expenditures Under Certain Amount, and §20.555, regarding County Executive Committee Accepting Contributions or Making Expenditures That Exceed Certain Amount. The amendments are adopted without changes to the proposed text as published in the July 31, 2020, issue of the *Texas Register* (45 TexReg 5268). The rules will not be republished.

Section 571.064(b) of the Government Code requires the Commission to annually adjust reporting thresholds upward to the nearest multiple of $10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The laws under the Commission's authority that include reporting thresholds are Title 15 of the Election Code (campaign finance law), Chapter 305 of the Government Code (lobby law), Chapter 572 of the Government Code (personal financial statements), Chapters 302 and 303 of the Government Code (speaker election, governor for a day, and speaker's reunion day ceremony reports), and section 2155.003 of the Government Code (reporting requirements applicable to the comptroller).

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2021, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in these amended rules are also duplicated in numerous statutes, as referenced above; amendments to the affected statutes are included with the amendments to Figures 1 through 4 of 1 T.A.C. §18.31, which has been submitted concurrently with this adoption.

No public comments were received on these amended rules.

SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.62, §20.65

The amendments are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The adopted rules affect Title 15 of the Election Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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J.R. Johnson
General Counsel
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SUBCHAPTER C. REPORTING REQUIREMENTS FOR A CANDIDATE

1 TAC §§20.217, 20.219 - 20.221

The amendments are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute; and Texas Government Code §2155.003, which requires the Commission to adopt rules to implement that section.

The amended rules affect Title 15 of the Election Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. REPORTING REQUIREMENTS FOR AN OFFICEHOLDER WHO DOES NOT HAVE A CAMPAIGN TREASURER APPOINTMENT ON FILE

1 TAC §20.275, §20.279

The amendments are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The amended rules affect Title 15 of the Election Code.

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SUBCHAPTER E. REPORTS BY A SPECIFIC-PURPOSE COMMITTEE

1 TAC §§20.301, 20.303, 20.313, 20.329, 20.331, 20.333

The amendments are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The amended rules affect Title 15 of the Election Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. REPORTING REQUIREMENT FOR A GENERAL PURPOSE COMMITTEE

1 TAC §§20.401, 20.405, 20.431, 20.433 - 20.435

The amendments are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The amended rules affect Title 15 of the Election Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER I. RULES APPLICABLE TO A POLITICAL PARTY'S COUNTY EXECUTIVE COMMITTEE

1 TAC §20.553, §20.555

The amendments are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The amended rules affect Title 15 of the Election Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

1 TAC §§22.1, 22.6, 22.7

The Texas Ethics Commission (the Commission) adopts amendment to Texas Ethics Commission rules in Chapter 22. Specifically, the Commission adopts amendments to §22.1, regarding Certain Campaign Treasurer Appointments Required before Political Activity Begins, §22.6, regarding Reporting Direct Campaign Expenditures, and §22.7, regarding Contribution from Out-of-State Committee. The amendments are adopted without changes to the proposed text as published in the July 31, 2020, issue of the *Texas Register* (45 TexReg 5280). The rules will not be republished.

Section 571.064(b) of the Government Code requires the Commission to annually adjust reporting thresholds upward to the nearest multiple of $10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The laws under the Commission's authority that include reporting thresholds are Title 15 of the Election Code (campaign finance law), Chapter 305 of the Government Code (lobby law), Chapter 572 of the Government Code (personal financial statements), Chapters 302 and 303 of the Government Code (speaker election, governor for a day, and speaker's reunion day ceremony reports), and section 2155.003 of the Government Code (reporting requirements applicable to the comptroller).

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2021, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in these amended rules are also duplicated in numerous statutes, as referenced above; amendments to the affected statutes are included with the amendments to Figures 1 through 4 of 1 TAC §18.31, which has been submitted concurrently with this adoption.

No public comments were received on these amended rules.

The amendments are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The amended rules affect Title 15 of the Election Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 34. REGULATION OF LOBBYISTS
SUBCHAPTER B. REGISTRATION REQUIRED

1 TAC §34.41, §34.43

The Texas Ethics Commission (the Commission) adopts an amendment to Texas Ethics Commission rules in Chapter 34. Specifically, the Commission adopts amendments to §34.41, regarding Expenditure Threshold, and §34.43, regarding Compensation and Reimbursement Threshold. The amendments are adopted without changes to the proposed text as published in the July 31, 2020, issue of the *Texas Register* (45 TexReg 5282). The rules will not be republished.

Section 571.064(b) of the Government Code requires the Commission to annually adjust reporting thresholds upward to the nearest multiple of $10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The laws under the Commission's authority that include reporting thresholds are Title 15 of the Election Code (campaign finance law), Chapter 305 of the Government Code (lobby law), Chapter 572 of the Government Code (personal financial statements), Chapters 302 and 303 of the Government Code (speaker election, governor for a day, and speaker's reunion day ceremony reports), and section 2155.003 of the Government Code (reporting requirements applicable to the comptroller).

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2021, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in these amended rules are also duplicated in numerous statutes, as referenced above; amendments to the affected statutes are included with the amendments to Figures 1 through 4 of 1 TAC §18.31, which has been submitted concurrently with this adoption.

No public comments were received on these amended rules.

The amendments are adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 305 of the Election Code; Texas Government Code §305.003, which authorizes the Commission to determine by rule the amount of expenditures made or compensation received over which a person is required to register as a lobbyist; and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The amended rules affect Chapter 305 of the Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES
SUBCHAPTER D. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM
DIVISION 8. DSRIP PROGRAM DEMONSTRATION YEARS 9-10

1 TAC §§354.1729, 354.1735, 354.1737, 354.1753, 354.1757

The Texas Health and Human Services Commission (HHSC) adopts amendments to §§354.1729, concerning Definitions; 354.1735, concerning Participants; 354.1737, concerning RHP Plan Update for DY9-10; 354.1753, concerning Category C Requirements for Performers; and 354.1757, concerning Disbursement of Funds.

The amendments to §§354.1729, 354.1735, 354.1737, 354.1753, and 354.1757 are adopted without changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4857). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

On December 21, 2017, the Centers for Medicare & Medicaid Services (CMS) approved extending the Medicaid demonstration waiver entitled "Texas Healthcare Transformation and Quality Improvement Program" for an additional five years. The Delivery System Reform Incentive Payment (DSRIP) program is included in this waiver and provides incentive payments to participating Medicaid providers, primarily for improving their performance on selected health outcome measures. Even though the Transformation Waiver was approved for five more years,

CMS approved DSRIP funding only for an additional four years (demonstration years [DYs] 7-10).

Texas DSRIP for DYs 7-10 is governed by the Program Funding and Mechanics (PFM) Protocol, the Measure Bundle Protocol (MBP), and associated rules. HHSC negotiates the protocols with CMS and adopts rules reflecting the CMS-approved protocols. During the approval process for the protocols for DYs 9-10, CMS required certain changes to both the state's PFM protocol proposal and the MBP proposal. Once these changes were made by HHSC, CMS approved both protocols on September 17, 2019. The amendments being adopted reflect the final versions of the PFM protocol and MBP approved by CMS.

The amendment to §354.1729 revises the definitions of the terms "encounter" and "innovative measure." The amendment also deletes the definition of the term "quality improvement collaborative activity," as there are no quality improvement collaborative activities for DY9-10.

The amendment to §354.1735 clarifies that anchors are required to hold at least one public meeting prior to submitting the Regional Healthcare Partnership (RHP) plan update for DY9-10 to HHSC, as specified in the PFM Protocol.

The amendment to §354.1737 adds references to provisions that are being added to another section It also deletes the requirement that the RHP Plan Update for DY9-10 include for each performer the related strategies associated with each of the performer's Category C Measure Bundles for DY7-8 that the performer implemented in DY7-8.

The amendment to §354.1753 makes numerous changes, the most significant being: 1) it prohibits performers from carrying forward achievement of a measure's DY10 goal achievement milestone to Performance Year 5; and 2) it changes the pay for performance measures' DY9-10 milestone valuations from those in the PFM protocol proposal HHSC submitted to CMS on January 3, 2019, back to those that were in effect in DY7-8.

The amendment to §354.1757 makes the goal achievement milestone for a hospital safety measure with perfect performance at baseline eligible for full payment for maintenance of high performance if certain conditions are met.

COMMENTS

The 31-day comment period ended August 17, 2020.

During this period, HHSC did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; 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; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid payments.

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 November 12, 2020.

TRD-202004780
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: December 2, 2020
Proposal publication date: July 17, 2020
For further information, please call: (512) 923-0644

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 2. GENERAL POLICIES AND PROCEDURES

SUBCHAPTER C. GRANT POLICIES

DIVISION 1. GENERAL GRANT GUIDELINES

13 TAC §§2.116, 2.119, 2.120

The Texas State Library and Archives Commission (commission) adopts amendments to §2.116, Uniform Grant Management Standards (UGMS) and §2.119, Multiple Applications, and new §2.120, Applicant Eligibility. The amendments to §2.116 are adopted without changes to the proposed text as published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5722). Section 2.116 will not be republished. The amendments to §2.119 and new §2.120 are adopted with changes to the proposed text as published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5722). Sections 2.119 and 2.120 will be republished.

On adoption, the commission clarified and simplified the language for improved readability but made no substantive changes. Therefore, the amendments and new rule will not be republished as a proposed new rule for comment.

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTIONS. The amendments are necessary to improve accuracy and clarity of the commission's rules related to grant application and eligibility.

The amendment to §2.116 corrects a typographical error in the rule title and updates the citation to the Texas Comptroller of Public Accounts' (CPA) rules related to Uniform Grant and Contract Standards.

The amendments to §2.119 clarify the two instances when an applicant for a competitive grant may submit more than one grant application in the same grant cycle: if the applications are for different projects in different grant programs and the applications are not the same, or nearly the same; or if the grant program has specified separate categories for application and the proposals submitted are not for the same, or nearly the same, project.

New §2.120 adds a general rule on applicant eligibility. The rule specifies that each notice of funding opportunity for a specific grant authorized by commission rule will specify one or more of the following Texas entities as an eligible applicant: public libraries, TexShare Library Consortium member institutions or nonprofit organizations. The rule further clarifies that a public library is eligible if it is accredited by the commission and a nonprofit organization is eligible if it is applying on behalf of accredited public libraries or TexShare member institutions and the

nonprofit organization's organizational charter, operating guidelines, or mission statement includes providing direct support for activities and goals of one or more public libraries or TexShare member institutions as a defined objective.

SUMMARY OF COMMENTS. The commission did not receive any comments on the proposed amendments or new rule.

STATUTORY AUTHORITY. The amendments and new rule are adopted under Government Code, §441.135, which authorizes the commission to adopt rules regarding the guidelines for awarding grants.

§2.119. Multiple Applications.

Applicants for competitive grants may submit more than one grant application in the same grant cycle only if:

(1) the applications are for different projects in different grant programs and the applications are not the same, or nearly the same; or

(2) the grant program has specified separate categories for application and the proposals submitted are not the same, or nearly the same, project.

§2.120. Applicant Eligibility.

(a) Each notice of funding opportunity for a specific grant program authorized by commission rule will identify one or more of the following Texas entities as an eligible applicant:

(1) public libraries;

(2) TexShare Library Consortium member institutions; or

(3) nonprofit organizations.

(b) A public library is eligible for a grant program if it is accredited under Subchapter C of Chapter 1 of this Title (relating to Minimum Standards for Accreditation of Libraries in the State Library System).

(c) A nonprofit organization is eligible if it is applying on behalf of accredited public libraries as defined by this section or TexShare member institutions, and the nonprofit organization's organizational charter, operating guidelines, or mission statement includes providing direct support for activities and goals of one or more public libraries or TexShare member institutions as a defined objective.

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 November 12, 2020.

TRD-202004805
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Effective date: December 2, 2020
Proposal publication date: August 21, 2020
For further information, please call: (512) 463-5591

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SCHOOL FACILITIES

19 TAC §61.1038, §61.1039

The Texas Education Agency (TEA) adopts amendments to §61.1038 and §61.1039, concerning bond enhancement programs for school districts and open-enrollment charter schools. The amendments are adopted without changes to the proposed text as published in the August 7, 2020 issue of the *Texas Register* (45 TexReg 5470) and will not be republished. The adopted amendments update cross references to state and federal statute and align language for open-enrollment charter schools to the rule on the Bond Guarantee Program for charter schools.

REASONED JUSTIFICATION: Texas Education Code (TEC), Chapter 45, Subchapter I, establishes an intercept program to provide credit enhancement for school district bonds. Section 61.1038 sets out the statutory provisions for the intercept credit enhancement program; provides definitions; sets out the data sources used for prioritization of applications; explains application and approval requirements; provides a description of how applications would be processed; and sets out eligibility requirements, limitations on access to the credit enhancement, financial exigency provisions, and credit enhancement restrictions. The section also explains what effect defeasance would have on bonds approved for credit enhancement, the responsibilities of school districts that are unable to make payments on enhanced bonds, how payments would be made under the program, and how the Foundation School Program would be reimbursed for payments. In addition, the section describes penalties for repeated failure of a district to make payments on enhanced bonds.

TEC, Chapter 45, Subchapter J, establishes a charter school facilities credit enhancement program to help charter holders obtain financing to purchase, repair, or renovate real property for facilities. Section 61.1039 sets out the statutory provisions for the credit enhancement program, provides definitions, and explains the requirements of and policies related to the program's application and approval process. The section also provides limitations on access to the program and explains program payment conditions and restrictions.

House Bill 3, 86th Texas Legislature, 2019, recodified TEC, Chapter 41, to Chapter 49 and Chapter 42 to Chapter 48. The adopted amendments to §61.1038 and §61.1039 update the statutory references to conform to the recodification.

In addition, the amendment to §61.1039 eliminates references to a repealed federal statute regarding tax credit bonds and makes the reference more encompassing of state or federal definitions of debt service. The amendment also modifies the statement regarding obligation of entities under control of the charter holder to conform to 19 TAC §33.67(e)(2)(A)(iii) relating to the Bond Guarantee Program for charter schools.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began August 7, 2020, and ended September 21, 2020. Following is a summary of the public comment received and the corresponding agency response.

Comment: A Texas teacher commented that children should not be able to attend charter schools and that charter schools should be defunded.

Response: This comment is outside the scope of the proposed rulemaking.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §45.261(b), which gives the commissioner the authority to authorize reimbursement of the Foundation School Program in a manner other than that provided in TEC, §45.261; TEC, §45.263, which gives the commissioner authority to adopt rules necessary for the administration of the school district bond enhancement program; TEC, §45.302, which gives the commissioner authority to adopt a program for charter schools and establish a structure and procedures substantially similar to the program for school districts; TEC, §45.303, which gives the commissioner authority to limit participation to charter schools that meet standards established by the commissioner and to impose minimum debt service requirements; and TEC, §45.308, which states that if the commissioner establishes a program under TEC, Chapter 45, Subchapter J, the commissioner shall adopt rules to administer the program.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§45.261(b), 45.263, 45.302, 45.303, and 45.308.

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 November 16, 2020.

TRD-202004831
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: December 6, 2020
Proposal publication date: August 7, 2020
For further information, please call: (512) 475-1497

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CHAPTER 129. STUDENT ATTENDANCE
SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §129.1027

The Texas Education Agency (TEA) adopts an amendment to §129.1027, concerning the optional flexible school day program (OFSDP). The amendment is adopted without changes to the proposed text as published in the August 21, 2020 issue of the *Texas Register* (45 TexReg 5769) and will not be republished. The adopted amendment reflects statutory recodification resulting from House Bill (HB) 3, 86th Texas Legislature, 2019, and aligns board meeting requirements with current practice.

REASONED JUSTIFICATION: Texas Education Code (TEC), §29.0822, authorizes the commissioner of education to adopt rules for the administration of OFSDPs provided by school districts and open-enrollment charter schools for certain eligible students. Section 129.1027 specifies OFSDP general provisions, definitions, student eligibility, application requirements, attendance and funding criteria, program operation requirements, and review and evaluation provisions, as well as circumstances under which OFSDP authorization would be revoked or denied.

House Bill 3, 86th Texas Legislature, 2019, recodified TEC, Chapter 41, to Chapter 49 and Chapter 42 to Chapter 48. The adopted amendment updates statutory references to conform to the recodification. Additionally, statutory references to TEC, Chapter 39, updates to Chapter 39A where applicable.

The adopted amendment also aligns board meeting requirements with current practice by removing the requirement for public input at board meetings.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began August 21, 2020, and ended October 5, 2020. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §29.081, which establishes criteria for community-based campus and internet online dropout recovery education programs; TEC, §29.0822, which authorizes an optional flexible school day program (OFSDP) to allow a student to enroll in a dropout recovery program in which courses are conducted online and creates an exception regarding the number of instructional hours required and the minimum number of minutes required for students enrolled in an online dropout recovery program; TEC, §29.0822(d), which authorizes the commissioner to adopt rules for the administration of an OFSDP; TEC, §39A.107, which requires the commissioner to approve a campus turnaround program only if the commissioner determines that the campus will satisfy all student performance standards required; and TEC, §48.004, as transferred, redesignated, and amended by House Bill 3, 86th Texas Legislature, 2019, which specifies that the commissioner shall adopt rules that are necessary to implement and administer the Foundation School Program.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§29.081, 29.082, 39A.107, and 48.004.

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 November 16, 2020.

TRD-202004832
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: December 6, 2020
Proposal publication date: August 21, 2020
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.11

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to §153.11, Examinations, without changes to the proposed text as published in the September 4, 2020, issue of the *Texas Register* (45 TexReg 6209). The rule will not be republished.

The amendments reduce the number of hours of additional education required when an applicant fails an examination three times and clarifies the type of education.

No comments were received on the amendments as published.

The amendments are adopted under Occupations Code §1103.151, which allows TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee in this state that are in accordance with Chapter 1103 and consistent with applicable federal law.

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 November 16, 2020.

TRD-202004834
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: December 6, 2020
Proposal publication date: September 4, 2020
For further information, please call: (512) 936-3652

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22 TAC §153.18

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to §153.18, Appraiser Continuing Education (ACE), without changes to the proposed text as published in the September 4, 2020, issue of the *Texas Register* (45 TexReg 6210). The rule will not be republished.

The amendments reorganize the rule and outline requirements for acceptance of courses taken by a Texas license holder outside of Texas for continuing education credit.

No comments were received on the amendments as published.

The amendments are adopted under Occupations Code §1103.151, which allows TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee in this state that are in accordance with Chapter 1103 and consistent with applicable federal law.

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 November 16, 2020.

TRD-202004835
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: December 6, 2020
Proposal publication date: September 4, 2020
For further information, please call: (512) 936-3652

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 502. PEER ASSISTANCE

22 TAC §502.1

The Texas State Board of Public Accountancy adopts an amendment to §502.1, concerning Peer Assistance to Licensees, without changes to the proposed text as published in the October 2, 2020, issue of the *Texas Register* (45 TexReg 6950). The rule will not be republished.

The amendment makes it clear that Peer Assistance is available to applicants to become CPAs and certificate holders in addition to licensees.

No comments were received by the Board.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 12, 2020.

TRD-202004795
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: December 2, 2020
Proposal publication date: October 2, 2020
For further information, please call: (512) 305-7842

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CHAPTER 505. THE BOARD

22 TAC §505.1

The Texas State Board of Public Accountancy adopts an amendment to §505.1, concerning Board Seal and Headquarters, without changes to the proposed text as published in the October 2, 2020, issue of the *Texas Register* (45 TexReg 6951). The rule will not be republished.

The amendment will provide the correct Board address to the public.

No comments were received by the Board.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the

agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 12, 2020.

TRD-202004796
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: December 2, 2020
Proposal publication date: October 2, 2020
For further information, please call: (512) 305-7842

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22 TAC §505.10

The Texas State Board of Public Accountancy adopts an amendment to §505.10, concerning Board Committees, without changes to the proposed text as published in the October 2, 2020, issue of the *Texas Register* (45 TexReg 6953). The rule will not be republished.

The citation to the rule is incorrect and should be corrected. In addition, legislation creating the fifth-year accounting student advisory committee was repealed during the last session of the legislature and the rule section addressing the committee should be repealed.

No comments were received by the Board.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 12, 2020.

TRD-202004797
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: December 2, 2020
Proposal publication date: October 2, 2020
For further information, please call: (512) 305-7842

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CHAPTER 507. EMPLOYEES OF THE BOARD

22 TAC §507.4

The Texas State Board of Public Accountancy adopts an amendment to §507.4, concerning Confidentiality, without changes to the proposed text as published in the October 2, 2020, issue of the *Texas Register* (45 TexReg 6955). The rule will not be republished.

The amendment makes the public aware that written authorization is required prior to the release of Board investigation files.

No comments were received by the Board.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 12, 2020.

TRD-202004798
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: December 2, 2020
Proposal publication date: October 2, 2020
For further information, please call: (512) 305-7842

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 531. CANONS OF PROFESSIONAL ETHICS AND CONDUCT

22 TAC §531.18

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §531.18, Consumer Information, in Chapter 531, Canons of Professional Ethics and Conduct, without changes to the proposed text and the form adopted by reference, as published in the August 28, 2020, issue of the *Texas Register* (45 TexReg 6017). The rule will not be republished.

The amendment to the Consumer Protection Notice was recommended by Texas Real Estate Inspector Committee (Inspector Committee) and adds a statement to alert consumers that inspectors licensed by TREC are required to maintain errors and omissions insurance to cover losses arising from the performance of a real estate inspection in a negligent or incompetent manner. Real estate license holders are required to post this notice at their place of business and on their website.

Seven comments were received. Five comments were in favor of the change and felt it served the purpose of informing and protecting the consumer. One comment generally indicated a dislike for rules that protected the interests of some but not all. One comment indicated a belief the proposed change did not advance consumer protection interests and instead encouraged citizens to file complaints tied to insurance without sufficient information as to the impact such complaints might have on the inspector industry. The Inspector Committee considered these comments at its October 12, 2020, meeting and voted to move forward with a recommendation to the Commission to adopt the

rule as proposed. The Inspector Committee did not agree with the two comments opposed to the proposed language and noted the new language provided an additional layer of consumer protection. The Commission ultimately decided to move forward with the changes to the notice as recommended by the Inspector Committee.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

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 November 13, 2020.

TRD-202004811
Vanessa Burgess
General Counsel
Texas Real Estate Commission
Effective date: February 1, 2021
Proposal publication date: August 28, 2020
For further information, please call: (512) 936-3284

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CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.20, 537.28, 537.30 - 537.32, 537.37, 537.43, 537.58, 537.59

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §537.20, Standard Contract Form TREC No. 9-13; §537.28, Standard Contract Form TREC No. 20-14; §537.30, Standard Contract Form TREC No. 23-15; §537.31, Standard Contract Form TREC No. 24-15; §537.32, Standard Contract Form TREC No. 25-12; §537.37, Standard Contract Form TREC No. 30-13; §537.43, Standard Contract Form TREC No. 36-9; and new rules §537.58, Standard Contract form TREC No. 51-0; §537.59, and Standard Contract Form TREC No. 52-0, in Chapter 537, Professional Agreements and Standard Contracts, without changes to the rule text. The rules will not be republished. TREC adopts the Standard Contract Form TREC No. 36-9, adopted by reference in §537.43, with changes to the forms as published in the August 28, 2020, issue of the *Texas Register* (45 TexReg 6018). The rule will be republished.

Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted and recommended for adoption by the Texas Real Estate Broker-Lawyer Committee (BLC), an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the governor.

The Broker-Lawyer Committee recommended revisions to the contract forms adopted by reference under the amendments and new rules to Chapter 537 to address issues that have arisen since the last contract revisions. Prior versions of these rules changes and new forms were posted in the June 12, 2020, issue of the Texas Register. At its July 17, 2020, meeting, the Broker-Lawyer Committee considered comments submitted by members of the public and made significant revisions to these items. Because such changes were substantive in nature, the Broker-Lawyer Committee withdrew the prior version of these items posted in the June 12, 2020, issue of the Texas Register and now adopts these items as amended. The changes listed below apply to all contract forms unless specified otherwise. Paragraph numbers referenced are from the *One to Four Family Residential Contract (Resale).*

Paragraph 2 is amended to remove quotes and add a parenthetical around the word "Property."

Paragraph 2.C is amended security systems and "Controls" as Accessories and defines "Controls."

The language of Paragraph 4 was moved to the end of Paragraph 8, which is retitled "License Holders."

Language was added to Paragraph 4 to address leases to which the Seller is a party. The Buyer may terminate the contract after receipt of the Leases within a period of days set in the contract.

Paragraph 4 is also amended to include language regarding disclosure of existing leases and prohibits, without Buyer's consent, any new leases, amendments to exiting leases, or conveyance of interest in the property. Language also requires disclosure of Residential Leases, Fixture leases, or Natural Resources Leases within 3 days after the effective date.

Paragraph 5 is amended is authorize payment of option fee to escrow agent separately or combined with earnest money in single payment. Clarifies order application of funds to be credited first to Option Fee and then to earnest money. Authorizes release of option money without further consent from Buyer. Paragraph 5 also now incorporates language previously found in Paragraph 23 relating to remedy for failure to timely deliver Option Fee and earnest money.

Paragraph 10.B is amended to remove redundancies found in Paragraph 4 by striking all language except "After the Effective Date, Seller may not convey any interest in the Property without Buyer's written consent."

Paragraph 10.C is amended to include definition of Smart Device and require delivery of access codes to Buyer and removal of seller access points.

Paragraph 18.A is amended to allow escrow agent to require any disbursement made under the contract to be made in good funds.

Paragraph 18.B is amended to further define expenses that an escrow agent may deduct.

Paragraph 23 is deleted in its entirety.

Paragraph 24 is renumbered to Paragraph 23.

The Option Fee Receipt is amended to strike reference to Seller/Broker and replace with Escrow Agent.

Language was deleted from the Broker Information page of all forms except the Farm and Ranch Contract form: "Listing Broker has agreed to pay Other Broker ___ of the total sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay Other Broker from Listing Broker's fee at closing." Language was added for informational purposes to disclose there is a separate commission agreement between the Listing Broker and Other Broker.

Language was added to the Incomplete Construction Contract to mirror the language in the Complete Construction Contract Paragraph 7.I. regarding Residential Service Contracts. The language was added to the Incomplete Construction Contract as Paragraph 7.J.

In the Residential Condominium Contract, all references to a survey were removed from Paragraph 6.

The Addendum for Property Subject to Mandatory Membership in a Property Owners Association adopted by reference in §537.43 is amended to add deposits and reserves to the list of payments the Buyer will make in association with the transfer of the property.

The Addendum Regarding Residential Leases is adopted by reference in §537.58 is a new form that supplements changes made to Paragraph 4 regarding required consent to enter into any new leases, amendments to exiting leases, or conveyance of interest in the property.

The Addendum Regarding Fixture Leases adopted by reference in §537.59 is a new form protects the parties regarding fixture leases in place on the property at the time of contract execution.

One hundred twenty-four Comments were received. The Broker Lawyer Committee (committee) met on October 16, 2020, and addressed each comment received.

Texas Realtors submitted comments in agreement with the majority of changes made to the contract forms; however, the Association expressed concern the seller's disclosure language contained in the Addendum for Residential Leases in Paragraph B(3) might expose the seller to greater liability and risk. As a result, the committee modified the disclosure language to reflect the leases the seller was aware of at the time of transaction.

The San Antonio Board of Realtors (SABOR) also submitted comments in response to the form changes, which consisted of overall concerns regarding the impact of these changes. The committee addressed the majority of these concerns verbally in its meeting. The committee did make a suggested change related to Paragraph 4(C), which was addressed in response to SABOR's comments and other submitted by members of the public and is detailed below.

The committee changed two typographical errors cited in two comments received from members of the public.

In response to multiple comments, the committee decided to change Paragraph 5D to now reference Paragraph 5 in the sentence referencing the unrestricted right to terminate. Additionally and in response to public comment, the committee decided to move the last sentence in Paragraph 5B and make it the last sentence in Paragraph 5A(4).

In response to multiple comments regarding formatting and sufficient space to fill out information, the committee changed the formatting in Paragraph 21 so that both the fax and the email line will both read "Email/Fax:".

In response to multiple comments received, the committee decided to revise the Addendum Regarding Fixture Leases so that it notes the rights to any leased fixtures are governed by the fixture leases in place and provide notice regarding rights associated with leased fixtures left on the property. The Addendum Regarding Fixture Leases now contains assumption of fixture lease language, addresses liens on fixture leases at the time of transaction, and recommends consulting with an attorney regarding assignment, assumption, or termination of any fixture leases.

In response to multiple comments, the committee decided to make changes to the paragraph concerning Natural Resource Leases in the contract forms (Paragraph 4C) to reference seller delivery of natural resources leases.

In response to multiple comments from members of the public and SABOR, the committee decided to change the disclosure in the Broker Information Box, at the end of the contract forms, to include the example of an MLS offer of compensation or other agreement between brokers.

In response to multiple requests to include additional disclosure space in Paragraph 8(A), the committee added additional lines to the paragraph and added back current language to Paragraph 8(B) regarding broker's fees.

In response to multiple comments, the committee also replaced a previously struck the phrase related to garage doors and entry gates in Paragraph 2C.

In response to multiple comments, the committee requested a new line in the Broker Information box on the last page and to add lines for "Team Name" after the Associate's Name for the Other Broker, after the Listing Associate, and after the Selling Associate (adding three new lines).

In response to public comment, the committee decided to change the bolded notice in Paragraph A of the Addendum Regarding Residential Leases to include language stating the paragraph does not amend or terminate any existing lease and to consult with an attorney regarding termination of residential leases prior to signing the agreement.

The committee received fourteen comments requesting a 5:00 p.m. deadline be inserted into Paragraph 5. The committee declined to make that change, noting that there is not a 5:00 p.m. deadline associated with the current process for delivery of option fee and earnest money. The committee also received three comments suggesting insertion of a business day clarification in Paragraph 5 and declined to make that suggested change for the same reason.

The committee received 34 comments solely related to being generally in favor of the proposed changes to Paragraph 5 (combination of option fee and earnest money to be delivered to title company). The committee received 12 comments solely related to being generally against the same proposed changes to Paragraph 5. The committee declined to make changes in response to the opposing comments and noted the new changes have been overall favorably received by license holders, real estate associations, and the title industry.

The Committee voted to recommend adoption to the Commission. The Commission voted to move forward with adoption of these changes at its November 10, 2020, meeting.

The amendments and new rules are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

§537.43. Standard Contract Form TREC No. 36-9.

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 36-9 approved by the Commission in 2020 for use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association.

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 November 13, 2020.

TRD-202004812
Vanessa Burgess
General Counsel
Texas Real Estate Commission
Effective date: April 1, 2021
Proposal publication date: August 28, 2020
For further information, please call: (512) 936-3284

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 85. HEALTH AUTHORITIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts the repeal of §85.1, concerning Health Authorities; and adopts new §85.1, concerning Definitions; new §85.3, concerning Health Authorities; and new §85.4, concerning Public Health Data Review Process.

The repeal of §85.1, and new §85.1, §85.3, and §85.4 are adopted without changes to the proposed text as published in the August 28, 2020, issue of the *Texas Register* (45 TexReg 6025). The rules will not be republished.

BACKGROUND AND JUSTIFICATION

The adoption complies with House Bill 3704, 86th Legislature, Regular Session, 2019, which added Texas Health and Safety Code, §1001.089(e). The new law requires DSHS to establish a review process for a local public health entity that requests public health data maintained by DSHS. The review process applies to public health data requests for which there is not an existing agreement to share data. The adopted new rule allows DSHS to enter into an agreement with a local public health entity to share public health data that are necessary to fulfill its essential public health services in compliance with federal and state law.

The adopted rules also reorganize the structure of the chapter and define terms to improve clarity. The adopted rules also serve as the four-year review of rules in compliance with Texas Government Code, §2001.039.

COMMENTS

The 31-day comment period ended September 28, 2020.

During this period, DSHS received one comment regarding the proposed rules from one commenter with Harris County Public Health. A summary of the comment relating to the rules and DSHS's response follows.

Comment: The commenter asked whether the new public health data review process outlined in the proposed rules would invalidate existing memorandum of understandings (MOUs).

Response: DSHS confirmed that existing MOUs would continue as is, and according to the new rules, for any public health data request not subject to an existing agreement with DSHS, the local public health entity submits a request to DSHS using procedures posted on DSHS's website.

SUBCHAPTER A. LOCAL PUBLIC HEALTH

25 TAC §85.1

STATUTORY AUTHORITY

The repeal is authorized by Texas Health and Safety Code, §1001.089(e), which requires DSHS to establish a review process for public health data requests from local health entities; and Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, including by DSHS. Under Texas Health and Safety Code, Chapter 1001, the DSHS Commissioner is authorized to assist the Executive Commissioner in the development of rules relating to the matters within DSHS jurisdiction. Review of the rules implements Texas Government Code, §2001.039.

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 November 12, 2020.

TRD-202004778
Barbara L. Klein
General Counsel
Department of State Health Services
Effective date: February 1, 2021
Proposal publication date: August 28, 2020
For further information, please call: (512) 776-6537

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CHAPTER 85. LOCAL PUBLIC HEALTH

25 TAC §§85.1, 85.3, 85.4

STATUTORY AUTHORITY

The new sections are authorized by Texas Health and Safety Code, §1001.089(e), which requires DSHS to establish a review process for public health data requests from local health entities; and Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, including by DSHS. Under Texas Health and Safety Code, Chapter 1001, the DSHS Commissioner is authorized to assist the Executive Commissioner in the development of rules relating to the matters within DSHS jurisdiction. Review of the rules implements Texas Government Code, §2001.039.

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 November 12, 2020.

TRD-202004779

Barbara L. Klein
General Counsel
Department of State Health Services
Effective date: February 1, 2021
Proposal publication date: August 28, 2020
For further information, please call: (512) 776-6537

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 370. HUMAN TRAFFICKING RESOURCE CENTER

26 TAC §370.1

The Texas Health and Human Services Commission (HHSC) adopts new §370.1, concerning Human Trafficking Prevention Training Requirements. The new §370.1 is adopted with changes to the proposed text as published in the August 14, 2020, issue of the *Texas Register* (45 TexReg 5594). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The new section is necessary to comply with Texas Occupations Code, §§116.001, 116.002, and 116.003, which require HHSC to approve, post, and update a list of human trafficking prevention training courses for certain health care practitioners.

HHSC adopts the new rule as the result of House Bill (H.B.) 2059, 86th Legislature, Regular Session, 2019. H.B. 2059 requires the Executive Commissioner to approve training courses on human trafficking prevention, including at least one that is available without charge. It also requires the Executive Commissioner to post the list of approved training courses on the agency website and to update the list of approved trainings as necessary. The bill requires an HHSC rule to define the time allowed for health care practitioners to successfully complete a training course from the approved list.

COMMENTS

The 31-day comment period ended September 14, 2020.

During this period, HHSC received comments regarding the proposed rule from 11 commenters, including the National Association of Social Workers, the University of Texas Southwestern Medical Center, Northwest Community Health Trafficking in Medical Education, Texas Association of EMS Educators, American College of Obstetricians and Gynecologists, and The SAFE Alliance. A summary of comments relating to the rule and HHSC responses follows.

Comment: A commenter suggested clarifying §370.1 to make it clear that physicians and nurses are statutorily required to take a course on human trafficking prevention.

Response: HHSC declines to revise the rule as requested. Texas Occupations Code, Chapter 116 does not address human trafficking prevention training requirements for physicians and nurses, other than to clarify that it does not apply to physicians and nurses. Two other statutes, namely, Texas Occupations Code §§156.060 and 301.308, address the issue of human trafficking prevention training course requirements for physicians and nurses. These statutes do instruct the physician or nurse to choose a human trafficking prevention training course selected by HHSC pursuant to Chapter 116. However, these statutes also provide that the boards of each particular profession will adopt rules to implement those laws. Therefore, HHSC defers to the boards of each respective profession regarding implementation of human trafficking prevention training requirements for nurses and physicians.

Comment: A commenter requested guidance on how to complete the training requirement in §370.1 and where to find courses, how many hours are required, and how to notify the licensing board of completion.

Response: HHSC declines to revise the rule in response to this comment. HHSC directs those required to complete a course on human trafficking prevention training to find information on the HHSC website and by contacting their licensing entity. The hours required and notification of course completion is regulated by each licensing entity and not by HHSC.

Comment: A commenter suggested including "10 Ideas to End Human Trafficking" in various public outreach media, which includes signs, bumper stickers, and commercials. The commenter also recommended that HHSC track internet addresses, block internet services, and provide a three-digit number to report trafficking.

Response: HHSC declines to revise the rule in response to this comment. These suggestions are outside the scope of this rule.

Comment: A commenter requested that HHSC require the license holder to take the course only once or once every 10 years since the material "will not change drastically or at all" each year.

Response: HHSC disagrees and declines to revise the rule in response to this comment. HHSC requires all approved courses to be re-certified every two years to maintain current information and resources, and many courses are updated annually.

Comment: Multiple commenters stated that HHSC should add emergency medical services (EMS) clinicians to the list of impacted health care practitioners under §370.1. They explain EMS first responders have "unique opportunities to observe, document, and report patient indicators and environmental red flags" of human trafficking and, with training, can "provide trauma-informed care" to those being trafficked.

Response: HHSC acknowledges this rationale but declines to revise the rule in response to this comment at this time. Adding health care practitioners is outside the scope of this rule and would require a statutory amendment or rule change in EMS administrative code.

Comment: A commenter requests that HHSC publicly share the "scoring tool" for human trafficking training reviews.

Response: HHSC replied to the commenter that the "scoring tool" is identical to the training standards posted publicly on the website. No revision to the rule is necessary.

Comment: A commenter requests clarification on the human trafficking training application as to whether approval would be granted if an element is missing from a training submitted by an external entity. They have requested "creative latitude" to adapt trainings to the OB/GYN profession.

Response: HHSC replied to the commenter that the review process is posted publicly on the website, all standards must

be met to be approved, and each training is evaluated on an individual basis. No revision to the rule is necessary.

Comment: A commenter suggested sex trafficking prevention training should be expanded to law enforcement, child welfare, front line mental health care, and transportation professionals, each of which have regular interaction with survivors of sex trafficking.

Response: HHSC replied to the commenter that other professions, such as law enforcement and child welfare case workers, have their own training requirements for human trafficking prevention, and this law does require certain mental health practitioners to complete a training. This request is outside the scope of this rule, and no revision is necessary.

Comment: A commenter requested that "equal emphasis be faced on training professionals around preventing re-entry into commercial sexual exploitation." They explain that "risk factors for entry into sex trafficking must be disaggregated for adults and for juveniles. Transitional youth coming out of the foster care system are already at higher risk of entering trafficking during that time frame."

Response: This request is outside the scope of this rule, and HHSC declines to revise the rule based on this comment.

An editorial change was made to remove §370.1(a) from the adopted rule since defining these terms in §370.1 was determined to be unnecessary and out of the scope for HHSC. Subsections (b) - (e) were relabeled accordingly. Additionally, HHSC made an editorial change to §370.1(d) (relabeled to (c)) deleting "At least one approved course will be available without charge" and adding the language to §370.1(e) (relabeled to (d)), to improve the organization of the rule.

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the Health and Human Services system. In addition, Texas Occupations Code §116.002(b) provides that the Executive Commissioner shall approve training courses on human trafficking prevention and post a list of the approved training courses on HHSC's Internet website. Texas Occupations Code §116.002(c) further requires the Executive Commissioner to update the list of approved training courses and consider for approval training courses conducted by health care facilities.

§370.1. Human Trafficking Prevention Training Requirements.

(a) For a human trafficking prevention training course to become approved by the Executive Commissioner, or designee, the course must meet the human trafficking training standards established by the Health and Human Services Commission.

(b) The human trafficking prevention training course, at a minimum, must include:

(1) types of human trafficking, including definitions;

(2) vulnerability factors;

(3) health impact;

(4) identification;

(5) assessment;

(6) response; and

(7) resources.

(c) Health care practitioners who provide direct patient care, except physicians and nurses, must complete an approved human trafficking prevention training course for each license renewal, within the full license term as defined by each licensing entity.

(d) A complete description of the human trafficking prevention training standards and training approval process is posted on the HHSC website. At least one approved course will be available without charge.

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 November 12, 2020.

TRD-202004781
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: December 2, 2020
Proposal publication date: August 14, 2020
For further information, please call: (512) 438-3269

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CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 2. REQUIRED NOTIFICATION

26 TAC §746.303

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §746.303, concerning What changes must I notify Licensing of regarding the child-care center's designee, governing body, and director. The amendment to §746.303 is adopted without changes to the proposed text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4710). It will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to implement the portion of Senate Bill (S.B.) 708, 86th Legislature, Regular Session, 2019, that adds Subsection (c-1) to Texas Human Resources Code (HRC) §42.0412. HRC §42.0412(c-1) requires HHSC Child Care Regulation (CCR) to collect the total number of employees who left employment with each licensed child-care center during the preceding calendar year and publish the data on the Search Texas Child Care website. HRC §2.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42, HRC. CCR is implementing this legislative requirement by changing §746.303 to require licensed child-care centers to report the total number of employees who ceased working at the center the previous calendar year to CCR through their online CCR account. IT changes will enable this information to be published on the Search Texas Child Care website.

COMMENTS

The 31-day comment period ended August 10, 2020. During this period, HHSC received comments regarding the proposed rule

from 52 commenters representing licensed child-care centers, including Brainy Kids Place, Austin Community College Children's Lab School, Candy Cane Corner, Kingdom Heights Christian School, Kiddie Academy, Gingerbread Kids Academy, The Play Yard, FBC Daycare, SHS Inc. Community Preschool, Bundles of Care Pre-K Center, His Kids Christian Learning Center, Texana Children's Center for Autism, Starting Point Children's Center, Grayson Institute for Learning, Schoolhouse 226, Bell's Little Angels, The Sherwood Academy, Hillcrest Child Development Center, Methodist Day School, Chrysalis Christian Preschool, and Country Home Learning Center. A summary of comments relating to the rule and HHSC's responses follows.

Comment: Thirty-two commenters requested HHSC to add context to the rule to more accurately reflect a child-care center's turnover. One commenter recommended adding employment status, role at the center, and whether the employee worked full time. Twenty-nine commenters, all employees of the same organization, recommended including the total number of employees when a center is fully staffed to generate a percentage of employees who left annually.

Response: Although HHSC accepts that context could be helpful in interpreting the number of employees who left employment from an operation, HHSC declines to revise the rule. Recommendations for a more nuanced rule would require prohibitive additional IT costs. However, HHSC will address this recommendation by adding an explanatory text box to the Search Texas Child Care website with information like the following:

"This number reflects the number of employees who left employment during the previous year. Employees include all full-time, part-time, and seasonal child-care center staff, including caregivers, kitchen staff, office staff, maintenance staff, assistant director, director, and owner. If you would like additional information about this number, please contact the center directly."

Comment: Eleven commenters stated that the rule will provide information that is misrepresentative of child-care center quality, will be punitive, and will reflect poorly on the child-care center. Many argued that turnover is inherent in the child-care industry and not indicative of quality care. Several of those commenters had specific concerns about posting the number publicly for prospective parents to review.

Response: HHSC disagrees with the comments and declines to revise the rule. Implementation of HRC Section 42.0412(c-1) is mandatory. HHSC cannot support any recommendation that will not result in the public posting of the number of employees who ceased employment with each child-care center. However, HHSC will address these concerns by adding an explanatory text box to the Search Texas Child Care website, as outlined in the response above.

Comment: Six commenters stated that the rule is administratively burdensome or redundant. Three of those six asserted that the information is already available to Licensing through another process that requires child-care centers to verify their employee list quarterly and inactivate people no longer working at the child-care center. The other three commenters were unclear regarding the purpose of the rule, with one requesting information on the origin of the rule.

Response: HHSC disagrees with the comments and declines to revise the rule. The process referred to by the commenters does not provide a cumulative annual total that is posted publicly for parents to review, as required by statute. Additionally, HHSC does not anticipate that compliance with the rule will require a large time investment from child-care centers, as they will only provide the information once per year. To address the commenter's question about the rule's origin, HHSC provided the commenter with legislative information regarding the rule.

Comment: Three commenters expressed concerns that the rule may result in child-care centers changing hiring practices or retaining employees with poor performance to reduce the appearance of turnover in their centers.

Response: HHSC disagrees with the comments and declines to revise the rule. HHSC must implement the rule as statutorily required. Parents may access many different metrics when selecting a child-care center. Disclosing the annual number of employees who left the center will provide each center with an opportunity to engage in discussions with parents to explain how that number relates to quality care within the specific child-care center. Child-care centers continue to have a responsibility to hire and maintain quality staff who will protect the health and safety of children.

Comment: One commenter opposed the rule as written due to concerns that prospective employees deemed ineligible for employment due to background check results would negatively skew the child-care center's numbers, resulting in the appearance of higher turnover. The commenter requested operations not be penalized for submitting background checks on prospective employees that they later do not hire.

Response: HHSC disagrees with the comment and declines to revise the rule. The rule requires child-care centers to count employees only, not prospective employees. An individual deemed ineligible for hire would not be included in the child-care center's annual numbers. HHSC will further clarify this issue for licensed child-care providers by adding information to a Helpful Information box that will appear after the rule in the Minimum Standards on the HHSC provider webpage.

Comment: One commenter expressed support of the rule but recommended collecting additional information, including the reason the employee left employment and where the former employee is currently seeking employment.

Response: HHSC appreciates the support of the rule but declines to revise the rule. HHSC does not agree with adding more requirements to the rule that would increase the workload for child-care centers and require prohibitive additional IT costs.

Comment: One commenter stated the rule is not beneficial and requires the collection of data not required in other industries. The commenter recommended HHSC license individual caregivers in child-care centers in order to hold employees accountable, rather than holding a child-care center accountable for the actions of the caregivers.

Response: HHSC disagrees with the comment and declines to revise the rule. HHSC must implement the rule as statutorily required. With regards to licensing individual center employees, CCR functions as a regulatory entity for operations that care for children in out of home settings. It is not within the scope of CCR to license individual caregivers employed by a child-care center.

Comment: One commenter opposed the timing of the rule and recommended it be delayed due to the COVID-19 pandemic, which will automatically inflate a child-care center's numbers if the center closed and furloughed employees during the pandemic.

Response: HHSC disagrees with the comment and declines to revise the rule. HHSC must implement the rule as statutorily required and cannot alter the timeline of the rule.

Comment: One commenter requested HHSC refer to all child-care centers as early childhood programs or child-care, rather than day care, to elevate the perception of professionalism in the industry.

Response: This comment was not in response to the proposed rules. The terminology referenced by the commenter was not used in the proposed rules.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and HRC §42.042, which requires the Executive Commissioner to adopt rules to carry out the requirements of Chapter 42, HRC.

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 November 10, 2020.

TRD-202004756
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: December 15, 2020
Proposal publication date: July 10, 2020
For further information, please call: (512) 438-3269

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER B. PUBLIC PROCUREMENT AUTHORITY AND ORGANIZATION

DIVISION 2. PUBLICIZING PROCUREMENT: CMBL, ESBD, AND VPTS

34 TAC §20.115

The Comptroller of Public Accounts adopts the amendments to §20.115, concerning vendor performance tracking system, without changes to the proposed text as published in the August 28, 2020, issue of the *Texas Register* (45 TexReg 6051). The rule will not be republished. This rule is found in Chapter 20 (Statewide Procurement and Support Services), Subchapter B (Public Procurement Authority and Organization), Division 2 (Publicizing Procurement: CMBL, ESBD, and VPTS).

This rule amendment provides, under certain circumstances, for a state agency to revise a vendor performance report and grade that has been published to the comptroller's web page. Also, this rule amendment provides to revise the method for assigning an overall vendor performance letter grade, and addresses various grammatical issues identified in the present rule.

Under the amendment, the overall vendor performance letter grade will be a function of vendor grades assigned to a vendor after February 4, 2017, the date the legacy grading system was retired and the A through F grading system implemented. After February 5, 2021, the overall vendor performance letter grade will be a function of vendor grades assigned for the most recent 48 months. This change accounts for the fact that the contract term for many state contracts is four years and because the utility of a vendor performance report diminishes over time.

No comments were received regarding adoption of the amendment.

This rule amendment is adopted under Government Code, §2262.055(b)(1), which requires the comptroller by rule to establish an evaluation process that rates vendors on an A through F scale, with A being the highest grade; Government Code, §2262.055(b)(2), which allows vendors who receive a grade lower than a C to protest any classification given by the comptroller; Government Code, §2262.055(c), which requires the comptroller to include the performance reviews in a vendor performance tracking system; and Government Code, §2262.055(e), which requires the comptroller to make the vendor performance tracking system accessible to the public on the comptroller's Internet website.

The amendment implements Government Code, §2262.055.

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 November 10, 2020.

TRD-202004759
Don Neal
General Counsel, Operations and Support Legal Services
Comptroller of Public Accounts
Effective date: November 30, 2020
Proposal publication date: August 28, 2020
For further information, please call: (512) 475-0387

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SUBCHAPTER F. CONTRACT MANAGEMENT

DIVISION 2. REPORTS AND AUDITS

34 TAC §20.509

The Comptroller of Public Accounts adopts the amendments to §20.509, concerning performance reporting, without changes to the proposed text as published in the August 28, 2020, issue of the *Texas Register* (45 TexReg 6052). This rule is found in Chapter 20 (Statewide Procurement and Support Services), Subchapter F (Contract Management), Division 2 (Reports and Audits). The rule will not be republished.

This rule amendment implements Government Code, §2155.089 as revised by Senate Bill 65, 86th Legislature, 2019, which requires a state agency to review a vendor's performance during

a contract valued greater than $5 million and excludes certain contracts from the vendor performance reporting requirement.

This rule amendment also responds to the State Auditor's Office Report No. 19-042 (An Audit Report on The Vendor Performance Tracking System at the Office of the Comptroller of Public Accounts and Its Use by the Texas Workforce Commission and the Parks and Wildlife Department). That report stated that submitting vendor performance reports more than 30 days after contract termination increases the risk that vendor performance information submitted to VPTS may be inaccurate. However, the Comptroller of Public Accounts has learned that in some cases, delaying reports will result in more accurate information. For example, if an agency is investigating complaints about a vendor's conduct, the agency may need more than 30 days to accurately grade that vendor's performance. To account for such circumstances, §20.509 now allows a state agency to document the reason for delaying a vendor performance report in its procurement file.

Finally, the rule amendment revises the grading scale for vendor performance. The State Auditor's Office Report No. 19-042 indicated that a vendor which "completed service with no issues" deserves an A grade, and that a B grade for that vendor is "incorrect." This interpretation was not intended by the Comptroller of Public Accounts and appears inconsistent with the A through F grading scale enacted by the Legislature. The revised grading scale makes clear that an A is earned only if performance significantly exceeded requirements of a purchase order or contract to the state's benefit and that other requirements were satisfied.

There were no comments received at the public hearing held September 25, 2020.

The following entities jointly submitted a single written comment: The Texas A&M University System; Texas Tech University System; The University of Texas System; The Texas State University System; University of North Texas System; and University of Houston System (the State University Systems). The State University Systems did not identify whether they were for or against adoption of the amendment; however, they requested that the comptroller specifically exempt them from compliance with §20.509.

The State University Systems assert they are not required to submit vendor performance information to the Comptroller because they acquire goods and services pursuant to Education Code, §51.9335. They state that Government Code, Title 10, Subtitle D (which includes §2155.089) does not apply to the acquisition of goods or services by institutions of higher education.

Agency Response: Government Code, §2155.089(c) specifically identifies certain contracts the vendor performance of which is not required to be reported to VPTS. Section 20.509(g) follows Government Code, §2155.089(c) in this regard. In addition, Education Code, §51.9335(d) states that an institution of higher education "may . . . acquire goods or services as provided by Subtitle D, Title 10, Government Code." For these reasons, the comptroller declines to modify the rule in response to the comments and adopts §20.509 as proposed.

This rule amendment is adopted under Government Code, §2155.0012, which authorizes the comptroller to adopt rules to administer Government Code, Chapter 2155; Government Code, §2155.0755, which requires the comptroller ensure that state agencies include in their vendor performance reviews whether the best value standard was satisfied if the state agency was required to use the best value standard for a purchase of goods or services; Government Code, §2155.089, which requires each state agency to review and report to the comptroller a vendor's performance under a contract; and Government Code, §2262.055, which requires the comptroller by rule to establish an evaluation process that rates vendors on an A through F scale, with A being the highest grade.

The amendment implements Government Code, §§2155.0755, 2155.089, and 2262.055.

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 November 10, 2020.

TRD-202004760
Don Neal
General Counsel, Operations and Support Legal Services
Comptroller of Public Accounts
Effective date: November 30, 2020
Proposal publication date: August 28, 2020
For further information, please call: (512) 475-0387

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DIVISION 3. PROTESTS AND APPEALS

34 TAC §20.537

The Comptroller of Public Accounts adopts the amendments to §20.537, concerning action by director, without changes to the proposed text as published in the August 28, 2020, issue of the *Texas Register* (45 TexReg 6055). The rule will not be republished. This rule is found in Chapter 20 (Statewide Procurement and Support Services), Subchapter F (Contract Management), Division 3 (Protests and Appeals).

This rule amendment revises subsection (c) of the current rule so that the process for resolution of protests by the director is uniform for protests of vendor grades and protests based on solicitation or award of a contract. Under the current rule, the director resolves protests of vendor grades differently than protests based on a solicitation or contract award. The comptroller also amends subsection (a) to address a formatting issue identified in the current rule.

No comments were received regarding adoption of the amendment.

This rule amendment is adopted under Government Code, §2155.076(a), which requires the comptroller by rule to develop and adopt protest procedures for resolving vendor protests relating to purchasing issues and Government Code, §2262.055(b)(2), which requires the comptroller by rule to establish an evaluation process that allows vendors who receive a grade lower than a C to protest any classification given by the comptroller.

The amendment implements Government Code, §§2155.076, 2155.089, and 2262.055.

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 November 10, 2020.

TRD-202004761
Don Neal
General Counsel, Operations and Support Legal Services
Comptroller of Public Accounts
Effective date: November 30, 2020
Proposal publication date: August 28, 2020
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 459. FIRE AND LIFE SAFETY EDUCATOR

SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE AND LIFE SAFETY EDUCATOR II

37 TAC §459.201

The Texas Commission on Fire Protection (the commission) adopts amendments to 37 Texas Administrative Code Chapter 459, Fire and Life Safety Educator, Subchapter B, Minimum Standards For Fire and Life Safety Educator II, concerning §459.201, Fire and Life Safety Educator II Certification.

The amended section is adopted without changes to the text as published in the August 28, 2020, issue of the *Texas Register* (45 TexReg 6059) and will not be republished.

The amended section removes from the rule the "grandfathering" provision that expired on its own terms on February 29, 2020.

No comments were received from the public regarding the adoption of the amendments.

The amended section is adopted under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The amended section is also adopted under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the qualifications of fire protection personnel.

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 November 13, 2020.

TRD-202004816
Michael Wisko
Executive Director
Texas Commission on Fire Protection
Effective date: December 3, 2020
Proposal publication date: August 28, 2020
For further information, please call: (512) 936-3812

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CHAPTER 461. INCIDENT COMMANDER

37 TAC §§461.1, 461.3, 461.5

The Texas Commission on Fire Protection (the commission) adopts new 37 Texas Administrative Code, Chapter 461, Incident Commander, concerning §461.1, Incident Commander Certification, §461.3, Minimum Standards for Incident Commander Certification, and §461.5, Examination Requirement.

The new chapter is adopted without changes to the text as published in the August 28, 2020, issue of the *Texas Register* (45 TexReg 6060). The rules will not be republished.

The new chapter is adopted to offer a new voluntary Incident Commander certification that has been requested by the Texas fire service for several years. This new certification will create a statewide Incident Commander certification that meets the requirements of the National Fire Protection Association Standard (NFPA) 1026, Standard for Incident Management Personnel Professional Qualifications.

No comments were received from the public regarding the adoption of the new chapter.

The new chapter is adopted under Texas Government Code, Chapter 419, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the qualifications of fire protection personnel.

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 November 13, 2020.

TRD-202004817
Michael Wisko
Executive Director
Texas Commission on Fire Protection
Effective date: December 3, 2020
Proposal publication date: August 28, 2020
For further information, please call: (512) 936-3812

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Review Of Agency Rules

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Insurance

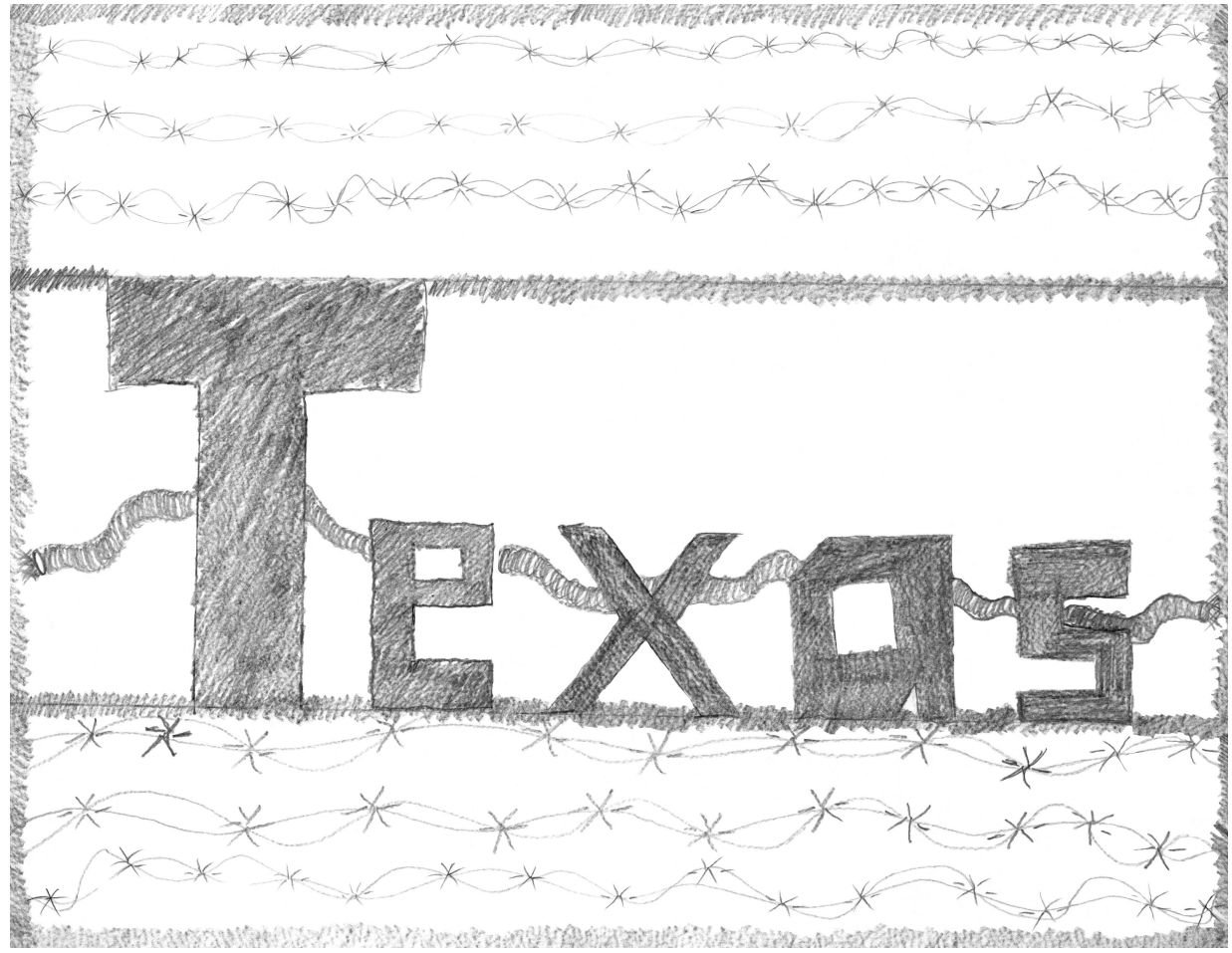
Title 28, Part 1

The Texas Department of Insurance (TDI), under Texas Government Code §2001.039, will review and consider for readoption the following chapters of 28 Texas Administrative Code Part 1: Chapter 5 (relating to Property and Casualty Insurance); Chapter 6 (relating to Captive Insurance); Chapter 7 (relating to Corporate and Financial Regulation); Chapter 9 (relating to Title Insurance); Chapter 13 (relating to Miscellaneous Insurers and Other Regulated Entities); Chapter 19 (relating to Licensing and Regulation of Insurance Professionals); Chapter 21 (relating to Trade Practices); Chapter 22 (relating to Privacy); Chapter 25 (relating to Insurance Premium Finance); Chapter 26 (relating to Employer-Related Health Benefit Plan Regulations); Chapter 28 (relating to Supervision and Conservation); Chapter 33 (relating to Continuing Care Providers); and Chapter 34 (relating to State Fire Marshal). The current versions of Chapter 11 (relating to Health Maintenance Organizations), and Chapter 15 (relating to Surplus Lines Insurance), were both adopted within the past four years, so it is not necessary to include them in the current review of rules.

TDI will consider whether the reasons for initially adopting these rules continue to exist and determine 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* under the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TDI will consider any written comments on the rule review that are received by TDI no later than 5:00 p.m., central time, on December 28, 2020. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

TRD-202004822
James Person
General Counsel
Texas Department of Insurance
Filed: November 16, 2020


TEXAS

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 1: 1 TAC §18.31(a)

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
253.031(b)	The amount of political contributions or political expenditures permitted by a political committee before a campaign treasurer appointment is required	$500	$910
253.031(d)(2)	The amount of political contributions or political expenditures permitted by a county executive party of a political party before a campaign treasurer appointment is required	$25,000	$33,750
253.032(a)	Threshold of contributions accepted from an out-of-state political committee above which a certain written statement or a statement of organization is required	$500	$930
253.032(a)(1)	Threshold of contributions to an out-of-state political committee above which certain information regarding contributions must be included in the written statement required under section 253.032(a), Election Code	$100	$190
253.032(e)	Threshold of contributions accepted from an out-of-state political committee at or below which certain information or a statement of organization must be included in a report	$500	$930
254.031(a)(1)	Threshold at which contributor information is required to be reported	$50	$90

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
254.031(a)(2)	Threshold at which lender information is required to be reported	$50	$90
254.031(a)(3)	Threshold at which information on the payee of a political expenditure is required to be reported	$100	$190
254.031(a)(5)	Threshold below which contributor information is not required to be reported	$50	$90
254.031(a)(5)	Threshold below which payee information is not required to be reported	$100	$190
254.031(a)(9)	Threshold at which the source of any credit, interest, return of deposit fee from political contributions or asset is required to be reported	$100	$120
254.031(a)(10)	Threshold at which the proceeds from sale of a political asset is required to be reported	$50	$120
254.031(a)(11)	Threshold at which any gain from an investment purchased with political contributions is required to be reported	$50	$120
254.031(a)(12)	Threshold at which any other gain from political contribution is required to be reported	$50	$120
254.0311(b)(1)	Threshold at which contributor information for contributions from non-caucus members is required to be reported by a caucus	$50	$90
254.0311(b)(2)	Threshold at which lender information is required to be reported by a caucus	$50	$90
254.0311(b)(3)	Threshold at which payee information for expenditures is required to be reported by a caucus	$50	$90

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
254.0311(b)(3)	Threshold below which payee information for expenditures is not required to be reported by a caucus	$50	$90
254.0311(b)(4)	Threshold below which contributor and payee information is not required to be reported by a caucus	$50	$90
254.0312	Threshold at which the best efforts rule requires one to make a written or oral request for contributor information in order to be considered in compliance when contributor information is missing	$500	$710
254.036	Threshold of political contributions and political expenditures below which a filer qualifies for the electronic filing exemption, if certain conditions are met	$20,000	$28,420
254.038(a)	Contribution threshold triggering a Special Report Near Election by Certain Candidates and Political Committees during the 9 days before election	$1,000	$1,860
254.039	Contribution threshold triggering Special Report Near Election by GPACs during the 9 days before election	$5,000	$6,370
254.039	Direct Campaign expenditure thresholds triggering Special Report Near Election by GPACs ($1,000 for single candidate or $15,000 for group of candidates) during the 9 days before election	$1,000/$15,000	$1,860/$27,950

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
254.0611(a)(2)	Threshold at which principal occupation/employer information for contributors to judicial filers is required to be reported	$50	$90
254.0611(a)(3)	Threshold at which the disclosure of an asset purchased with political contributions is required to be reported by judicial filers	$500	$930
254.0612	Threshold at which principal occupation/employer information for contributors to statewide executive and legislative candidates is required to be reported	$500	$930
254.095	Threshold of political contributions or political contributions below which a report is not required for officeholders who do not file with the Commission, unless also a candidate	$500	$930
254.151(6)	Threshold at which the principal occupation for GPAC contributors is required to be reported	$50	$90
254.1541(a)	Threshold of political contributions and political expenditures below which a GPAC has a $100 contribution itemization threshold, rather than $50	$20,000	$27,000
254.1541(b)	Contribution reporting threshold for GPACs qualifying under section 254.1541 set to $100	$100	$190

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
254.156(1)	Threshold at which contributor, lender, and payee information is required for a political contribution, loan, or expenditure, respectively, to an MPAC	$10	$20
254.156(2)	Threshold at which contribution information for MPACs qualifying under section 254.1541 is set to $20	$20	$40
254.181, 254.182, 254.183	Threshold of political contributions and political expenditures below which a candidate or SPAC may elect to avoid certain pre-election filing requirements (modified reporting)	$500	$930
254.261	Threshold at which a person making direct campaign expenditures in an election must disclose the expenditures, including payee information	$100	$140

Figure 2: 1 TAC §18.31(a)

Lobby Registrations and Reports: Section of Government Code	Threshold Description	Original Threshold Amount	Adjusted Amount
305.003(1)	Threshold of expenditures over which a person must register as a lobbyist	$500, by 1 Tex. Admin. Code §34.41	$810
305.003(2)	Threshold of compensation or reimbursement over which a person must register as a lobbyist	$1,000, by 1 Tex. Admin. Code §34.43	$1,620
305.004(7)	Threshold of expenditures and compensation below which a person lobbying on behalf of political party is excepted from the requirement to register as a lobbyist	$5,000	$9,320
305.005(g)(2)	Threshold of category to report compensation less than $10,000	$10,000	$18,630
305.005(g)(3)	Upper threshold of category to report compensation of at least $10,000 but less than $25,000	$25,000	$46,580
305.005(g)(4)	Upper threshold of category to report compensation of at least $25,000 but less than $50,000	$50,000	$93,150
305.005(g)(5)	Upper threshold of category to report compensation of at least $50,000 but less than $100,000	$100,000	$186,300
305.005(g)(6)	Upper threshold of category to report compensation of at least $100,000 but less than $150,000	$150,000	$279,450
305.005(g)(7)	Upper threshold of category to report compensation of at least $150,000 but less than $200,000	$200,000	$372,600
305.005(g)(8)	Upper threshold of category to report compensation of at least $200,000 but less than $250,000	$250,000	$465,750
305.005(g)(9)	Upper threshold of category to report compensation of at least $250,000 but less than $300,000	$300,000	$558,900

Lobby Registrations and Reports: Section of Government Code	Threshold Description	Original Threshold Amount	Adjusted Amount
305.005(g)(10)	Upper threshold of category to report compensation of at least $300,000 but less than $350,000	$350,000	$652,050
305.005(g)(11)	Upper threshold of category to report compensation of at least $350,000 but less than $400,000	$400,000	$745,200
305.005(g)(12)	Upper threshold of category to report compensation of at least $400,000 but less than $450,000	$450,000	$838,350
305.005(g)(13)	Upper threshold of category to report compensation of at least $450,000 but less than $500,000	$500,000	$931,500
305.005(g-1)	Threshold of compensation or reimbursement at which a registrant must report the exact amount	$500,000	$931,500
305.0061(c)(3)	Threshold over which the name of a legislator who is the recipient of a gift, a description of the gift, and amount of the gift is required to be disclosed	$50	$90
305.0061(e-1)	Threshold below which an expenditure for food or beverages is considered a gift and reported as such	$50	$90
305.0063	Threshold of expenditures below which a registrant may file lobby activities reports annually instead of monthly	$1,000	$1,860

Figure 3: 1 TAC §18.31(a)

Personal Financial Statements: Section of Gov't Code	Threshold Description	Original Threshold Amount	Adjusted Amount
572.022(a)(1)	Threshold of category to report an amount less than $5,000	less than $5,000	less than $9,320
572.022(a)(2)	Threshold of category to report an amount of at least $5,000 but less than $10,000	$5,000 to less than $10,000	$9,320 to less than $18,630
572.022(a)(3)	Threshold of category to report an amount of at least $10,000 but less than $25,000	$10,000 to less than $25,000	$18,630 to less than $46,580
572.022(a)(4)	Threshold of category to report an amount of at least $25,000 or more	$25,000 or more	$46,580 or more
572.005, 572.023(b)(1)	Threshold to disclose the source and category of amount of retainer received by a business entity in which the filer has a substantial interest; section 572.005 defines substantial interest, in part, as owning over $25,000 of the fair market value of the business entity	$25,000	$46,580
572.023(b)(4)	Threshold over which income from interest, dividends, royalties, and rents is required to be reported	$500	$930
572.023(b)(5)	Threshold over which the identity of each loan guarantor and person to whom filer owes liability on a personal note or lease agreement is required to be reported	$1,000	$1,860
572.023(b)(7)	Threshold of value over which the identity of the source of a gift and a gift description is required to be reported	$250	$470
572.023(b)(8)	Threshold over which the source and amount of income received as beneficiary of a trust asset is required to be reported	$500	$930
572.023(b)(15)	if aggregate cost of goods or services sold under contracts exceeds $10,000, PFS must identify each contract, and name of each party, with a	Exceeds $10,000	$10,220

Personal Financial Statements: Section of Gov't Code	Threshold Description	Original Threshold Amount	Adjusted Amount
	governmental entity for sale of goods or services in amount of $2,500 or more		
572.023(b)(15)(A)	itemization under (15) of contracts for sale of goods or services in the amount of $2,500 or more to governmental entities	$2,500 or more	$2,560 or more
572.023(b)(16)(D)(i)	category of amount of bound counsel fees paid to legislator	less than $5,000	less than $5,110
572.023(b)(16)(D)(ii)	category of amount of bound counsel fees paid to legislator	at least $5,000 but less than $10,000	at least $5,110 but less than $10,220
572.023(b)(16)(D)(iii)	category of amount of bound counsel fees paid to legislator	at least $10,000 but less than $25,000	at least $10,220 but less than $25,550
572.023(b)(16)(D)(iv)	category of amount of bound counsel fees paid to legislator	$25,000 or more	$25,550 or more
572.023(b)(16)(E)(i)	category of amount of bound counsel fees paid to individual's firm	less than $5,000	less than $5,110
572.023(b)(16)(E)(ii)	category of amount of bound counsel fees paid to individual's firm	at least $5,000 but less than $10,000	at least $5,110 but less than $10,220
572.023(b)(16)(E)(iii)	category of amount of bound counsel fees paid to individual's firm	at least $10,000 but less than $25,000	at least $10,220 but less than $25,550
572.023(b)(16)(E)(iv)	category of amount of bound counsel fees paid to individual's firm	$25,000 or more	$25,550 or more

Figure 4: 1 TAC §18.31(a)

Speaker Election and Certain Ceremonial Reports: Section of Government Code	Threshold Type	Original Threshold Amount	Adjusted Amount
302.014(4)	Expenditure of campaign funds over $10 must be disclosed, including payee's name and address and the purpose	$10	$20
303.005(a)(1) – (10)	Thresholds applicable to contribution and expenditure disclosure requirements for a governor for a day or speaker's reunion day ceremony report	$50	$90

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.

Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - October 2020

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period October 2020 is $27.68 per barrel for the three-month period beginning on July 1, 2020, and ending September 30, 2020. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of October 2020, from a qualified low-producing oil lease, is eligible for a 25% credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period October 2020 is $0.96 per mcf for the three-month period beginning on July 1, 2020, and ending September 30, 2020. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of October 2020, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of October 2020 is $39.55 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from oil produced during the month of October 2020, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of October 2020 is $2.84 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of October 2020, from a qualified low-producing gas well.

This agency hereby certifies that legal counsel has reviewed this notice and found it to be within the agency's authority to publish.

TRD-202004863
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: November 18, 2020

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List of States With Bidder Preferences

The list of state preference statutes and regulations below is published pursuant to Texas Government Code, §2252.003. This list is current as of September 10, 2020, and may be used by Texas purchasing personnel in applying the "reciprocal preference" to bidders from other states. See Texas Government Code, §2252.002 and §2252.003(b). A "reciprocal preference" is a purchasing preference under which a purchasing entity gives a preference to its in-state bidders equivalent to what another state would give to its in-state bidders against a bidder from another state.

In compiling the list of other states' preference laws and regulations, citations to "in-state" preference programs similar to Texas Human Resource Code, Chapter 122 (Purchasing from People with Disabilities) and Texas Government Code, Chapter 497, (Industry and Agriculture; Labor of Inmates) may have been omitted. Citations to other preferences which do not discriminate based upon state of origin, such as recycled products preferences, may have also been omitted.

If state purchasers, agency counsel, or other staff have questions or concerns regarding the list or its application, please contact the Statewide Procurement Division of the comptroller at (512) 463-3034.

ALABAMA

ALABAMA RESIDENT BIDDER PREFERENCE

Title 23: Highways, Roads, Bridges, And Ferries

Chapter 1: Alabama Highways

Section 23-1-51: Purchase of motor fuels, oils, greases, and lubricants.

(a) All motor fuels, oils, greases, and lubricants bought by or for the State Department of Transportation for use in each county in which the construction, maintenance, and repair of the county roads and bridges have been transferred to the State Department of Transportation shall be purchased from vendors and suppliers residing in the county where such motor fuels, oils, greases, and lubricants are to be used. All such purchases shall be made on the basis of competitive bids, and contracts and purchase orders shall be awarded to the lowest responsible bidder as provided by law.

Title 39: Public Works

Chapter 3: Use of Domestic Products & Resident Workmen For Public Works, Improvements, Etc.

Section 39-3-5: Preference to resident contractors in letting of certain public contracts.

(a) In the letting of public contracts in which any state, county, or municipal funds are utilized, except those contracts funded in whole or in part with funds received from a federal agency, preference shall be given to resident contractors, and a nonresident bidder domiciled in a state having laws granting preference to local contractors shall be awarded Alabama public contracts only on the same basis as the nonresident bidder's state awards contracts to Alabama contractors bidding under similar circumstances; and resident contractors in Alabama, as defined in Section 39-2-12, be they corporate, individuals, or partnerships, are to be granted preference over nonresidents in awarding of contracts in the same manner and to the same extent as provided by the laws of the state of domicile of the nonresident.

Title 41: State Government

Chapter 16: Public Contracts

Section 41-16-20: Contracts for which competitive bidding required; award to preferred vendor.

(a) With the exception of contracts for public works whose competitive bidding requirements are governed exclusively by Title 39, all contracts of whatever nature for labor, services, work, or for the purchase or lease of materials, equipment, supplies, other personal property or other nonprofessional services, involving fifteen thousand dollars ($15,000) or more, made by or on behalf of any state department, board, bureau, commission, committee, institution, corporation, authority, or office shall, except as otherwise provided in this article, be let by free and open competitive bidding, on sealed bids, to the lowest responsible bidder.

(b) A "preferred vendor" shall be a person, firm, or corporation which is granted preference priority according to the following:

(1) PRIORITY #1. Produces or manufactures the product within the state.

(2) PRIORITY #2. Has an assembly plant or distribution facility for the product within the state.

(3) PRIORITY #3. Is organized for business under the applicable laws of the state as a corporation, partnership, or professional association and has maintained at least one retail outlet or service center for the product or service within the state for not less than one year prior to the deadline date for the competitive bid.

(4) PRIORITY #4. A business that is physically located in the state and that is more than 50 percent owned by a person who was discharged or released under conditions other than dishonorable and who has at least 24 months' active service in the United States' military, naval, or air service, or who has less than 24 months of active service in any of the foregoing and was separated with a service-connected disability, or a national guardsman or reservist who completed active federal service for purposes other than training or who served at least 180 days of continuous service for purposes other than training.

(c) In the event a bid is received for the product or service from a person, firm, or corporation deemed to be a responsible bidder and a preferred vendor where any state higher education institution, department, board, bureau, commission, committee, institution, corporation, authority, or office is the awarding authority and the bid is no more than five percent greater than the bid of the lowest responsible bidder, the awarding authority may award the contract to the preferred vendor.

Title 41: State Government

Chapter 16: Public Contracts

Section 41-16-27: Manner of awarding contracts; records; exemptions.

(d) The purchasing agent in the purchase of or contract for personal property or contractual services shall give preference, provided there is no sacrifice or loss in price or quality, to commodities produced in Alabama or sold by Alabama persons, firms, or corporations.

(g) Notwithstanding the requirements under Sections 41-16-20, 41-16-21, and this section, contractual services and purchases of personal property regarding the athletic department, food services, and transit services negotiated on behalf of two-year and four-year colleges and universities may be awarded without competitive bidding provided that no state revenues, appropriations, or other state funds are expended or committed and when it is deemed by the respective board that financial benefits will accrue to the institution, except that in the cases where an Alabama business entity, as defined by this section, is available to supply the product or service, they will have preference unless the product or service supplied by a foreign corporation is substantially different or superior to the product or service supplied by the Alabama business entity. However, the terms and conditions of any of the services or purchases which are contracted through negotiation without being competitively bid and the name and address of the recipient of such a contract shall be advertised in a newspaper of general circulation in the municipality in which the college or university is located once a week for two consecutive weeks commencing no later than 10 days after the date of the contract. For the purposes of this section, the term Alabama business entity shall mean any sole proprietorship, partnership, or corporation organized in the State of Alabama.

Title 41: State Government

Chapter 16: Public Contracts

Section 41-16-50: Contracts for which competitive bidding required.

(a) With the exception of contracts for public works whose competitive bidding requirements are governed exclusively by Title 39, all expenditure of funds of whatever nature for labor, services, work, or for the purchase of materials, equipment, supplies, or other personal property involving fifteen thousand dollars ($15,000) or more, and the lease of materials, equipment, supplies, or other personal property where the lessee is, or becomes legally and contractually, bound under the terms of the lease, to pay a total amount of fifteen thousand dollars ($15,000) or more, made by or on behalf of any state trade school, state junior college, state college, or university under the supervision and control of the Alabama Community College System, the Alabama Fire College, the district boards of education of independent school districts, the county commissions, the governing bodies of the municipalities of the state, and the governing boards of instrumentalities of counties and municipalities, including waterworks boards, sewer boards, gas boards, and other like utility boards and commissions, except as hereinafter provided, shall be made under contractual agreement entered into by free and open competitive bidding, on sealed bids, to the lowest responsible bidder. Prior to advertising for bids for an item of personal property or services, where a county, a municipality, or an instrumentality thereof is the awarding authority, the awarding authority may establish a local preference zone consisting of either the legal boundaries or jurisdiction of the awarding authority, or the boundaries of the county in which the awarding authority is located, or the boundaries of the Core Based Statistical Area in which the awarding authority is located. If no such action is taken by the awarding authority, the boundaries of the local preference zone shall be deemed to be the same as the legal boundaries or jurisdiction of the awarding authority. In the event a bid is received for an item of personal property or services to be purchased or contracted for from a person, firm, or corporation deemed to be a responsible bidder, having a place of business within the local preference zone where the county, a municipality, or an instrumentality thereof is the awarding authority, and the bid is no more than five percent greater than the bid of the lowest responsible bidder, the awarding authority may award the contract to the resident responsible bidder. In the event only one bidder responds to the invitation to bid, the awarding authority may reject the bid and negotiate the purchase or contract, providing the negotiated price is lower than the bid price.

(d) Notwithstanding subsection (a), in the event the lowest bid for an item of personal property or services to be purchased or contracted for is received from a foreign entity, where the county, a municipality, or an instrumentality thereof is the awarding authority, the awarding authority may award the contract to a responsible bidder whose bid is no more than 10 percent greater than the foreign entity if the bidder has a place of business within the local preference zone or is a responsible bidder from a business within the state that is a woman-owned enterprise, an enterprise of small business, as defined in Section 25-10-3, a minority-owned business enterprise, a veteran-owned business enterprise, or a disadvantaged-owned business enterprise. For the purposes of this subsection, foreign entity means a business entity that does not have a place of business within the state.

Title 41: State Government

Chapter 16: Public Contracts

Section §41-16-57: Municipal or county contracts for certain services exempt from competitive bid requirements.

(b) The awarding authority in the purchase of or contract for goods or services shall give preference, provided there is no sacrifice or loss in price or quality, to commodities produced in Alabama or sold by Alabama persons, firms, or corporations. Notwithstanding the foregoing, no county official, county commission, city council or city councilmen, or other public official charged with the letting of contracts or purchase of goods or services may specify the use of materials or systems by a sole source, unless:

(1) The governmental body can document that the sole source goods or services are of an indispensable nature, all other viable alternatives have been explored, and it has been determined that only these goods or services will fulfill the function for which the product is needed. Frivolous features will not be considered.

(2) No other vendor offers substantially equivalent goods or services that can accomplish the purpose for which the goods or services are required.

(3) All information substantiating the use of a sole source specification is documented in writing and is filed into the project file.

ALASKA

ALASKA RESIDENT BIDDER PREFERENCE

Title 29: Municipal Government

Chapter 71: General Provisions

Section 29.71.050. Procurement preferences for recycled Alaska products.

(a) Alaska recycled products shall be used in municipal procurements when the products are of comparable quality, of equivalent price, and appropriate for the intended use.

(b) Unless the procurement is governed by AS 29.71.040, in the evaluation of a bid or proposal for a procurement by a municipality, if a bid or proposal designates the use of recycled Alaska products for the products identified in the contract specifications, and if the recycled Alaska products meet the contract specifications, the bid or offer shall be decreased by the percentage of preference given to the recycled Alaska products under AS 36.30.332.

Title 35: Public Buildings, Works, And Improvements

Chapter 27: Art Works in Public Buildings and Facilities

Section 35.27.20: Art requirements for public buildings and facilities.

(g) The architect, superintendent, department, and the Alaska State Council on the Arts shall encourage the use of state cultural resources in these art works and the selection of Alaska resident artists for the commission of these art works.

Title 36: Public Contracts

Chapter 15: Alaska Product Preferences

Section 36.15.010: Use of local forest products required in projects financed by public money.

In a project financed by state money in which the use of timber, lumber, and manufactured lumber products is required, only timber, lumber, and manufactured lumber products originating in this state from local forests shall be used wherever practicable.

Title 36: Public Contracts

Chapter 15: Alaska Product Preferences

Section 36.15.050: Use of local agricultural and fisheries products required in purchases with state money.

(a) When agricultural products are purchased by the state or by a school district that receives state money, a preference not less than seven percent nor more than 15 percent shall be applied to the price of products harvested in the state.

(b) When fisheries products are purchased by the state or by a school district that receives state money, a preference not less than seven percent nor more than 15 percent shall be applied to the price of products harvested or processed within the jurisdiction of the state.

Title 36: Public Contracts

Chapter 30: State Procurement Code

Section 36.30.321: Alaska bidder and related preferences.

(a) If the bidder or offeror is an Alaska bidder, a five percent preference shall be applied to the price in the bid or proposal.

(b) Except as otherwise provided in (d), (e), or (g) of this section, if a bidder or offeror qualifies as an Alaska bidder and is offering services through an employment program, a 15 percent preference shall be applied to the price in the bid or proposal.

(c) If a bidder or offeror qualifies as an Alaska bidder and is an Alaska domestic insurer, and if the procurement is for an insurance-related contract, a five percent preference shall be applied to the price in the bid or proposal.

(d) A 10 percent preference shall be applied to a price in a bid or proposal if the bidder or offeror qualifies as an Alaska bidder and is a:

(1) sole proprietorship owned by a person with a disability;

(2) partnership under AS 32.06 or AS 32.11 if each of the partners is a person with a disability;

(3) limited liability company organized under AS 10.50 if each of the members is a person with a disability;

(4) corporation that is wholly owned by individuals, and each of the individuals is a person with a disability; or

(5) joint venture that is composed of ventures that qualify under (1) - (4) of this subsection.

(f) If a bidder or offeror qualifies as an Alaska bidder and is a qualifying entity, a five percent preference shall be applied to the price in the bid or proposal. The preference may not exceed $5,000. In this subsection:

(1) "Alaska veteran" means an individual who is both a resident of the state and a veteran;

(2) "qualifying entity" means a

(A) sole proprietorship owned by an Alaska veteran;

(B) partnership under AS 32.06 or AS 32.11 if a majority of the partners are Alaska veterans;

(C) limited liability company organized under AS 10.50 if a majority of the members are Alaska veterans; or

(D) corporation that is wholly owned by individuals, and a majority of the individuals are Alaska veterans;

(3) "veteran" means an individual who

(A) served in the

(i) armed forces of the United States, including a reserve unit of the United States armed forces; or

(ii) Alaska Territorial Guard, the Alaska Army National Guard, the Alaska Air National Guard, or the Alaska Naval Militia; and

(B) was separated from service under a condition that was not dishonorable.

(g) A bidder or offeror may not receive a preference under both (b) and (d) of this section for the same contract.

Title 36: Public Contracts

Chapter 30: State Procurement Code

Section 36.30.322: Use of local forest products.

(a) Only timber, lumber, and manufactured lumber products originating in this state from Alaska forests may be procured by an agency or used in construction projects of an agency unless:

(1) the manufacturers and suppliers who have notified the commissioner of commerce, community, and economic development of their willingness to manufacture or supply Alaska forest products have been given reasonable notice of the forest product needs of the procurement or project; and

(2) a manufacturer or supplier who has notified the commissioner of commerce, community, and economic development of its willingness to manufacture or supply Alaska forest products is not the low bidder after all applicable preferences have been applied to the price of the qualifying forest product under AS 36.30.336.

Title 36: Public Contracts

Chapter 30: State Procurement Code

Section 36.30.324: Use of Alaska products and recycled Alaska products.

Alaska products shall be used whenever practicable in procurements for an agency. Recycled Alaska products shall be used when they are of comparable quality, of equivalent price, and appropriate for the intended use.

Title 36: Public Contracts

Chapter 30: State Procurement Code

Section 36.30.328: Grant of Alaska products preference.

In the evaluation of a bid or proposal for a procurement for an agency, a bid or offer that designates the use of Alaska products identified in the contract specifications and designated as Class I, Class II, or Class III state products under AS 36.30.332 is decreased by the percentage of the value of the designated Alaska products under AS 36.30.332.

Title 36: Public Contracts

Chapter 30: State Procurement Code

Section 36.30.330: Penalty for failing to use designated products.

(a) If a successful bidder or offeror who designates the use of an Alaska product in a bid or proposal for a procurement for an agency fails to use the designated product for a reason within the control of the successful bidder or offeror, each payment under the contract shall be reduced according to the following schedule:

(1) for a Class I designated Alaska product -- four percent;

(2) for a Class II designated Alaska product -- six percent;

(3) for a Class III designated Alaska product -- eight percent.

(b) A person is not a responsible bidder or offeror if, in the preceding three years, the person has twice designated the use of an Alaska product in a bid or proposal for a procurement for an agency and has each time failed to use the designated Alaska product for reasons within the control of the bidder or offeror.

Title 36: Public Contracts

Chapter 30: State Procurement Code

Section 36.30.332: Classification of Alaska products.

(b) Materials and supplies with value added in the state that are

(1) more than 25 percent and less than 50 percent produced or manufactured in the state are Class I products;

(2) 50 percent or more and less than 75 percent produced or manufactured in the state are Class II products; and

(3) 75 percent or more produced or manufactured in the state are Class III products.

(c) In a bid or proposal evaluation a

(1) Class I product is given a three percent preference;

(2) Class II product is given a five percent preference;

(3) Class III product is given a seven percent preference.

Title 36: Public Contracts

Chapter 30: State Procurement Code

Section 36.30.336: Application of preferences.

(a) Except as provided in AS 36.15.050(g) and AS 36.30.321(g), the preferences provided in AS 36.15.050 and AS 36.30.321 -- 36.30.338 are cumulative. A bidder who would otherwise qualify for preferences under AS 36.30.321 may not be given a preference over another bidder who qualifies for the same preferences.

(b) Notwithstanding the other provisions of this chapter, AS 36.30.321 - 36.30.338 apply to all procurements subject to this chapter, except as provided in AS 36.15.050(h) and AS 36.30.322(b).

Alaska Administrative Code

Title 2: Administration

Chapter 12: Procurement

Article 4: Competitive Sealed Proposals

Section 2 AAC 12.260. Evaluation of proposals

(e) If a numerical rating system is used, an Alaska offeror's preference of at least 10 percent of the total possible value of the rating system must be assigned to a proposal of an offeror who qualifies as an Alaska bidder under AS 36.30.990(2). This subsection does not apply to solicitations or contracts for lease space under AS 36.30.080.

ARIZONA

ARIZONA RESIDENT BIDDER PREFERENCE

Title 34: Public Buildings and Improvements

Chapter 2: Employment of Contractors

Section 34.242: Preference for locally manufactured materials in awarding contracts for furnishing materials.

A. In awarding contracts for furnishing materials to construct a building or structure, or additions to or alterations of existing buildings or structures, either directly or through a contractor or subcontractor, to any political subdivision of this state, to be paid for from public funds, bidders who furnish materials produced or manufactured in this state shall be awarded the contract in preference to any competing bidder who furnishes materials not produced or manufactured in this state whenever

the bid of the competing bidder, quality and suitability considered, is less than five per cent lower.

B. Bidders may not claim a preference pursuant to both this section and section 34-243. Bidders claiming a preference pursuant to this section shall be awarded a preference to any competing bidder claiming a preference pursuant to section 34-243 whenever the bid of the competing bidder claiming a preference pursuant to section 34-243, quality and suitability considered, is less than five per cent lower, but in no case may any bidder receive more than five per cent total preference.

Title 34: Public Buildings and Improvements

Chapter 2: Employment of Contractors

Section 34.243: Preference for materials supplied by resident dealers in awarding contracts for furnishing materials.

In awarding contracts for furnishing materials to construct a building or structure, or additions to or alterations of existing buildings or structures, either directly or through a contractor, to any political subdivision of this state, to be paid for from public funds, the contract shall be awarded to bidders who furnish materials supplied by a dealer who is a resident of this state who has for not less than two successive years immediately prior to submitting the bid paid real or personal property taxes assessed under title 42 in preference to a competing bidder who furnishes materials not supplied by the resident dealer, whenever the bid of the competing bidder, quality and suitability considered, is less than five per cent lower than that of the resident dealer.

ARKANSAS

ARKANSAS RESIDENT BIDDER PREFERENCE

(b)

(1)

(A) In the purchase of commodities by competitive bidding, all public agencies shall accept the lowest qualified bid from a firm resident in Arkansas.

(B) This bid shall be accepted only if the bid does not exceed the lowest qualified bid from a nonresident firm by more than five percent (5%) and if one (1) or more firms resident in Arkansas made written claim for a preference at the time the bids were submitted.

(C)

(i) In calculating the preference to be allowed, the appropriate procurement officials, pursuant to §§19-11-201 - 19-11-259, shall take the amount of each bid of the Arkansas dealers who claimed the preference and deduct five percent (5%) from its total.

(ii) If, after making such deduction, the bid of any Arkansas bidder claiming the preference is lower than the bid of the nonresident firm, then the award shall be made to the Arkansas firm which submitted the lowest bid, regardless of whether that particular Arkansas firm claimed the preference.

(2)

(A) The preference provided for in this section shall be applicable only in comparing bids where one (1) or more bids are by a firm resident in Arkansas and the other bid or bids are by a nonresident firm.

(B) This preference shall have no application with respect to competing bids if both bidders are firms resident in Arkansas, as defined in this section.

(C)

(i) All public agencies shall be responsible for carrying out the spirit and intent of this section in their procurement policies.

(ii) Any public agency which, through any employee or designated agent, is found guilty of violating the provisions of this section or committing an unlawful act under it, shall be guilty of a misdemeanor.

(D) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than six (6) months or a fine of not more than one thousand dollars ($1,000), or both.

(E)

(i) If any provision or condition of this subchapter conflicts with any provision of federal law or any rule or regulation made under federal law pertaining to federal grants-in-aid programs or other federal aid programs, such provision or condition shall not apply to such federal-supported contracts for the purchase of commodities to the extent that the conflict exists.

(ii) However, all provisions or conditions of this subchapter with which there is no conflict shall apply to contracts to purchase commodities to be paid, in whole or in part, from federal funds.

(c)

(1)

(A) This section applies only to projects designed to provide utility needs of a county or municipality.

(B) Those projects shall include without limitation pipeline installation, sanitary projects, and waterline, sewage, and water works.

(2) To the extent that federal purchasing laws or bidding preferences conflict, this subchapter does not apply to projects related to supplying water or wastewater utility services, operations, or maintenance to a federal military installation by a municipality of the state.

Title 19: Public Finance

Chapter 11: Purchasing and Contracts

Subchapter 3: Bidding - State Industry Priority

Section 19.11.304: Priority for state industries.

In the bidding process for the sale of products for use by the state, bids submitted by private industries located within the State of Arkansas and employing Arkansas taxpayers shall be given priority over bids submitted by out-of-state penal institutions employing convict labor.

Title 19: Public Finance

Chapter 11: Purchasing and Contracts

Subchapter 3: Bidding - State Industry Priority

Section 19.11.305: Award to lowest state bidder - Exceptions.

Subject to any applicable bonding requirements, in all bidding procedures involving a bid by one (1) or more out-of-state penal institutions and a bid by one (1) or more private industries located within the State of Arkansas, the contract shall be awarded to the sole Arkansas bidder or lowest Arkansas bidder if the Arkansas bidder is not underbid by more than five percent (5%), as provided in §19-11-259, by another representative of private industry located outside the State of Arkansas or by more than fifteen percent (15%) by an out-of-state correctional institution.

Title 19: Public Finance

Chapter 11: Purchasing and Contracts

Subchapter 3: Bidding - State Industry Priority

Section 19.11.306: Underbid by nonresident industry or penal institution

Subject to any applicable bonding requirements, in the event that a private Arkansas bidder is underbid by more than five percent (5%), as provided in §19-11-259, by another representative of private industry located outside the State of Arkansas or is underbid by more than fifteen percent (15%) by an out-of-state correctional institution, the state contract shall be awarded to the lowest responsible bidder, whether that bidder is a penal or correctional institution or is a representative of private industry.

Title 19: Public Finance

Chapter 11: Purchasing and Contracts

Subchapter 8: Procurement of Professional Services

Section 19.11.803: Evaluation of Qualifications.

In evaluating the qualifications of each firm, the state agency or political subdivision shall consider:

(1) The specialized experience and technical competence of the firm with respect to the type of professional services required;

(2) The capacity and capability of the firm to perform the work in question, including specialized services, within the time limitations fixed for the completion of the project;

(3) The past record of performance of the firm with respect to such factors as control of costs, quality of work, and ability to meet schedules and deadlines; and

(4) The firm's proximity to and familiarity with the area in which the project is located.

CALIFORNIA

CALIFORNIA RESIDENT BIDDER PREFERENCE

Government Code - GOV

Title 1: General

Division 5: Public Work and Public Purchases

Chapter 4: Preference for Materials

Section 4361: Services and supplies of agricultural aircraft operators.

Public officers and bodies charged with the purchase or the letting of contracts for services or supplies for any public use may give such contracts and purchase such services and supplies from agricultural aircraft operators who are residents of California if the bids of such persons, or the prices quoted by them, do not exceed by more than 5 percent the lowest bids or prices quoted by agricultural aircraft operators who are not residents of California.

Government Code - GOV

Title 1: General

Division 5: Public Work and Public Purchases

Chapter 10.5: Target Area Contract Preference Act

Section 4530 - 4535.3

4531: The Legislature hereby declares that it serves a public purpose, and is of benefit to the state, to encourage and facilitate job maintenance and job development in distressed and declining areas of cities and towns in the state. It is the intent of the Legislature to further these goals by providing appropriate preferences to California based companies submitting bids or proposals for state contracts to be performed at worksites in distressed areas by persons with a high risk of unemployment when the contract is for goods or services in excess of one hundred thousand dollars ($100,000).

4532: As used in this chapter:

(a) "California-based company" means either of the following:

(1) A business or corporation whose principal office is located in California, and the owners, or officers if the entity is a corporation, are domiciled in California.

(2) A business or corporation that has a major office or manufacturing facility located in California and that has been licensed by the state on a continuous basis to conduct business within the state and has continuously employed California residents for work within the state during the three years prior to submitting a bid or proposal for a state contract.

4533: Whenever the state prepares a solicitation for a contract for goods in excess of one hundred thousand dollars ($100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference to California-based companies who demonstrate and certify under penalty of perjury that of the total labor hours required to manufacture the goods and perform the contract, at least 50 percent of the hours shall be accomplished at an identified worksite or worksites located in a distressed area.

4533.1: Where a bidder complies with the provisions of Section 4533, or the worksite or worksites where at least 50 percent of the labor required to perform the contract is within commuting distance of a distressed area, the state shall award a 1-percent preference for bidders who certify under penalty of perjury to hire persons with high risk of unemployment equal to 5 to 9 percent of its work force during the period of contract performance; a 2-percent preference for bidders who shall agree to hire persons with high risk of unemployment equal to 10 to 14 percent of its work force during the period of contract performance; a 3-percent preference for bidders who shall agree to hire persons with high risk of unemployment equal to 15 to 19 percent of its work force during the period of contract performance; and a 4-percent preference for bidders who shall agree to hire persons with high risk of unemployment equal to 20 or more percent of its work force during the period of contract performance.

4534:

(a) In evaluating proposals for contracts for services in excess of one hundred thousand dollars ($100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference on the price submitted by California-based companies that demonstrate and certify under penalty of perjury that not less than 90 percent of the total labor hours required to perform the contract shall be accomplished at an identified worksite or worksites.

(b) Where a bidder complies with the provisions of subdivision (a), the state shall award the additional preferences as set forth in Section 4533.1 as appropriate.

4535.2:

(a) The maximum preference and incentive a bidder may be awarded pursuant to this chapter and any other provision of law shall be 15 percent. However, in no case shall the maximum preference and incentive cost under this chapter exceed fifty thousand dollars ($50,000) for any bid, nor shall the combined cost of preferences and incentives granted pursuant to this chapter and any other provision of law exceed one hundred thousand dollars ($100,000). In those cases where the 15-percent cumulated preference and incentive cost would exceed the one hundred thousand dollar ($100,000) maximum preference and incentive cost limit, the one hundred thousand dollar ($100,000) maximum preference and incentive cost limit shall apply.

(b) Notwithstanding the provisions of this chapter, small business bidders qualified in accordance with Section 14838 shall have precedence over non-small business bidders in that the application of any bidder

preference for which non-small business bidders may be eligible, including the preference contained in this chapter, shall not result in the denial of the award to a small business bidder. This subdivision shall apply to those cases where the small business bidder is the lowest responsible bidder, as well as to those cases where the small business bidder is eligible for award as the result of application of the 5-percent small business bidder preference and incentive.

Government Code - GOV

Title 2: Government of the State of California

Division 3: Executive Department

Part 5.5: Department of General Services

Chapter 6.5 Small Business Procurement and Contract Act

Section 14835-14843: General Provisions

14838: In order to facilitate the participation of small business, including microbusiness, in the provision of goods, information technology, and services to the state, and in the construction (including alteration, demolition, repair, or improvement) of state facilities, the directors of the department and other state agencies that enter those contracts, each within their respective areas of responsibility, shall do all of the following:

(a) Establish goals, consistent with those established by the Office of Small Business and Disabled Veteran Business Enterprise Services, for the extent of participation of small businesses, including microbusinesses, in the provision of goods, information technology, and services to the state, and in the construction of state facilities.

(b) Provide for small business preference, or non-small business preference for bidders that provide for small business and microbusiness subcontractor participation, in the award of contracts for goods, information technology, services, and construction, as follows:

(1) In solicitations where an award is to be made to the lowest responsible bidder meeting specifications, the preference to small business and microbusiness shall be 5 percent of the lowest responsible bidder meeting specifications. The preference to non-small business bidders that provide for small business or microbusiness subcontractor participation shall be, up to a maximum of 5 percent of the lowest responsible bidder meeting specifications, determined according to rules and regulations established by the Department of General Services.

(2) In solicitations where an award is to be made to the highest scored bidder based on evaluation factors in addition to price, the preference to small business or microbusiness shall be 5 percent of the highest responsible bidder's total score. The preference to non-small business bidders that provide for small business or microbusiness subcontractor participation shall be up to a maximum 5 percent of the highest responsible bidder's total score, determined according to rules and regulations established by the Department of General Services.

(3) The preferences under paragraphs (1) and (2) shall not be awarded to a noncompliant bidder and shall not be used to achieve any applicable minimum requirements.

(4) The preference under paragraph (1) shall not exceed fifty thousand dollars ($50,000) for any bid, and the combined cost of preferences granted pursuant to paragraph (1) and any other provision of law shall not exceed one hundred thousand dollars ($100,000). In bids in which the state has reserved the right to make multiple awards, this fifty thousand dollar ($50,000) maximum preference cost shall be applied, to the extent possible, so as to maximize the dollar participation of small businesses, including microbusinesses, in the contract award.

(c) Give special consideration to small businesses and microbusinesses by both:

(1) Reducing the experience required.

(2) Reducing the level of inventory normally required.

(d) Give special assistance to small businesses and microbusinesses in the preparation and submission of the information requested in Section 14310.

(e) Under the authorization granted in Section 10163 of the Public Contract Code, make awards, whenever feasible, to small business and microbusiness bidders for each project bid upon within their prequalification rating. This may be accomplished by dividing major projects into subprojects so as to allow a small business or microbusiness contractor to qualify to bid on these subprojects.

(f) Small business and microbusiness bidders qualified in accordance with this chapter shall have precedence over non-small business bidders in that the application of a bidder preference for which non-small business bidders may be eligible under this section or any other provision of law shall not result in the denial of the award to a small business or microbusiness bidder. In the event of a precise tie between the low responsible bid of a bidder meeting specifications of a small business or microbusiness, and the low responsible bid of a bidder meeting the specifications of a disabled veteran-owned small business or microbusiness, the contract shall be awarded to the disabled veteran-owned small business or microbusiness. This provision applies if the small business or microbusiness bidder is the lowest responsible bidder, as well as if the small business or microbusiness bidder is eligible for award as the result of application of the small business and microbusiness bidder preference granted by subdivision (b).

14838.4. No small business preference shall be allowed if allowing the small business preference would result in a computed bid of the preference recipient which would exceed the amount of funds appropriated by the Legislature for the construction project, plus any augmentation that may be made by the State Public Works Board pursuant to authority granted in the annual Budget Act.

Government Code - GOV

Title 2: Government of the State of California

Division 3: Executive Department

Part 10b: State Building Construction

Chapter 2.1: Art in Public Buildings

Section 15813.3

In order to carry out the purposes of this chapter, the State Architect and the council, jointly, shall do all of the following:

(a)

(1) Determine and implement procedures for the purchase or lease by written contract of existing works of art from an artist or the artist's authorized agent. Works of art to be purchased or leased shall be selected by the State Architect and the council, jointly, from lists of works prepared and submitted by the council or by advisory committees empowered by the council. In making such purchases or in executing such leases, preference may be given to artists who are California residents. No lease obligation shall be incurred under the provisions of this chapter without the prior approval of the Department of Finance.

(2) Determine and implement procedures, one of which shall provide for competition among artists, for the selection and commissioning of artists by written contract to create works of art. Commissioned artists shall be selected by the State Architect and the council, jointly, from

lists of qualified and available artists prepared and submitted by the council or by advisory committees empowered by the council. In making such contracts, preference may be given to artists who are California residents.

Code of Regulations - CCR

Title 2: Administration

Division 2: Financial Operations

Chapter 3: Department of General Services

Subchapter 8: Office of Small Business Procurement and Contracts

Article 2: Small Business Preference

Section 1896.6: Application of the Small Business and Non-Small Business Preferences

(a) Small businesses will be granted the five percent (5%) small business preference on a bid evaluation by an awarding department when a responsible non-small business has submitted the lowest-priced, responsive bid or a bid that has been ranked as the highest scored bid pursuant to a solicitation evaluation method described in §1896.8, and when the small business:

(1) Has included in its bid a notification to the awarding department that it is a small business or that it has submitted to OSDS a complete application pursuant to §1896.14(a) no later than 5:00 p.m. on the bid due date, and is subsequently certified by OSDS as a small business; and

(2) Has submitted a timely, responsive bid; and

(3) Is determined to be a responsible bidder.

(b) Non-small business bidders will be granted a five percent (5%) non-small business subcontracting preference on a bid evaluation by an awarding department when a responsible non-small business has submitted the lowest-priced responsive bid or a bid that has been ranked as the highest scored bid pursuant to a solicitation evaluation method described in §1896.8, and when the non-small business bidder:

(1) Has included in its bid a notification to the awarding department that it commits to subcontract with at least twenty-five percent (25%) of its net bid price with one (1) or more small business; and

(2) Has submitted a timely, responsive bid; and

(3) Is determined to be a responsible bidder; and

(4) Submits a list of the small business(es) it commits to subcontract with for a commercially useful function in the performance of the contract. The list of subcontractors shall include their name, address, phone number, small business certification number (if applicable), a description of the work to be performed, and the dollar amount or percentage (as specified in the solicitation) per subcontractor.

Code of Regulations - CCR

Title 2: Administration

Division 2: Financial Operations

Chapter 3: Department of General Services

Subchapter 8: Office of Small Business Procurement and Contracts

Article 2: Small Business Preference

Section 1896.8: Computing the Small Business and the Non-Small Business Preferences.

(a) Awards Made to the Lowest Responsive, Responsible Bidder

(1) The five percent (5%) small business or non-small business subcontracting preferences are used for bid evaluation purposes when determining a contract award in the following situations:

(A) There is at least one (1) small business competing, and award of the contract will be made to the lowest responsive, responsible bidder. The preference shall be computed as follows:

1. Five percent (5%) is computed from the lowest, responsive and responsible bid of a business that is not a small business. This results in the preference amount.

2. The preference amount is subtracted from the small business' bid amount.

(B) There is at least one (1) non-small business competing that is subcontracting at least twenty-five percent (25%) of its net price bid to one (1) or more small businesses, and award of the contract will be made to the lowest responsive, responsible bidder. The preference shall be computed as follows:

1. Five percent (5%) is computed from the lowest, responsive and responsible bid of a business that is not a small business or is not subcontracting to a small business. This results in the preference amount.

2. The preference amount is subtracted from the bid of the non-small business that is subcontracting at least twenty-five percent (25%) of its net price bid to one or more small businesses.

(b) Awards Based on Highest Scored Proposal

(1) The five percent (5%) small business preference or non-small business subcontracting preferences are used for bid evaluation purposes when determining a contract award in the following situations:

(A) There is at least one (1) small business competing, and award of the contract is to be made to the highest scored responsive bid submitted by a responsible bidder following an evaluation process that weighs factors other than price, together in a formula with price. The preference shall be computed as follows:

1. The awarding department shall specify the minimum number of points, if any, that a bid must receive in order to be deemed responsive and of acceptable quality. If a small business does not achieve the specified minimum number of points, it shall not be entitled to the five percent (5%) preference.

2. Five percent (5%) of the score of the highest scored responsive bid submitted by a responsible non-small business is computed as specified in the solicitation. The result of the calculation is a number that represents the preference points.

3. The preference points are then included in the formula as specified in the solicitation to determine the highest scored bidder.

(B) There is at least one (1) non-small business competing that is subcontracting at least twenty-five percent (25%) of its net price bid to one (1) or more small businesses, and award of the contract is to be made to the highest scored responsive bid submitted by a responsible bidder following an evaluation process that weighs factors other than price, together in a formula with price. The preference shall be computed as follows:

1. The awarding department shall specify the minimum number of points, if any, that a bid must receive in order to be deemed responsive and of acceptable quality. If a non-small business does not achieve the specified minimum number of points, it shall not be entitled to the five percent (5%) preference.

2. If the non-small business achieves the specified minimum number of points, five percent (5%) of the score of the highest scored responsive bid submitted by a responsible non-small business that is not subcon-

tracting a minimum of twenty-five percent (25%) of its net price bid to one (1) or more small businesses is computed as specified in the solicitation. The result of the calculation is a number that represents the preference points.

3. The preference points are then included in the formula as specified in the solicitation to determine the highest scored bidder.

(c) If, after application of the small business preference to the bid of a small business, that bid is equal to the lowest priced, responsive bid from a responsible non-small business, or equal to the highest scored bid offered by a responsible non-small business, as applicable, the contract shall be awarded to the small business for the amount of its bid.

(d) If, after application of the non-small business subcontracting preference, a responsible non-small business that has submitted a responsive bid is the lowest bidder, and does not displace a small business from winning the award, the contract shall be awarded to the non-small business for the amount of its bid.

(e) In no event shall the amount of the small business or non-small business subcontracting preferences awarded on a single bid exceed fifty thousand dollars ($50,000), and in no event shall the combined cost of the small business or non-small business subcontracting preference and preferences awarded pursuant to any other provision of law exceed one hundred thousand dollars ($100,000). In bids that the state has reserved the right to award by line item, or make multiple awards, the small business preference shall be applied to maximize the participation of small businesses.

(f) In the event of a precise tie between the bid of a small business and the bid of a DVBE that is also a small business, the award shall go to the DVBE that is also a small business.

Code of Regulations - CCR

Title 2: Administration

Division 2: Financial Operations

Chapter 3: Department of General Services

Subchapter 8: Office of Small Business Procurement and Contracts

Article 3: Small Business Eligibility, Certification Process and Responsibilities

Section 1896.12: Eligibility for Certification as a Small Business

(a) To be eligible for certification as a small business, a business must meet all of the following qualifying criteria:

(1) It is independently owned and operated; and

(2) Its principal office is located in California; and

(3) The officers of the business (in the case of a corporation); officers and/or managers, or in the absence of officers and/or managers, all members in the case of a limited liability company; partners in the case of a partnership; or the owner(s) in all other cases, are domiciled in California; and

(4) It is not dominant in its field of operation(s), and

(5) It is either:

(A) A business that, together with all affiliates, has 100 or fewer employees, and annual gross receipts of fifteen million dollars ($15,000,000) or less as averaged for the previous three (3) tax years, as biennially adjusted by the Department in accordance with Government Code §14837(d)(3) (If the business or its affiliate(s) has been in existence for less than three (3) tax years, then the GAR will be based upon the number of years in existence); or

(B) A manufacturer as defined herein that, together with all affiliates, has 100 or fewer employees.

(b) To be eligible for designation as a microbusiness, a business must meet all the qualifying criteria in subparagraph (a)(1) - (4), and in addition, must be either:

(1) A business that, together with all affiliates, has annual gross receipts of five million, dollars ($5,000,000) or less as averaged for the previous three (3) tax years, as biennially adjusted by the Department in accordance with Government Code §14837(d)(3) (If the business or its affiliate(s) has been in existence for less than three (3) tax years, then the GAR will be based upon the number of years in existence); or

(2) A manufacturer as defined herein that, together with all affiliates, has 25 or fewer employees.

(c) Joint ventures may be certified as a small business or microbusiness when each individual business of the joint venture is a certified small business. The joint venture is established by written agreement to engage in and carry out a business venture for joint profit, for which purpose they combine their efforts, property, money, skills and/or knowledge. The joint venture shall not be subject to the average annual gross receipts and employee limits imposed by this subchapter.

Code of Regulations - CCR

Title 2: Administration

Division 2: Financial Operations

Chapter 3: Department of General Services

Subchapter 9: Small and Minority Business Procurement and Assistance Division - Target Area Contract Preference Act

Article 1: General Provisions

Section 1896.31: Worksite Preference/Contract for Goods.

Whenever a state agency prepares an invitation for bid (IFB) for a contract for the purchase of goods, the cost of which is estimated to be in excess of $100,000, except a contract where the worksite will be fixed by the terms of the contract, provision shall be made in the IFB for a 5 percent preference for California based companies who certify under the penalty of perjury that no less than 50 percent of the labor required to perform the contract shall be accomplished at a worksite or worksites located in a distressed area.

Code of Regulations - CCR

Title 2: Administration

Division 2: Financial Operations

Chapter 3: Department of General Services

Subchapter 9: Small and Minority Business Procurement and Assistance Division - Target Area Contract Preference Act

Article 1: General Provisions

Section 1896.32: Hiring Preference/Contract for Goods.

Where a bidder complies with the provisions of rule 1896.31 the state shall award additional preferences ranging from 1 percent to 4 percent in accordance with Government Code Section 4533.1 if the bidder certifies under penalty o perjury it will hire the specified percentage of persons with high risk of unemployment during the period of contract performance.

Code of Regulations - CCR

Title 2: Administration

Division 2: Financial Operations

Chapter 3: Department of General Services

Subchapter 9: Small and Minority Business Procurement and Assistance Division - Target Area Contract Preference Act

Article 1: General Provisions

Section 1896.33: Application of Preferences/Contract for Goods.

Preferences provided for by sections 1896.31 and 1896.32 for a contract for goods shall be granted in an amount equal to a corresponding percentage of the lowest responsible bid: provided, however, that for contract award purposes the total of any preferences for which the low responsible bidder qualifies under any provision of law shall be deducted from the total of any preferences to which a higher bidder may be entitled.

Code of Regulations - CCR

Title 2: Administration

Division 2: Financial Operations

Chapter 3: Department of General Services

Subchapter 9: Small and Minority Business Procurement and Assistance Division - Target Area Contract Preference Act

Article 1: General Provisions

Section 1896.34: Worksite Preference/Contract for Services

Whenever a state agency prepares an IFB or a request for proposals (RFP) for a contract for services, the cost of which is estimated to be in excess of $100,000, except an IFB or a RFP where the worksite is fixed by the terms of the contract, provision shall be made in the IFB or the RFP for a 5 percent preference on the price submitted by California based companies who certify under penalty of perjury that they shall perform the contract at a worksite or worksites located in a distressed area.

Code of Regulations - CCR

Title 2: Administration

Division 2: Financial Operations

Chapter 3: Department of General Services

Subchapter 9: Small and Minority Business Procurement and Assistance Division - Target Area Contract Preference Act

Article 1: General Provisions

Section 1896.35: Hiring Preference/Contract for Services

Where a bidder complies with the provisions of rule 1896.34 the state shall award additional preferences ranging from 1 percent to 4 percent in accordance with Government Code Section 4534.1 if the bidder certifies under penalty of perjury it will hire the specified percentages of persons with high risk of unemployment for contract performance.

Code of Regulations - CCR

Title 2: Administration

Division 2: Financial Operations

Chapter 3: Department of General Services

Subchapter 9: Small and Minority Business Procurement and Assistance Division - Target Area Contract Preference Act

Article 1: General Provisions

Section 1896.36: Application of Preference/Contract for Services

Preferences provided for by sections 1896.34 and 1896.35 for a contract for services shall be granted in an amount equal to a corresponding percentage of the price offered by the lowest responsible bid or the lowest responsible proposal: provided, however, that for contract award purposes the total of any preferences for which the low responsible bidder qualifies under any provision of law shall be deducted from the total of any preferences to which a higher bidder may be entitled.

Code of Regulations - CCR

Title 2: Administration

Division 2: Financial Operations

Chapter 3: Department of General Services

Subchapter 11: Employment and Economic Incentive Act Contract Preferences

Article 1, Section 1896.101: Worksite Preference/Contract for Goods.

Whenever a state agency prepares an invitation for bid (IFB) for a contract for the purchase of goods, the cost of which is estimated to be in excess of $100,000, except a contract where the worksite will be fixed by the terms of the contract, provision shall be made in the IFB for a 5-percent preference for California-based companies who certify under penalty of perjury that no less than 50 percent of the labor required to perform the contract shall be accomplished at a worksite or worksites located in a program area.

Code of Regulations - CCR

Title 2: Administration

Division 2: Financial Operations

Chapter 3: Department of General Services

Subchapter 11: Employment and Economic Incentive Act Contract Preferences

Article 1, Section 1896.102: Hiring Preference/Contract for Goods.

Where a bidder complies with the provisions of rule 1896.71 the state shall award additional preferences ranging from 1-percent to 4-percent in accordance with Government Code section 7095(b) if the bidder certifies under penalty of perjury it will hire the specified percentage of persons living in a high density unemployment area or enterprise zone qualified employees during the period of contract performance.

Code of Regulations - CCR

Title 2: Administration

Division 2: Financial Operations

Chapter 3: Department of General Services

Subchapter 11: Employment and Economic Incentive Act Contract Preferences

Article 1, Section 1896.103: Application of Preferences/Contract for Goods

Preferences provided for by sections 1896.71 and 1896.72 for a contract for goods shall be granted in an amount equal to a corresponding percentage of the lowest responsible bid: provided, however, that for contract award purposes the total of any preferences for which the low responsible bidder qualifies under any provision of law shall be deducted from the total of any preferences to which a higher bidder may be entitled.

Code of Regulations - CCR

Title 2: Administration

Division 2: Financial Operations

Chapter 3: Department of General Services

Subchapter 11: Employment and Economic Incentive Act Contract Preferences

Article 1, Section 1896.104: Worksite Preference/Contract for Services

Whenever a state agency prepares an IFB or a request for proposals (RFP) for a contract for services, the cost of which is estimated to be in excess of $100,000, except an IFB or a RFP where the worksite is fixed by the terms of the contract, provision shall be made in the IFB or the RFP for a 5-percent preference on the price submitted by California-based companies who certify under penalty of perjury that they shall perform the contract at a worksite or worksites located in a program area.

Code of Regulations - CCR

Title 2: Administration

Division 2: Financial Operations

Chapter 3: Department of General Services

Subchapter 11: Employment and Economic Incentive Act Contract Preferences

Article 1, Section 1896.105: Hiring Preference/Contract for Services

Where a bidder complies with the provisions of rule 1896.74 the state shall award additional preferences ranging from 1-percent to 4-percent in accordance with Government Code section 7095(d) if the bidder certifies under penalty of perjury it will hire the specified percentages of persons living in high density unemployment areas or enterprise zone qualified employees for contract performance.

Public Contract Code - PCC

Division 2: General Provisions

Part 1: Administrative Provisions

Chapter 6: Awarding of Contracts

Section 6107

(a) As used in this section, "California company" means a sole proprietorship, partnership, joint venture, corporation, or other business entity that was a licensed California contractor on the date when bids for the public contract were opened and meets one of the following:

(1) Has its principal place of business in California.

(2) Has its principal place of business in a state in which there is no local contractor preference on construction contracts.

(3) Has its principal place of business in a state in which there is a local contractor construction preference and the contractor has paid not less than five thousand dollars ($5,000) in sales or use taxes to California for construction related activity for each of the five years immediately preceding the submission of the bid.

(b)

(1) When awarding contracts for construction, a state agency shall grant a California company a reciprocal preference as against a nonresident contractor from any state that gives or requires a preference to be given contractors from that state on its public entity construction contracts.

(2) The amount of the reciprocal preference shall be equal to the amount of the preference applied by the state of the nonresident contractor with the lowest responsive bid, except where the resident contractor is eligible for a California small business preference, in which case the preference applied shall be the greater of the two, but not both.

(3) If the contractor submitting the lowest responsive bid is not a California company and has its principal place of business in any state that gives or requires the giving of a preference on its public entity construction contracts to contractors from that state, and if a California company has also submitted a responsive bid, and, with the benefit of the reciprocal preference, the California company's bid is equal to or less than the original lowest responsive bid, the public entity shall award the contract to the California company at its submitted bid price.

(c)

(1) The bidder shall certify, under penalty of perjury, that the bidder qualifies as a California company.

(2) A nonresident contractor shall, at the time of bidding, disclose to the awarding agency any and all bid preferences provided to the nonresident contractor by the state or country in which the nonresident contractor has its principal place of business.

(d) The reciprocal preference is waived if the certification described in paragraph (1) of subdivision (c) does not appear on the bid.

(e) This section does not apply if application of this section might jeopardize the receipt of federal funds or the nonresident contractor certifies, under penalty of perjury, in its bid that its state of residency does not give a preference for contractors from that state on its public entity construction contracts.

COLORADO

COLORADO RESIDENT BIDDER PREFERENCE

Title 24: Government - State

Principal Departments

Article 30: department of Personnel - State Administrative Support Services

Part 14: Negotiation of Consultants' Contracts

Section 24-30-1403: Professional services - listings - preliminary selections

(2)

(a) For each proposed project for which professional services are required and where the fee for such professional services is estimated to equal or exceed twenty-five thousand dollars, the principal representative of the state agency or state institution of higher education for which the project is to be done shall evaluate current statements of qualifications and performance data on file with the office of the state architect and shall conduct discussions with no less than three persons regarding their qualifications, approaches to the project, abilities to furnish the required professional services, anticipated design concepts, and use of alternative methods of approach for furnishing the required professional services. The principal representative shall then select, in order of preference, no less than three persons ranked in order and deemed to be most highly qualified to perform the required professional services after considering, and based upon, such factors as the ability of professional personnel, past performance, willingness to meet time and budget requirements, location, current and projected workloads, the volume of work previously awarded to the person by the state agency or state institution of higher education, and the extent to which said persons have and will involve minority subcontractors, with the object of effecting an equitable distribution of contracts among qualified persons as long as such distribution does not violate the principle of selection of the most highly qualified person. In selection pursuant to this section, Colorado firms shall be given preference when qualifications appear to be equal. All selections are subject to approval by the principal representative, and all contracts between the principal representative and

such selected professionals shall be consistent with appropriation and legislative intent.

Title 24: Government - State

Procurement Code

Article 103: Source Selection and Contract Formation

Part 9: Procurement Preferences and Goals

Section 24-103-902: Low tie bids - award procedure and determination - bid preference

(1) If low tie bids are received in response to an invitation for bids for a supply contract, the following procedures are required:

(a) If the low tie bids are from a resident bidder and a nonresident bidder, the resident bidder shall be given preference over the nonresident bidder;

(b) If the low tie bids are from resident bidders, the procurement agent shall:

(I) Use a fair and reasonable procedure for determining which bidder receives the contract award that at a minimum provides for the presence, at the time and place the determination is made, of the bidders or the bidders' representatives and an impartial witness designated by the procurement agent who is not an employee of that procurement agent's agency; and

(II) Give the bidders at least five business days' written notice by certified mail of the date the determination will be made, of the procedure for making the determination, and that the bidders or the bidders' representatives may be present when the determination is made;

(c) If the low tie bids are only from nonresident bidders, the procurement agent shall follow the procedures in subsections (1)(b)(I) and (1)(b)(II) of this section;

(d) All other applicable provisions of the code that are not inconsistent with this section shall be followed.

(2) If the procurement agent determines that compliance with this section will cause denial of federal moneys that would otherwise be available or would otherwise be inconsistent with federal law, this section shall be suspended, but only to the extent necessary to prevent denial of the moneys or to eliminate the inconsistency with federal law.

Title 24: Government - State

Procurement Code

Article 103: Source Selection and Contract Formation

Part 9: Procurement Preferences and Goals

Section 24-103-907: Preference for state agricultural products

(1) When purchasing agricultural products, a governmental body shall award the contract to a resident bidder who produces products in the state, subject to the conditions in subsection (2) of this section.

(2) The preference in subsection (1) of this section shall apply only if the following conditions are met:

(a) The quality of available products produced in the state is equal to the quality of products produced outside the state;

(b) Available products produced in the state are suitable for the use required by the purchasing entity;

(c) The resident bidder is able to supply products produced in the state in sufficient quantity, as indicated in the invitation for bids; and

(d)

(I) The resident bidder's bid or quoted price for products produced in the state does not exceed the lowest bid or price quoted for products produced outside the state or the resident bidder's bid or quoted price reasonably exceeds the lowest bid or price quoted for products produced outside the state.

(II) For purposes of this subsection (2)(d), "reasonably exceeds" shall occur when the head of the governmental body, or other public officer charged by law with the duty to purchase such products, at his or her sole discretion, determines such higher bid to be reasonable and capable of being paid out of that governmental body's existing budget, without any further supplemental or additional appropriation.

(3)

(a) For purposes of this section, an agricultural product is produced in the state if it is grown, raised, or processed in the state.

(b) A resident bidder that seeks to qualify for the preference created by subsection (1) of this section shall certify to the governmental body inviting the bid and provide documentation confirming that the resident bidder's agricultural product was produced in the state. The governmental body may rely in good faith on such certification and documentation.

Title 24: Government - State

Procurement Code

Article 103: Source Selection and Contract Formation

Part 9: Procurement Preferences and Goals

Section 24-103-906: Bid preference - state contracts

(1)

(a) Except as provided in subsection (1)(b) of this section and in section 24-103-907, when a contract for commodities or services is to be awarded to a bidder, a resident bidder shall be allowed a preference against a nonresident bidder equal to the preference given or required by the state in which the nonresident bidder is a resident.

(b) Notwithstanding subsection (1)(a) of this section, when an invitation for bids for a contract for the purchase of commodities results in a low tie bid, the provisions of section 24-103-902 apply.

(c) For the purposes of this subsection (1), "commodities" includes supplies as defined in section 24-101-301 (47).

(2) If it is determined by the procurement agent responsible for awarding the bid that compliance with this section may cause denial of federal moneys which would otherwise be available or would otherwise be inconsistent with requirements of federal law, this section shall be suspended, but only to the extent necessary to prevent denial of the moneys or to eliminate the inconsistency with federal requirements.

Title 24: Government - State

Procurement Code

Article 103: Source Selection and Contract Formation

Part 9: Procurement Preferences and Goals

Section 24-103-908: Bid preferences - resident bidder - public projects - report - federal and state law - definitions

(2)

(a) When a construction contract for a public project is to be awarded to a bidder, a resident bidder shall be allowed a preference against a nonresident bidder from a state or foreign country equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident.

(b) If it is determined by the procurement agent responsible for awarding the bid that compliance with this section may cause denial of federal moneys which would otherwise be available or would otherwise be inconsistent with requirements of federal law, this section shall be suspended, but only to the extent necessary to prevent denial of the moneys or to eliminate the inconsistency with federal requirements.

(3)

(a) The executive director of the department of personnel, or the executive director's designee, shall use a national registry of bidding preferences published by another state or national organization or shall conduct a survey and compile the results into a list of which states provide a bidding preference on public works contracts for their resident bidders. The list must include details on the type of preference provided by each state, the amount of the preference, and how the preference is applied. The executive director shall complete the initial list on or before July 1, 2014, shall update the list periodically as needed but at least on an annual basis, and shall make the list available to the public on the department's website.

(b) In any bidding process for public works in which a bid is received from a bidder who is not a resident bidder and who is from a state that provides a percentage bidding preference to resident bidders of that state, a comparable percentage disadvantage shall be applied to the bid of that bidder.

(c) Any request for proposals issued by a state agency or political subdivision of the state must include a notice to nonresident bidders that if the nonresident bidder is from a state that provides a bidding preference to bidders from that state, then a comparable percentage disadvantage will be applied to the bid of that nonresident bidder. The notice must also specify that the bidder may obtain additional information from the department of personnel's website.

(d) The executive director of the department of personnel may promulgate rules necessary for the implementation of this section. Such rules shall be promulgated in accordance with the "State Administrative Procedure Act", article 4 of this title 24.

(4) Nothing in this section applies to any project that receives federal moneys. In addition, nothing in this section contravenes any existing treaty, law, agreement, or regulation of the United States. Contracts entered into in accordance with any treaty, law, agreement, or regulation of the United States do not violate this section to the extent of that accordance. The requirements of this section are suspended if such requirement would contravene any treaty, law, agreement, or regulation of the United States, or would cause denial of federal moneys or preclude the ability to access federal moneys that would otherwise be available.

Title 43: Transportation - General and Administrative

Article 1: General and Administrative

Part 14: Design-Build Contracts

Section 43-1-1406: General Procedures

(2) Except as provided in this subsection (2), the department shall allow the preference to Colorado residents provided in section 24-103-908 in awarding an adjusted score design-build contract pursuant to this part 14. In evaluating and selecting a proposal for a design-build contract under this part 14, the department shall assign greater value to a proposal in proportion to the extent such proposal commits to using Colorado residents to perform work on the transportation project. If, however, the department determines that compliance with this subsection (2) may cause the denial of federal moneys that would otherwise be available for the transportation project or if such compliance would otherwise be inconsistent with the requirements of federal law, the department shall suspend the preference granted under this subsection (2) only to the extent necessary to prevent denial of federal moneys or to eliminate the inconsistency with federal law.

CONNECTICUT

CONNECTICUT RESIDENT BIDDER PREFERENCE

Title 4a: Administrative Services

Chapter 58: Purchases and Printing

Section 4a-51: Duties of Administrative Services Commissioner re-purchases.

(a) The Commissioner of Administrative Services shall:

(1) Purchase, lease or contract for all supplies, materials, equipment and contractual services required by any state agency, except as provided in sections 4-98 and 4a-57;

(2) enforce standard specifications established in accordance with section 4a-56;

(3) establish and operate a central duplicating and mailing room for state agencies located in or near the city of Hartford and such other places as he deems practical; and

(4) establish and operate or have supervisory control over other central supply services in such locations as may best serve the requirements of the state agencies.

(b) The Commissioner of Administrative Services, when purchasing or contracting for the purchase of dairy products, poultry, eggs, beef, pork, lamb, farm-raised fish, fruits or vegetables pursuant to subsection (a) of this section, shall give preference to dairy products, poultry, eggs, beef, pork, lamb, farm-raised fish, fruits or vegetables grown or produced in this state, when such products, poultry, eggs, beef, pork, lamb, farm-raised fish, fruits or vegetables are comparable in cost to other dairy products, poultry, eggs, beef, pork, lamb, farm-raised fish, fruits or vegetables being considered for purchase by the commissioner that have not been grown or produced in this state.

Title 4a: Administrative Services

Chapter 58: Purchases and Printing

Section 4a-59: Award of Contracts

(c) All open market orders or contracts shall be awarded to

(1) the lowest responsible qualified bidder, the qualities of the articles to be supplied, their conformity with the specifications, their suitability to the requirements of the state government and the delivery terms being taken into consideration and, at the discretion of the Commissioner of Administrative Services, life-cycle costs and trade-in or resale value of the articles may be considered where it appears to be in the best interest of the state, (2) the highest scoring bidder in a multiple criteria bid, in accordance with the criteria set forth in the bid solicitation for the contract, or (3) the proposer whose proposal is deemed by the awarding authority to be the most advantageous to the state, in accordance with the criteria set forth in the request for proposals, including price and evaluation factors. Notwithstanding any provision of the general statutes to the contrary, each state agency awarding a contract through competitive negotiation shall include price as an explicit factor in the criteria in the request for proposals and for the contract award. In considering past performance of a bidder for the purpose of determining the "lowest responsible qualified bidder" or the "highest scoring bidder in a multiple criteria bid", the commissioner shall evaluate the skill, ability and integrity of the bidder in terms of the bidder's fulfillment of past contract obligations and the bidder's experience or lack of experience in delivering supplies, materials, equipment or contractual services of the

size or amount for which bids have been solicited. In determining the lowest responsible qualified bidder for the purposes of this section, the commissioner may give a price preference of up to ten per cent for (A) the purchase of goods made with recycled materials or the purchase of recyclable or remanufactured products if the commissioner determines that such preference would promote recycling or remanufacturing. As used in this subsection, "recyclable" means able to be collected, separated or otherwise recovered from the solid waste stream for reuse, or for use in the manufacture or assembly of another package or product, by means of a recycling program which is reasonably available to at least seventy-five per cent of the state's population, "remanufactured" means restored to its original function and thereby diverted from the solid waste stream by retaining the bulk of components that have been used at least once and by replacing consumable components and "remanufacturing" means any process by which a product is remanufactured; (B) the purchase of motor vehicles powered by a clean alternative fuel; (C) the purchase of motor vehicles powered by fuel other than a clean alternative fuel and conversion equipment to convert such motor vehicles allowing the vehicles to be powered by either the exclusive use of clean alternative fuel or dual use of a clean alternative fuel and a fuel other than a clean alternative fuel. As used in this subsection, "clean alternative fuel" means natural gas, electricity, hydrogen or propane when used as a motor vehicle fuel; or (D) the purchase of goods or services from a micro business, except that, in the case of a veteran-owned micro business, the commissioner may give a price preference of up to fifteen per cent. As used in this subsection, "micro business" means a business with gross revenues not exceeding three million dollars in the most recently completed fiscal year, "veteran-owned micro business" means a micro business of which at least fifty-one per cent of the ownership is held by one or more veterans and "veteran" means any person (i) honorably discharged from, or released under honorable conditions from active service in, the armed forces, as defined in section 27-103, or (ii) with a qualifying condition, as defined in said section, who has received a discharge other than bad conduct or dishonorable from active service in the armed forces. All other factors being equal, preference shall be given to supplies, materials and equipment produced, assembled or manufactured in the state and services originating and provided in the state. Except with regard to contracts that may be paid for with United States Department of Transportation funds, if any such bidder refuses to accept, within ten days, a contract awarded to such bidder, such contract may be awarded to the next lowest responsible qualified bidder or the next highest scoring bidder in a multiple criteria bid, whichever is applicable, and so on until such contract is awarded and accepted. Except with regard to contracts that may be paid for with United States Department of Transportation funds, if any such proposer refuses to accept, within ten days, a contract awarded to such proposer, such contract shall be awarded to the next most advantageous proposer, and so on until the contract is awarded and accepted. There shall be a written evaluation made of each bid. This evaluation shall identify the vendors and their respective costs and prices, document the reason why any vendor is deemed to be nonresponsive and recommend a vendor for award. A contract valued at one million dollars or more shall be awarded to a bidder other than the lowest responsible qualified bidder or the highest scoring bidder in a multiple criteria bid, whichever is applicable, only with written approval signed by the Commissioner of Administrative Services and by the Comptroller. The commissioner shall post on the department's Internet web site all awards made pursuant to the provisions of this section.

Title 4e: State Contracting

Chapter 62: State Contracting Standards Board

Section 4e-48: Reciprocal preference provision in award of state contracts. Definitions. Application of provision. List of states with in-state preference published by the State Contracting Standards Board.

(a) For the purposes of this section, "nonresident bidder" means a business that is not a resident of the state that submits a bid in response to an invitation to bid by a state contracting agency, "resident bidder" means a business that submits a bid in response to an invitation to bid by a state contracting agency and that has paid unemployment taxes or income taxes in this state during the twelve calendar months immediately preceding submission of such bid, has a business address in the state and has affirmatively claimed such status in the bid submission, "contract" means "contract" as defined in section 4e-1 and "state contracting agency" means "state contracting agency", as defined in section 4e-1.

(b) Notwithstanding any provision of law, in the award of a contract, after the original bids have been received and an original lowest responsible qualified bid is identified, a state contracting agency shall add a per cent increase to the original bid of a nonresident bidder equal to the per cent, if any, of the preference given to such nonresident bidder in the state in which such nonresident bidder resides. If, after application of such per cent increase, the bidder that submits the lowest responsible qualified bid is a resident bidder, the state contracting agency shall award such contract to such resident bidder provided such resident bidder agrees, in writing, to meet the original lowest responsible qualified bid. Any such agreement by such resident bidder to meet the original lowest responsible qualified bid shall be made not later than seventy-two hours after such resident bidder receives notice from such state contracting agency that such resident bidder may be awarded such contract if such resident bidder agrees to meet the original lowest responsible qualified bid.

Title 31: Labor

Chapter 557: Employment Regulation

Section Sec. 31-52: Preference to state citizens in construction of public buildings. Enforcement of violations.

(a) In the employment of mechanics, laborers and workmen in the construction, remodeling or repairing of any public building, by the state or any of its agents or by persons contracting therewith, preference shall be given to citizens of the state, and, if they cannot be obtained in sufficient numbers, then to citizens of the United States. Any contractor who knowingly and willfully employs any person in violation of any provision of this subsection shall be fined two hundred dollars for each week or fraction of a week each such person is so employed.

(b) Each contract for the construction or repair of any building under the supervision of the state or any of its agents shall contain the following provisions: "In the employment of labor to perform the work specified herein, preference shall be given to citizens of the United States, who are, and continuously for at least three months prior to the date hereof have been, residents of the labor market area, as established by the Labor Commissioner, in which such work is to be done, and if no such qualified person is available, then to citizens who have continuously resided in the county in which the work is to be performed for at least three months prior to the date hereof, and then to citizens of the state who have continuously resided in the state at least three months prior to the date hereof." In no event shall said provisions be deemed to abrogate or supersede, in any manner, any provision regarding residence requirements contained in a collective bargaining agreement to which the contractor is a party.

DELAWARE

DELAWARE RESIDENT BIDDER PREFERENCE

Title 29: State Government

Chapter 69: State Procurement

Subchapter: 4: Public Works Contracting

Section 6962: Large public works contract procedures

(d) Bid specifications and plans requirement

(4) Special provisions

(b) Preference for Delaware labor: In the construction of all public works for the State or any political subdivision thereof or by firms contracting with the State or any political subdivision thereof, preference in employment of laborers, workers or mechanics shall be given to bona fide legal citizens of the State who have established citizenship by residence of at least 90 days in the State. Each public works contract for the construction of public works for the State or any political subdivision thereof shall contain a stipulation that any person, company or corporation who violates this section shall pay a penalty to the Secretary of Finance equal to the amount of compensation paid to any person in violation of this section.

FLORIDA

FLORIDA RESIDENT BIDDER PREFERENCE

Florida Statutes

Title XVIII: Public Lands and Property

Chapter 255: Public Property and Publicly Owned Buildings

Section 255.04: Preference to home industries in building public buildings.

Every official board in the state, whether of the state, a county, or a municipality, which may be charged with the duty of erecting or constructing any public administrative or institutional building shall give preference, in the purchase of material and in letting contracts for the construction of such building, to materialmen, contractors, builders, architects, and laborers who reside within the state, whenever such material can be purchased or the services of such materialmen, contractors, builders, architects, and laborers can be employed at no greater expense than that which would obtain if such purchase was made from, or contract let or employment given to, a person residing beyond the limits of the state. However, this section in no way prohibits the right of any such official board to compare the quality of materials proposed for purchase and to compare the qualifications, character, responsibility, and fitness of materialmen, contractors, builders, and architects proposed for employment in its consideration of the purchase of materials or employment of persons. Notwithstanding the foregoing, no county official, board of county commissioners, school board, city council or city council members, or other public official, state board, or state agency charged with the letting of contracts or purchase of materials for the construction, modification, alteration, or repair of any publicly owned facility may specify the use of materials or systems by a sole source, unless:

(1) The governmental body, after consideration of all available alternative materials and systems, determines that the specification of a sole material or system is justifiable based upon its cost or interchangeability;

(2) The sole source specification has been recommended by the architect or engineer of record; and

(3) The consideration by, and the justifications of, the governmental body are documented, in writing, in the project file.

Florida Statutes

Title XIX: Public Business

Chapter 283: Public Printing

Section 283.35: Preference given printing within the state.

When awarding a contract to have materials printed, the agency, university, college, school district, or other political subdivision of this state awarding the contract shall grant a preference to the lowest responsible and responsive vendor having a principal place of business within this state. The preference shall be 5 percent if the lowest bid is submitted by a vendor whose principal place of business is located outside the state and if the printing can be performed in this state at a level of quality comparable to that obtainable from the vendor submitting the lowest bid located outside the state. As used in this section, the term "other political subdivision of this state" does not include counties or municipalities.

Florida Statutes

Title XIX: Public Business

Chapter 287: Procurement of Personal Property and Services

Part I: Commodities, Insurance, and Contractual Services

Section 287.082: Commodities manufactured, grown, or produced in state given preference.

Whenever two or more competitive sealed bids are received, one or more of which relates to commodities manufactured, grown, or produced within this state, and whenever all things stated in such received bids are equal with respect to price, quality, and service, the commodities manufactured, grown, or produced within this state shall be given preference.

Florida Statutes

Title XIX: Public Business

Chapter 287: Procurement of Personal Property and Services

Part I: Commodities, Insurance, and Contractual Services

Section 287.084: Preference to Florida businesses.

(1)

(a) When an agency, university, college, school district, or other political subdivision of the state is required to make purchases of personal property through competitive solicitation and the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is in a state or political subdivision thereof which grants a preference for the purchase of such personal property to a person whose principal place of business is in such state, then the agency, university, college, school district, or other political subdivision of this state shall award a preference to the lowest responsible and responsive vendor having a principal place of business within this state, which preference is equal to the preference granted by the state or political subdivision thereof in which the lowest responsible and responsive vendor has its principal place of business. In a competitive solicitation in which the lowest bid is submitted by a vendor whose principal place of business is located outside the state and that state does not grant a preference in competitive solicitation to vendors having a principal place of business in that state, the preference to the lowest responsible and responsive vendor having a principal place of business in this state shall be 5 percent.

(b) Paragraph (a) does not apply to transportation projects for which federal aid funds are available.

(c) As used in this section, the term "other political subdivision of this state" does not include counties or municipalities.

(2) A vendor whose principal place of business is outside this state must accompany any written bid, proposal, or reply documents with a written opinion of an attorney at law licensed to practice law in that foreign state, as to the preferences, if any or none, granted by the law of

that state to its own business entities whose principal places of business are in that foreign state in the letting of any or all public contracts.

(3)

(a) A vendor whose principal place of business is in this state may not be precluded from being an authorized reseller of information technology commodities of a state contractor as long as the vendor demonstrates that it employs an internationally recognized quality management system, such as ISO 9001 or its equivalent, and provides a warranty on the information technology commodities which is, at a minimum, of equal scope and length as that of the contract.

(b) This subsection applies to any renewal of any state contract executed on or after July 1, 2012.

Florida Statutes

Title XIX: Public Business

Chapter 287: Procurement of Personal Property and Services

Part I: Commodities, Insurance, and Contractual Services

Section 287.092: Preference to certain foreign manufacturers.

Any foreign manufacturing company with a factory in the state and employing over 200 employees working in the state shall have preference over any other foreign company when price, quality, and service are the same, regardless of where the product is manufactured.

Florida Statutes

Title XX: Veterans

Chapter 295: Laws Relating to Veterans: General Provisions

Section 295.187: Florida Veteran Business Enterprise Opportunity Act.

(4) VENDOR PREFERENCE.

(a) A state agency, when considering two or more bids, proposals, or replies for the procurement of commodities or contractual services, at least one of which is from a certified veteran business enterprise, which are equal with respect to all relevant considerations, including price, quality, and service, shall award such procurement or contract to the certified veteran business enterprise.

(b) Notwithstanding s. 287.057(11), if a veteran business enterprise entitled to the vendor preference under this section and one or more businesses entitled to this preference or another vendor preference provided by law submit bids, proposals, or replies for procurement of commodities or contractual services which are equal with respect to all relevant considerations, including price, quality, and service, the state agency shall award the procurement or contract to the business having the smallest net worth.

(c) Political subdivisions of the state are encouraged to offer a similar consideration to businesses certified under this section.

Florida Administrative Code

Title: Source Selection, Bid Openings and Contract Awards

Department: Public Service Commission

Division: Departmental

Chapter: Purchasing - General Purchasing Procedures

Section: 25-25-009: Source Selection, Bid Openings and Contract Awards

(5) Preference to Bidders within the State. Preference shall be given to bidders located within the State of Florida when awarding contracts, whenever commodities bid can be purchased at no greater expense than, and at a level of quality comparable to, those bid by a bidder located outside of the State of Florida.

GEORGIA

GEORGIA RESIDENT BIDDER PREFERENCE

Title 8: Buildings & Housing

Chapter 5: Art in State Buildings

Section 8-5-5: Duties of the art council

(1)

(A) Determine and implement procedures for the purchase or lease by written contract of existing works of art from an artist or the artist's authorized agent. Works of art to be purchased or leased shall be selected by the council from lists of works prepared and submitted by advisory committees empowered by the council. In making such purchases or in executing such leases, preference may be given to artists who are Georgia residents. No lease obligation shall be incurred under the provisions of this chapter without the prior approval of the Office of Planning and Budget.

(B) Determine and implement procedures, one of which shall provide for competition among artists, for the selection and commissioning of artists by written contract to create works of art. Commissioned artists shall be selected by the council from lists of qualified and available artists prepared and submitted by advisory committees empowered by the council. In making such contracts, preference may be given to artists who are Georgia residents.

Title 50: State Government

Chapter 5: Department of Administrative Services

Article 3: State Purchasing

Part 1: General Authority, Duties, and Procedure

Section 50-5-60: Preference to supplies, equipment, materials, and agricultural products produced in Georgia generally; determination as to reasonableness of preference.

(a) The state and any department, agency, or commission thereof, when contracting for or purchasing supplies, materials, equipment, or agricultural products, excluding beverages for immediate consumption, shall give preference as far as may be reasonable and practicable to such supplies, materials, equipment, and agricultural products as may be manufactured or produced in this state. Such preference shall not sacrifice quality.

(b) Vendors resident in the State of Georgia are to be granted the same preference over vendors resident in another state in the same manner, on the same basis, and to the same extent that preference is granted in awarding bids for the same goods or services by such other state, or by any local government of such state, to vendors resident therein over vendors resident in the State of Georgia.

(c) In determining whether such a preference is reasonable in any case where the value of a contract for or purchase of such supplies, materials, equipment, or agricultural products exceeds $100,000.00, the state or its department, agency, or commission shall consider, among other factors, information submitted by the bidder which may include the bidder's estimate of the multiplier effect on gross state domestic product and the effect on public revenues of the state and the effect on public revenues of political subdivisions resulting from acceptance of a bid or offer to sell Georgia manufactured or produced goods as opposed to out-of-state manufactured or produced goods. Any such estimates shall be in writing. The state or its department, agency, or commission

shall not divide a contract or purchase which exceeds $100,000.00 for the purpose of avoiding the requirements of this subsection.

(d) Nothing in this Code section shall negate the requirements of Code Section 50-5-73.

Title 50: State Government

Chapter 5: Department of Administrative Services

Article 3: State Purchasing

Part 1: General Authority, Duties, and Procedure

Section 50-5-60.4: Use of compost and mulch in road building, land maintenance, and land development activities; preference to be given Georgia compost and mulch

(a) All state agencies, departments, and authorities responsible for the maintenance of public lands shall give preference to the use of compost and mulch in all road building, land maintenance, and land development activities. Preference shall be given to compost and mulch made in the State of Georgia from organics which are source separated from the state's nonhazardous solid waste stream.

Title 50: State Government

Chapter 5: Department of Administrative Services

Article 3: State Purchasing

Part 1: General Authority, Duties, and Procedure

Section 50-5-61. State and local authorities to give preference to supplies, materials, and agricultural products produced in Georgia; determination as to reasonableness of preference

(a) State and local authorities created by law, in the purchase of and contracting for any supplies, materials, equipment, and agricultural products, excluding beverages for immediate consumption, shall give preference as far as may be reasonable and practicable to such supplies, materials, equipment, and agricultural products as may be manufactured or produced in this state. Such preference shall not sacrifice quality.

(b) In determining whether such a preference is reasonable in any case where the value of a contract for or purchase of such supplies, materials, equipment, or agricultural products exceeds $100,000.00, the state or local authority shall consider, among other factors, information submitted by the bidder which may include the bidder's estimate of the multiplier effect on gross state domestic product and the effect on public revenues of the state and the effect on public revenues of political subdivisions resulting from acceptance of a bid or offer to sell Georgia manufactured or produced goods as opposed to out-of-state manufactured or produced goods. Any such estimates shall be in writing. No state or local authority shall divide a contract or purchase which exceeds $100,000.00 for the purpose of avoiding the requirements of this subsection.

(c) Nothing in this Code section shall negate the requirements of Code Section 50-5-73.

Title 50: State Government

Chapter 5: Department of Administrative Services

Article 3: State Purchasing

Part 1: General Authority, Duties, and Procedure

Section 50-5-63: Green building standards; exclusive use of Georgia forest products in state construction contracts; exception where federal regulations conflict

(a) As used in this Code section, the term:

(1) "Green building standards" means any system or tool created to rate the environmental efficiency and sustainability of the design, construction, operation, and maintenance of a building.

(2) "State building" means any facility owned, constructed, or acquired by the State of Georgia or any department, board, commission, or agency thereof, including state supported institutions of higher learning.

(b) No contract for the construction of, addition to, or repair or renovation of any facility, the cost of which is borne by this state or any department, agency, commission, authority, or political subdivision thereof, shall be let unless the contract contains a stipulation therein providing that the contractor or any subcontractor shall use exclusively Georgia forest products in the construction thereof, when forest products are to be used in such construction, addition, repair, or renovation, and if Georgia forest products are available.

(c) Whenever green building standards are applied to the new construction, operation, repair, or renovation of any state building, the entity applying the standards shall use only those green building standards that give certification credits equally to Georgia forest products grown, manufactured, and certified under the Sustainable Forestry Initiative, the American Tree Farm System, the Forest Stewardship Council, or other similar certifying organization approved by such entity.

(d) This Code section shall not apply when in conflict with federal rules and regulations concerning construction.

HAWAII

HAWAII RESIDENT BIDDER PREFERENCE

Hawaii Statutes

Title 9: Public Property, Purchasing, and Contracting

Chapter 103D: Hawaii Public Procurement Code

Part X: Preferences

Section 103D - 1001: Definitions

"Hawaii input" means the part of the cost of a product that is attributable to production, manufacturing, or other expenses arising within the State. "Hawaii input" includes but is not limited to:

(1) The cost to mine, excavate, produce, manufacture, raise, or grow the materials in Hawaii;

(2) The added value of that portion of the cost of imported materials that is incurred after landing in Hawaii, including but not limited to other articles, materials, and supplies, added to the imported materials;

(3) The cost of labor, variable overhead, utilities, and services, incurred in the production and manufacturing of materials or products in Hawaii; and

(4) Fixed overhead cost and amortization or depreciation cost, if any, for buildings, tools, and equipment, situated and located in Hawaii and used in the production or manufacturing of a product. "Hawaii products" means products that are mined, excavated, produced, manufactured, raised, or grown in the State and where the cost of the Hawaii input towards the product exceeds fifty per cent of the total cost of the product; provided that:

(1) Where the value of the input exceeds fifty per cent of the total cost, the product shall be classified as class I; and

(2) Where any agricultural, aquacultural, horticultural, silvicultural, floricultural, or livestock product is raised, grown, or harvested in the State, the product shall be classified as class II.

Hawaii Statutes

Title 9: Public Property, Purchasing, and Contracting

Chapter 103D: Hawaii Public Procurement Code

Part X: Preferences

Section 103D - 1002: Hawaii Products

(a) A purchasing agency shall review all specifications in a bid or proposal for purchase of Hawaii products where these products are available.

(b) All invitations for bids and requests for proposals shall:

(1) Include a description of the products that are listed in the Hawaii products list established pursuant to this section, which may be used to complete the scope of work specified in the invitation for bids or request for proposals; or

(2) Allow as part of the offer, self-certification that the Hawaii products qualify for preference;

provided that the offer may be evaluated along with any other published criteria in the solicitation, including but not limited to considerations such as specific nutritional content or its equivalent, timing of delivery, quality or freshness, and past performance, if applicable. All Hawaii products in any bid or request for proposal shall be made available for inspection, or additional information may be requested to verify that the Hawaii product meets the minimum specifications.

(c) All persons submitting bids or proposals to claim a Hawaii products preference shall designate in their bids which individual product and its price is to be supplied as a Hawaii product.

(d) Where a bid or proposal contains both Hawaii and non-Hawaii products, then for the purpose of selecting the lowest bid or purchase price only, the price or bid offered for a Hawaii product item shall be decreased by subtracting ten per cent for class I Hawaii product items bid or offered, or fifteen per cent for class II Hawaii product items bid or offered. The lowest total bid or proposal, taking the preference into consideration, shall be awarded the contract unless the bid or offer provides for additional award criteria. The contract amount of any contract awarded, however, shall be the amount of the bid or price offered, exclusive of the preferences.

(e) Upon receipt and approval of application for Hawaii products preference, the administrator shall include within the Hawaii products list, the names of producers and manufacturers in the State who are authorized to supply locally manufactured soil enhancement products to state agencies under subsection k. The administrator of the state procurement office shall maintain and distribute copies of the list to the purchasing agencies of the various governmental agencies.

(f) Any person not on the Hawaii products list desiring a preference pursuant to this section shall certify the Hawaii product when submitting a response to a solicitation; provided that the person certifies under penalty of sanctions that the offered Hawaii products meet the requirements for the preference. The procurement officer may request additional information deemed necessary to qualify a product and shall have sole discretion in determining qualification for the preference. Any offeror whose product is deemed not qualified for the preference may appeal by filing a written request for reexamination of facts to the procurement officer. Upon determining that the offeror is qualified for the preference, the procurement officer shall notify the administrator and the administrator shall place the offeror on the Hawaii products list.

(g) Solicitations shall contain a provision notifying offerors who request application of the preference that in the event of any change that materially alters the offeror's ability to supply Hawaii products, the offeror shall immediately notify the chief procurement officer in writing and the parties shall enter into discussions for the purposes of revising the contract or terminating the contract for convenience.

(h) Nothing in this section shall limit, restrict, or preclude a Hawaii product from any preferences, set-asides, or criteria that may be applied under section 103D-906, and this section shall operate instead to mutually enhance the purpose of this section and section 103D-906.

(i) This section shall not apply whenever its application will disqualify any governmental agency from receiving federal funds or aid.

(j) Any purchase made or any contract awarded or executed in violation of this section shall be void and no payment shall be made by any purchasing agency on account of the purchase or contract.

(k) For the purposes of this section, "soil enhancement product" means any nonchemical soil preparation, conditioner, or compost mixture designed to supplement aeration or add organic, green waste, or decaying matter to the soil; provided that the term does not include any plant fertilizer intended to stimulate or induce plant growth through chemical means. All state agencies shall include in their solicitations, when required, the soil enhancement products identified on the Hawaii products list pursuant to subsection e.

Hawaii Statutes

Title 9: Public Property, Purchasing, and Contracting

Chapter 103D: Hawaii Public Procurement Code

Part X: Preferences

Section 103D - 1003: Printing, binding, and stationery work

(a) All bids submitted for a printing, binding, or stationery section 103D-302 contract in which all work will be performed in-state, including all preparatory work, presswork, bindery work, and any other production-related work, to include storage and shipping costs, shall receive a fifteen per cent preference for purposes of bid evaluation.

(b) Where bids are for work performed in-state and out-of-state, then for the purpose of selecting the lowest bid submitted only, the amount bid for work performed out-of-state shall be increased by fifteen per cent. The lowest total bid, taking the preference into consideration, shall be awarded the contract unless the solicitation provides for additional award criteria. The contract amount awarded, however, shall be the amount of the price offered, exclusive of the preference.

Hawaii Statutes

Title 9: Public Property, Purchasing, and Contracting

Chapter 103D: Hawaii Public Procurement Code

Part X: Preferences

Section 103D - 1004: Reciprocity

(a) To ensure fair and open competition for Hawaii businesses engaged in contracting with other states, the chief procurement officer may impose a reciprocal preference against bidders from those states which apply preferences. The amount of the reciprocal preference shall be equal to the amount by which the non-resident preference exceeds any preference applied by this State.

In determining whether a bidder qualifies as a resident bidder, the definition used by the other state in applying a preference shall apply.

(b) The policy board shall adopt rules to implement this section.

(c) This section shall not apply to any transaction if the provisions of the section conflict with any federal laws.

Hawaii Statutes

Title 9: Public Property, Purchasing, and Contracting

Chapter 103D: Hawaii Public Procurement Code

Part X: Preferences

Section 103D - 1006: Software development businesses

(a) In any expenditure of public funds for software development, the use of Hawaii software development businesses shall be preferred. Where a package bid or response to a request for proposal contains both Hawaii and non-Hawaii software development businesses, then for the purpose of selecting the lowest bid or purchase price only, the bid or offer by a non-Hawaii software development business shall be increased by a preference percentage pursuant to rules adopted by the policy board.

(b) This section shall not apply when precluded by federal requirements for competitive bidding.

Hawaii Statutes

Title 13: Planning and Economic Development

Chapter 201: Department of Business, Economic Development, and Tourism

Section 201-4: Contracts

(a) The department of business, economic development, and tourism may contract with qualified private and public agencies, associations, firms, or individuals within or without the State in pursuance of its duties and functions; provided that preference shall be given to contractors within the State; provided further that preference shall be given to qualified parties who agree to match department funds in whole or in part with funds, equipment, materials, or services; provided further that funds to assist associations of producers, processors, or distributors of industrial products to introduce products which are new or inadequately known to consumers shall be matched by funds equal to at least forty per cent of the funds contracted for by the department or expenses incurred by the department in behalf of the associations; provided further that in instances where the promotion program will benefit one or more of the commodity groups as a whole or where a new or fragile commodity association or industry has the potential for growth but is unable to contribute its full matching share, the department may waive matching fund requirements for the first three years of any contract, but shall require twenty per cent matching funds for the fourth year of any such contract, and at least forty per cent matching funds for the fifth and all subsequent years of any such contract. The contracts shall be approved in writing by the department and shall specify the name of the contractor, the nature of the work to be performed, the manner in which funds may be expended, and such data as the state comptroller may require.

(b) When necessary to effectuate the purposes of this part, funds to state agencies may authorize expenditures for the purchase of machinery and equipment and the erection and conversion of structures, laboratories, and buildings within the State, which facilities shall be and remain under the jurisdiction of the agencies. Private agencies, associations, firms, or individuals shall provide all structures and equipment necessary to effectuate the purposes of funds made to them, in which cases the value which may be attributed to the use of the facilities shall be considered as matching funds. The department shall retain under its own jurisdiction only such furniture, office equipment, and other equipment as is necessary for administration purposes.

(c) The director of business, economic development, and tourism may prescribe rules, pursuant to chapter 91, to carry out provisions of this section relating to the manner in which associations of producers, processors, or distributors may be assisted. The rules may prescribe the qualifications for eligibility of associations for assistance under this section, the preferences and priorities in determining eligibility for such assistance, and the conditions, consistent with the purpose of this chapter, for the granting or the continuance of assistance to such associations.

Hawaii Administrative Rules

Title 3: Department of Accounting and General Services

Subtitle 11: Procurement Policy Board

Chapter 124: Preferences

Subchapter 1: Hawaii Products

Section: 3-124-5: Evaluation procedure and contract award

(a) In any expenditure of public funds resulting from a contract award, a purchasing agency shall purchase any required product from the Hawaii products list where the registered Hawaii product is available, provided the product meets the specifications and the selling price f.o.b. jobsite, unloaded, including applicable general excise tax and use tax and does not exceed the lowest delivered price in Hawaii f.o.b. jobsite, unloaded, including applicable general excise tax and use tax, of a similar non-Hawaii product by more than three per cent, where class I registered Hawaii products are involved, or five per cent where class II registered Hawaii products are involved, or ten per cent where class III registered Hawaii products are involved.

(b) For evaluation purposes, no preference shall be considered when only registered Hawaii products are offered.

(c) Where offers include both registered Hawaii products and non-Hawaii product~, for the purpose of determining the lowest evaluated offer, the offer for the Hawaii product shall be decreased by its applicable three per cent, five per cent, or ten per cent classification preference.

(d) The contract amount shall be the amount of the price offered, exclusive of any preference.

(e) Should more than one preference allowed by statute apply, the evaluated price shall be based on

application of applicable preferences in the order specified below. The preferences (1) through (7) in this subsection shall be applied to the original prices. The sum of the preferences, where applicable, shall be added to the original price, except that preferences (1) and (4) shall be subtracted from the Hawaii products or recycled products price.

(1) Hawaii products list, pursuant to section 103D-1002, HRS;

(2) Tax adjustment for tax exempt offerors, pursuant to section 103D-lO08, HRS;

(3) Preferred use of Hawaii software development businesses, pursuant to section 103D-1006, HRS;

(4) Recycled products, pursuant to section 103D - 1005, HRS;

(5) Reciprocal preference, pursuant to section 103D-1004, HRS;

(6) Printing, binding, and stationery work within the State, pursuant to section 103D-1003, HRS;

(7) Preference for persons with disabilities, pursuant to section 103D-1009, HRS.

(f) Should the price comparison for bids submitted pursuant to section 103D-302, HRS, after taking into consideration all applicable preferences, result in identical total prices, award shall be made to the offeror offering a registered Hawaii product in preference to a non-Hawaii product.

(g) For proposals submitted pursuant to section 103D-303, HRS, and after taking into consideration all applicable preferences, the procurement officer shall award the contract pursuant to section 3-122-57.

Hawaii Administrative Rules

Title 3: Department of Accounting and General Services

Subtitle 11: Procurement Policy Board

Chapter 124: Preferences

Subchapter 2: Printing, Binding, and Stationery Work

Section: 3-124-12: Evaluation procedure and contract award

(a) If the in-state price is low, award shall be made to the bidder offering to perform the work in Hawaii.

(b) If an out-of-state price is low, the following applies in determining the lowest evaluated price:

(1) The amount bid for work performed out of state shall be increased by fifteen per cent.

(2) The lowest total bid, taking the preference into consideration, shall be awarded the contract unless the solicitation provides for additional award criteria.

(c) The contract amount shall be the price offered, exclusive of any preferences.

(d) Should more than one preference allowed by statute apply, the evaluated price shall be based on application of applicable preferences in the order specified below. The preferences (1) through (7) in this subsection shall be applied to the original prices. The sum of the preferences, where applicable, shall be added to the original price, except that preferences (1) and (4) shall be subtracted from the Hawaii products or recycled products price.

(1) Hawaii products list, pursuant to section 103D-1002, HRS;

(2) Tax adjustment for tax exempt offerors, pursuant to section 103D-1008, HRS;

(3) Preferred use of Hawaii software development businesses, pursuant to section 103D-1006, HRS;

(4) Recycled products, pursuant to section 103D1005, HRS;

(5) Reciprocal preference, pursuant to section 103D-1004, HRS;

(6) Printing, binding, and stationery work within the State, pursuant to section 103D-I003, HRS;

(7) Preference for persons with disabilities, pursuant to section 103D-I009, HRS.

(e) Should the price comparison for bids submitted pursuant to section 103D-302, HRS, after taking into consideration all applicable preferences, result in identical total prices, award shall be made pursuant to section 3-122-34.

Hawaii Administrative Rules

Title 3: Department of Accounting and General Services

Subtitle 11: Procurement Policy Board

Chapter 124: Preferences

Subchapter 3: Reciprocal

Section: 3-124-17: Applicability

(a) The Chief procurement officer may impose a reciprocal against bidders from states which apply preferences.

(b) When applied to solicitations made pursuant to section 103D-302, HRS, a resident bidder of the State of Hawaii may be given a reciprocal preference equal to the preference the out-of-state bidder would be given in their own state. If the out-of-state bidder's state has a preference comparable to a Hawaii preference, the reciprocal preference shall be equal to the amount the out-of-state preference exceeds the Hawaii preference.

(c) At least annually, the administrator of the state procurement office shall make available a list of preference laws of all states to the chief procurement officers.

(d) These rules shall not apply to any transaction if the provisions of these rules conflict with any federal laws.

Hawaii Administrative Rules

Title 3: Department of Accounting and General Services

Subtitle 11: Procurement Policy Board

Chapter 124: Preferences

Subchapter 3: Reciprocal

Section: 3-124-18: Evaluation procedure and contract award

(a) When applied, the amount of the reciprocal preference as specified in section 3-124-17 shall be added for evaluation purposes to the out-of-state bidder's price.

(b) Pursuant to section 103D-302, HRS, the responsible and responsive bidder submitting the lowest evaluated bid, taking into consideration all applicable preferences, shall be awarded the contract.

(c) The contract amount shall be the price bid, exclusive of preference.

(d) Should more than one preference allowed by statute apply, the evaluated price shall be based on application of applicable preferences in the order specified below. The preferences (1) through (7) in this subsection shall be applied to the original prices. The sum of the preferences, where applicable, shall be added to the original price, except that preferences (1) and (4) shall be subtracted from the Hawaii products or recycled products price.

(1) Hawaii products list, pursuant to section 103D-1002, HRS;

(2) Tax adjustment for tax exempt offerors, pursuant to section 103D-1008, HRS;

(3) Preferred use of Hawaii software development businesses, pursuant to section 103D-1006, HRS;

(4) Recycled products, pursuant to section 103D-1005, HRS;

(5) Reciprocal preference, pursuant to section 103D-1004, HRS;

(6) Printing, binding, and stationery work within the State, pursuant to section 103D-1003, HRS;

(7) Preference for persons with disabilities, pursuant to section 103D-1009, HRS.

(e) Should the price comparison for bids submitted pursuant to section 103D-302, HRS, after taking into consideration all applicable preferences, result in identical total prices, award shall be made pursuant to section 3-122-34.

Hawaii Administrative Rules

Title 3: Department of Accounting and General Services

Subtitle 11: Procurement Policy Board

Chapter 124: Preferences

Subchapter 5: Software Development Businesses

Section: 3-124-34: Solicitation procedure

(a) Solicitations issued by a state purchasing agency shall contain a notice stating that a price preference will be given to Hawaii software development businesses. This price preference will be ten per cent of the price, and will be used for evaluation.

(b) All state purchasing agencies shall provide an appropriate space for offerors to indicate whether the bidder is requesting the Hawaii software development business preference.

(c) When a solicitation specifies that because of federal requirements, the Hawaii software development business preference will not be considered, the price preference shall not apply.

(d) Offerors requesting a preference shall submit a completed certification form, as required by section 3-124-33, with each offer. Previous certifications shall not apply unless allowed by the solicitation.

(e) Any offeror who fails to indicate that it is a Hawaii software development business will be presumed to be a non-Hawaii software development business and the offeror's offer will be increased by ten per cent for purposes of evaluation.

Hawaii Administrative Rules

Title 3: Department of Accounting and General Services

Subtitle 11: Procurement Policy Board

Chapter 124: Preferences

Subchapter 5: Software Development Businesses

Section: 3-124-35: Evaluation procedure and contract award

(a) In any expenditure of public funds for software development where offers received contain both Hawaii and non-Hawaii software development businesses, for the purpose of selecting the lowest offer only, the offer by a non-Hawaii software development business shall be increased by ten per cent.

(b) Should more than one preference allowed by statute apply, the evaluated price shall be based on

application of applicable preferences in the order specified herein. The preferences (1) through (7) in this subsection shall be applied to the original prices. The sum of the preferences, where applicable, shall be added to the original price, except that preferences (1) and (4) shall be subtracted from the Hawaii products or recycled products price.

(1) Hawaii products list, pursuant to section 103D-1002, HRS;

(2) Tax adjustment for tax exempt offerors, pursuant to section 103D-100B, HRS;

(3) Preferred use of Hawaii software development businesses, pursuant to section 103D-1006, HRS;

(4) Recycled products, pursuant to section 103D100S, HRS;

(5) Reciprocal preference, pursuant to section 103D-1004, HRS; and

(6) Printing, binding, and stationery work within the State, pursuant to section 103D-1003, HRS;

(7) Preference for persons with disabilities, pursuant to section 103D-1009, HRS.

(c) The responsible and responsive offeror submitting the lowest evaluated offer(s) pursuant to section 103D-302, HRS, taking into consideration all applicable preferences shall be awarded the contract.

(d) The contract amount shall be the original price offered, exclusive of any preference.

(e) Should the price comparison for bids submitted pursuant to section 103D-302, HRS, after taking into consideration all applicable preferences, result in identical evaluated prices for Hawaii software development projects, the procurement officer shall award the contract resulting from an invitation for bids pursuant to section 3-122-34.

(f) For proposals submitted pursuant to section 103D-303, HRS, and after taking into consideration all

applicable preferences, the procurement officer shall award the contract pursuant to section 3-122-57.

Hawaii Administrative Rules

Title 3: Department of Accounting and General Services

Subtitle 11: Procurement Policy Board

Chapter 124: Preferences

Subchapter 7: Tax Preference

Section: 3-124-55: Evaluation procedure and contract award

(a) As applicable, the price submitted by the tax exempt bidder shall be increased by the applicable retail rate of the Hawaii general excise tax and applicable use tax to determine the evaluated price for award purposes.

(b) The contract amount shall be the original price bid, exclusive of any preferences used in evaluating the bid.

(c) Should more than one preference allowed by statute apply, the evaluated price shall be based on application of applicable preferences in the order specified herein. The preferences (1) through (7) in this subsection shall be applied to the original prices. The sum of the preferences, where applicable, shall be added to the original price, except that preferences (1) and (4) shall be subtracted from the Hawaii products or recycled products price.

(1) Hawaii products list, if applicable, pursuant to section 103D-1002, HRS;

(2) Tax adjustment for tax exempt bidders, pursuant to section 103D-1008, HRS;

(3) Preferred use of Hawaii software development businesses, pursuant to section 103D-.1006, HRS;

(4) Recycled products, pursuant to section 103D1005, HRS;

(5) Reciprocal preference, pursuant to section 103D-1004, HRS; and

(6) Printing, binding, and stationery work within the State, pursuant to section 103D-1003, HRS;

(7) Preference for persons with disabilities, pursuant to section 103D-1009, HRS.

(d) Should the price comparison, after taking into consideration all applicable preferences, result in identical evaluated prices, the procurement officer shall award the contract pursuant to section 3-122-34.

Hawaii Administrative Rules

Title 3: Department of Accounting and General Services

Subtitle 11: Procurement Policy Board

Chapter 124: Preferences

Subchapter 8: Qualified Community Rehabilitation Programs

Section: 3-124-64: Evaluation procedure and contract award

(a) In evaluating offers for goods or services, all chief procurement officers and heads of purchasing agencies shall purchase from quali-

fied community rehabilitation programs provided the prices submitted by a noncommunity rehabilitation program shall be increased by the percentage allowed under section 103D-1009, HRS, to determine the lowest evaluated offeror.

(b) The contract amount shall be the amount of the price offered, exclusive of any preference.

(c) Should more than one preference allowed by statute apply, the evaluated price shall be based on application of applicable preferences in the order specified below. The preferences (1) through (7) in this subsection shall be applied to the original prices. The sum of the preferences, where applicable, shall be added to the original price, except that preferences (1) and (4) shall be subtracted from the Hawaii products or recycled products price.

(1) Hawaii products list, pursuant to section 103D-1002, HRS;

(2) Tax adjustment for tax exempt offerors, pursuant to section 103D-1008, HRS;

(3) Preferred use of Hawaii software development businesses, pursuant to section 103D-1006, HRS;

(4) Recycled products, pursuant to section 103D1005, HRS;

(5) Reciprocal preference, pursuant to section 103D-1004, HRS;

(6) Printing, binding, and stationery work within the State, pursuant to section 103D-1003, HRS;

(7) Preference for persons with disabilities, pursuant to section 103D-1009, HRS.

(d) Should the price comparison for bids submitted pursuant to section 103D-302, HRS, after taking into consideration all applicable preferences, result in identical total prices, award shall be made pursuant to section 3-122-34.

(e) For proposals submitted pursuant to section 103D-303, HRS, and after taking into consideration all applicable preferences, the procurement officer shall award the contract pursuant to section 3-122-57.

IDAHO

IDAHO RESIDENT BIDDER PREFERENCE

Idaho Statutes

Title 60: Public Printing and Official Notices

Chapter 1: Contracts for Printing - Publication of Notices

Section: 60-101: Contracts for State Printing - Execution within State - Exception

All printing, binding (excluding binding for state supported libraries), engraving and stationery work executed for or on behalf of the state, and for which the state contracts, or becomes in any way responsible, shall be executed within the state of Idaho, except as provided in section 60-103, Idaho Code. Provided, however, that this section shall not apply to any compilation, publication or codification of the laws of the state of Idaho.

Idaho Statutes

Title 60: Public Printing and Official Notices

Chapter 1: Contracts for Printing - Publication of Notices

Section: 60-103: Exception in case of excessive charge - Exceptions for lack of production facilities on bids on state or county work.

(a) Whenever it shall be established that any charge for printing, engraving, binding (excluding binding for state supported libraries) or stationery work is in excess of the charge usually made to private individuals for the same kind and quality of work, then the state or county officer or officers having such work in charge shall have power to have such work done outside of said county or state, but nothing in this chapter shall be construed to oblige any of said officers to accept any unsatisfactory work.

(b) Any work referred to in section 60-101 or 60-102, Idaho Code, and which is to be executed for or on behalf of the state or a county may be executed outside of this state in any case

(1) where the execution of such work shall require the use of a technique or process which cannot be performed through the use of physical production facilities located within this state and the use of such technique or process is essential to a necessary function to be served by the printing, binding, engraving or stationery work required;

(2) where, after a solicitation has been made or notice thereof has been given as required by section 67-9208, Idaho Code, no bid or proposal is made thereon by any person, firm or corporation proposing to execute such work within this state; or

(3) where, after a solicitation has been made or notice thereof given as required by section 67-9208, Idaho Code, the lowest bid from a person, firm or corporation proposing to execute such work within this state is more than ten percent (10%) above the lowest bid from a person, firm or corporation proposing to execute such work outside this state.

Idaho Statutes

Title 60: Public Printing and Official Notices

Chapter 23 Miscellaneous Provisions

Section 67-2348: Preference for Idaho domiciled contractors on public works

To the extent permitted by federal laws and regulations, whenever the state of Idaho, or any department, division, bureau or agency thereof, or any city, county, school district, irrigation district, drainage district, sewer district, highway district, good road district, fire district, flood district, or other public body, shall let for bid any contract to a contractor for any public works, the contractor domiciled outside the boundaries of Idaho shall be required, in order to be successful, to submit a bid the same percent less than the lowest bid submitted by a responsible contractor domiciled in Idaho as would be required for such an Idaho domiciled contractor to succeed over the bidding contractor domiciled outside Idaho on a like contract being let in his domiciliary state.

Idaho Statutes

Title 60: Public Printing and Official Notices

Chapter 23 Miscellaneous Provisions

Section 67-2349: Preference for Idaho suppliers and recycled paper products for purchases

(1) To the extent permitted by federal laws and regulations, whenever the state of Idaho, or any department, division, bureau or agency thereof, or any city, county, school district, irrigation district, drainage district, sewer district, highway district, good road district, fire district, flood district, or other public body, shall let for bid any contract for purchase of any materials, supplies, services or equipment, the bidder domiciled outside the boundaries of Idaho shall be required, in order to be successful, to submit a bid the same percent less than the lowest bid submitted by a responsible bidder domiciled in Idaho as would be required for such an Idaho domiciled bidder to succeed over the bidder domiciled outside Idaho on a like contract being let in his domiciliary state. For the purposes of this section, any bidder domiciled outside the boundaries of the state of Idaho may be considered as an Idaho domiciled bidder, provided that there exists for a period of one (1) year

preceding the date of the bid a significant Idaho economic presence as defined herein. A significant economic presence shall consist of the following:

(a) That the bidder maintains in Idaho fully staffed offices, or fully staffed sales offices or divisions, or fully staffed sales outlets, or manufacturing facilities, or warehouses or other necessary related property; and

(b) If a corporation be registered and licensed to do business in the state of Idaho with the office of the secretary of state.

(2) In the evaluation of paper product bids, those items that meet recycled content standards may be given not more than a five percent (5%) purchasing preference. As such, those qualifying paper products may be considered to cost five percent (5%) less when choosing the lowest responsible bidder.

Idaho Statutes

Title 60: Public Printing and Official Notices

Chapter 23 Miscellaneous Provisions

Section 67-9210: Award of Contract

(1) The administrator shall award contracts to, and place orders for property with, the lowest responsible bidder. Qualifications for responsibility shall be prescribed by rule.

(2) Where both the bids and quality of property offered are the same, preference shall be given to property of local and domestic production and manufacture or from bidders having a significant Idaho economic presence as defined in section 67-2349, Idaho Code. In connection with the award of any contract for the placement of any order for state printing, binding, engraving or stationery work, the provisions of sections 60-101 and 60-103, Idaho Code, shall apply to the extent that the same may be inconsistent with any requirements contained in this section.

(3) In awarding contracts, the administrator shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin unless permitted by an exception described in section 67-5909A, Idaho Code.

Idaho Administrative Code

Department of Administration

IDAPA 38 Administrative Rules - 2019 C2 Archive

Division of Purchasing

Section 38.05.01: Rules of the Division of Purchasing

Subsection 38.05.01.082: Tie Responses

01. Tie Responses -- Definition. Tie responses are low responsive bids, proposals or quotes from responsible bidders or offerors (or for requests for quotes, from vendors submitting a quote) that are identical in price or score. Responsibility is determined based upon the standards of responsibility set forth in Section 081 of these rules. (3-29-17)

02. Award. Award shall not be made by drawing lots, except as set forth below, or by dividing business among tie responses. In the discretion of the buyer, award shall be made in any permissible manner that will resolve tie responses. Procedures that may be used to resolve tie responses include: (3-29-17)

a. If price is considered excessive or for another reason such responses are unsatisfactory, reject all responses, resolicit and seek a more favorable contract in the open market or enter into negotiations pursuant to Section 084 of these rules; (3-29-17)

b. Award to an Idaho resident or an Idaho domiciled vendor or for Idaho produced property where other tie response(s) are from out of state or to a vendor submitting a domestic property where other tie responses are for foreign (external to Idaho) manufactured or supplied property; (3-29-17)

c. Where identical low responses include the cost of delivery, award the contract to the vendor located (or shipping from a point) farthest from the point of delivery; (3-29-17)

d. Award to the vendor with the earliest delivery date. (3-29-17)

03. Drawing Lots. If no permissible method will be effective in resolving tie responses and a written determination is made so stating, award may be made by drawing lots or tossing a coin in the presence of witnesses if there are only two (2) tie responses.

ILLINOIS

ILLINOIS RESIDENT BIDDER PREFERENCE

Illinois Statutes

Government

Chapter 30: Finance

Part: Purchases and Contracts

Section 30 ILCS 520/ : Public Purchases in Other States Act

30 ILCS 520/2: The board of trustees or other officer or officers in charge of every institution in the State of Illinois, which is supported in whole or in part by public funds, who are authorized or required to purchase commodities for use in the operation of any such institution, shall, in purchasing such commodities from vendors in any other state, give preference to vendors in those states whose preference laws do not prohibit the purchase by the public institutions of such states of commodities grown or produced in Illinois.

Illinois Statutes

Government

Chapter 30: Finance

Part: Purchases and Contracts

Section 30 ILCS 500/ : Illinois Procurement Code

Article 45: Preferences

30 ILCS 500/45-10: Resident Bidders and Offerors

(a) Amount of preference. When a contract is to be awarded to the lowest responsible bidder or offeror, a resident bidder or offeror shall be allowed a preference as against a non-resident bidder or offeror from any state that gives or requires a preference to bidders or offerors from that state. The preference shall be equal to the preference given or required by the state of the non-resident bidder or offeror. Further, if only non-resident bidders or offerors are bidding, the purchasing agency is within its right to specify that Illinois labor and manufacturing locations be used as a part of the manufacturing process, if applicable. This specification may be negotiated as part of the solicitation process.

(b) Residency. A resident bidder or offeror is a person authorized to transact business in this State and having a bona fide establishment for transacting business within this State where it was actually transacting business on the date when any bid for a public contract is first advertised or announced. A resident bidder or offeror includes a foreign corporation duly authorized to transact business in this State that has a bona fide establishment for transacting business within this State where it was actually transacting business on the date when any bid for a public contract is first advertised or announced.

(c) Federal funds. This Section does not apply to any contract for any project as to which federal funds are available for expenditure when its provisions may be in conflict with federal law or federal regulation.

30 ILCS 500/45-20: Recycled Supplies

Recycled supplies. When a public contract is to be awarded to the lowest responsible bidder or offeror, an otherwise qualified bidder or offeror who will fulfill the contract through the use of products made of recycled supplies shall be given preference over other bidders or offerors unable to do so, provided that the cost included in the bid of supplies is equal or less than other bids or offers, unless the use of the product constitutes an undue practical hardship. This Section applies to bid opportunities posted to the Illinois Procurement Bulletin on or after January 1, 2016. Nothing in this Section shall be construed to apply to a construction agency for the purposes of procuring construction and construction-related services.

30 ILCS 500/45-25: Recyclable supplies

All supplies purchased for use by State agencies must be recyclable paper unless a recyclable substitute cannot be used to meet the requirements of the State agencies or would constitute an undue economic or practical hardship.

30 ILCS 500/45-26: Environmentally preferable procurement

(a) Definitions. For the purposes of this Section:

(1) "Supplies" means all personal property, including but not limited to equipment, materials, printing, and insurance, and the financing of those supplies.

(2) "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports or supplies that are incidental to the required performance.

(3) "Environmentally preferable supplies" means supplies that are less harmful to the natural environment and human health than substantially similar supplies for the same purpose. Attributes of environmentally preferable supplies include, but are not limited to, the following:

(i) made of recycled materials, to the maximum extent feasible;

(ii) not containing, emitting, or producing toxic substances;

(iii) constituted so as to minimize the production of waste; and

(iv) constituted so as to conserve energy and water resources over the course of production, transport, intended use, and disposal.

(4) "Environmentally preferable services" means services that are less harmful to the natural environment and human health than substantially similar services for the same purpose. Attributes of "environmentally preferable services" include, but are not limited to, the following:

(i) use of supplies made of recycled materials, to the maximum extent feasible;

(ii) use of supplies that do not contain, emit, or produce toxic substances;

(iii) employment of methods that minimize the production of waste; and

(iv) employment of methods that conserve energy and water resources or use energy and water resources more efficiently than substantially similar methods.

(b) Award of contracts for environmentally preferable supplies or services. Notwithstanding any rule, regulation, statute, order, or policy of any kind, with the exceptions of Sections 45-20 and 45-25 of this Code, State agencies shall contract for supplies and services that are environmentally preferable. If, however, contracting for an environmentally preferable supply or service would impose an undue economic or practical hardship on the contracting State agency, or if an environmentally preferable supply or service cannot be used to meet the requirements of the State agency, then the State agency need not contract for an environmentally preferable supply or service. Specifications for contracts, at the discretion of the contracting State agency, may include a price preference of up to 10% for environmentally preferable supplies or services.

30 ILCS 500/45-35: Not-for-profit agencies for persons with significant disabilities.

(c-5) Conditions for Use. Each chief procurement officer shall, in consultation with the State Use Committee, determine which articles, materials, services, food stuffs, and supplies that are produced, manufactured, or provided by persons with significant disabilities in qualified not-for-profit agencies shall be given preference by purchasing agencies procuring those items.

30 ILCS 500/45-50: Illinois agricultural products

In awarding contracts requiring the procurement of agricultural products, preference may be given to an otherwise qualified bidder or offeror who will fulfill the contract through the use of agricultural products grown in Illinois.

30 ILCS 500/45-55: Corn-based plastics

In awarding contracts requiring the procurement of plastic products, preference may be given to an otherwise qualified bidder or offeror who will fulfill the contract through the use of plastic products made from Illinois corn by-products.

30 ILCS 500/45-60: Vehicles powered by agricultural commodity-based fuel.

In awarding contracts requiring the procurement of vehicles, preference may be given to an otherwise qualified bidder or offeror who will fulfill the contract through the use of vehicles powered by ethanol produced from Illinois corn or biodiesel fuels produced from Illinois soybeans.

30 ILCS 500/45-75: Biobased products.

When a State contract is to be awarded to the lowest responsible bidder, an otherwise qualified bidder who will fulfill the contract through the use of biobased products may be given preference over other bidders unable to do so, provided that the cost included in the bid of biobased products is not more than 5% greater than the cost of products that are not biobased. For the purpose of this Section, a biobased product is defined as in the federal Biobased Products Preferred Procurement Program. This Section does not apply to contracts for construction projects awarded by the Capital Development Board or the Department of Transportation.

Illinois Statutes

Government

Chapter 30: Finance

Part: Purchases and Contracts

Section 30 ILCS 555/ :Illinois Mined Coal Act

30 ILCS 555/1

The board of trustees or other officer in charge of every institution in the State of Illinois which is supported in whole or in part by public funds or which is owned by any municipal corporation or political subdivision of this State, who are authorized and required to purchase coal for fuel purposes in the operation of any such institution, shall be required to purchase and use coal which is mined in the State of Illinois, if the

cost of coal mined in the State of Illinois is not more than ten per cent (10%) greater than the cost of coal mined in any other State or States, including the cost of transportation.

Illinois Statutes

Government

Chapter 30: Finance

Part: Purchases and Contracts

Section 30 ILCS 595/ : Local Food, Farms, and Jobs Act.

30 ILCS 595/10: Procurement goals for local farm or food products.

(a) In order to create, strengthen, and expand local farm and food economies throughout Illinois, it shall be the goal of this State that 20% of all food and food products purchased by State agencies and State-owned facilities, including, without limitation, facilities for persons with mental health and developmental disabilities, correctional facilities, and public universities, shall, by 2020, be local farm or food products.

(b) The Local Food, Farms, and Jobs Council established under this Act shall support and encourage that 10% of food and food products purchased by entities funded in part or in whole by State dollars, which spend more than $25,000 per year on food or food products for its students, residents, or clients, including, without limitation, public schools, child care facilities, after-school programs, and hospitals, shall, by 2020, be local farm or food products.

(c) To meet the goals set forth in this Section, when a State contract for purchase of food or food products is to be awarded to the lowest responsible bidder, an otherwise qualified bidder who will fulfill the contract through the use of local farm or food products may be given preference over other bidders, provided that the cost included in the bid of local farm or food products is not more than 10% greater than the cost included in a bid that is not for local farm or food products.

Illinois Administrative Code

Title 44: Government Contracts, Grantmaking, Procurement, Property Management

Part 1: Chief Procurement Officer for General Services Standard Procurement

Subpart E: Source Selection and Contract Formation

Section 1.2037: Tie Bids and Proposals

(a) Tie bids or proposals are those from responsive and responsible vendors that are, in the case of bids, identical in price, and, in the case of proposals, identical in rank after evaluation.

(b) Tie bids or proposals will be resolved as follows:

1) If the tied vendors include only one Illinois resident vendor, the Illinois resident vendor shall be given the award. "Illinois resident vendor" has the meaning ascribed in Section 1.4510 (Resident Vendor Preference).

2) In all other situations, the award shall be made by lot unless the SPO determines that:

A) Awarding to one of the vendors is in the State's best interest because, for example, that vendor is likely to be more reliable or responsive to the State's needs, based on past performance; provides a better quality of the supply or service; provides quicker delivery; or, in the case of proposals, because of a desire to take advantage of the lower price; or

B) Splitting the award is in the State's best interest because of a need to ensure delivery of the supply or service, or is necessary or desirable to promote future competition, and provided the affected vendors agree to the split award.

Illinois Administrative Code

Title 44: Government Contracts, Grantmaking, Procurement, Property Management

Part 1: Chief Procurement Officer for General Services Standard Procurement

Subpart E: Source Selection and Contract Formation

Section 1.4510: Resident Vendor Preference

a) "Illinois resident vendor", as used in this Section, means a person authorized to transact business in this State and having a bona fide establishment for transacting business within this State at which it was actually transacting business on the date when any competitive solicitation for a public contract was first advertised or announced, including a foreign corporation duly authorized to transact business in this State that has a bona fide establishment for transacting business within this State at which it was actually transacting business on the date when any competitive solicitation for a public contract is first advertised or announced.

b) In breaking a tie bid or proposal, as described in Section 1.2037, an Illinois resident vendor shall be given the award.

c) An Illinois resident vendor shall be allowed a preference over a non-resident vendor equal to any in-state vendor given or required by the state of the non-resident vendor.

d) If only non-resident bidders are bidding, the purchasing agency has the right to specify that Illinois labor and manufacturing locations be used as part of the manufacturing process. This specification may be negotiated as part of the solicitation process.

e) This Section does not apply to any contract for any project for which federal funds are available for expenditure when its provisions may be in conflict with federal law or federal regulation.

Illinois Administrative Code

Title 44: Government Contracts, Grantmaking, Procurement, Property Management

Part 500: Purchases and Contracts

Subpart L: Preferences

Section 500.1110: Resident Vendor Preference

(a) When a contract is to be awarded to the lowest responsible bidder or offeror, a resident bidder or offeror shall be allowed a preference as against a non-resident bidder or offeror from any state that gives or requires a preference to bidders or offerors from that state. The preference shall be equal to the preference given or required by the state of the non-resident bidder or offeror. Further, if only non-resident bidders or offerors are bidding, the purchasing agency is within its right to specify that Illinois labor and manufacturing locations be used as a part of the manufacturing process, if applicable. This specification may be negotiated as part of the solicitation process.

Illinois Administrative Code

Title 44: Government Contracts, Grantmaking, Procurement, Property Management

Part 500: Purchases and Contracts

Subpart L: Preferences

Section 500.1130: Recycled Supplies

When a public contract is to be awarded to the lowest responsible bidder or offeror, an otherwise qualified bidder or offeror who will fulfill the contract through the use of products made of recycled supplies shall be given preference over other bidders or offerors unable to do so, provided that the cost included in the bid of supplies is equal to or less than other bids or offers, unless the use of the product constitutes an undue practical hardship.

Illinois Administrative Code

Title 44: Government Contracts, Grantmaking, Procurement, Property Management

Part 500: Purchases and Contracts

Subpart L: Preferences

Section 500.1145: Environmentally Preferable Procurement

State agencies shall contract for supplies and services that are environmentally preferable, as that term is defined in 30 ILCS 500/45-26. If, however, contracting for an environmentally preferable supply or service would impose an undue economic or practical hardship on the contracting State agency, or if an environmentally preferable supply or service cannot be used to meet the requirements of the State agency, then the State agency need not contract for an environmentally preferable supply or service. Specifications for contracts, at the discretion of the contracting State agency, may include a price preference of up to 10% for environmentally preferable supplies or services.

Illinois Administrative Code

Title 44: Government Contracts, Grantmaking, Procurement, Property Management

Part 500: Purchases and Contracts

Subpart L: Preferences

Section 500.1148: Biobased Products

When a State contract is to be awarded to the lowest responsible bidder, an otherwise qualified bidder who will fulfill the contract through the use of biobased products may be given preference over other bidders unable to do so, provided that the cost included in the bid of biobased products is not more than 5% greater than the cost of products that are not biobased.

Illinois Administrative Code

Title 44: Government Contracts, Grantmaking, Procurement, Property Management

Part 500: Purchases and Contracts

Subpart L: Preferences

Section 500.1195: Illinois Agricultural Products

In awarding contracts requiring the procurement of agricultural products, preference may be given to an otherwise qualified bidder or offeror who will fulfill the contract through the use of agricultural products grown in Illinois.

Illinois Administrative Code

Title 44: Government Contracts, Grantmaking, Procurement, Property Management

Part 500: Purchases and Contracts

Subpart L: Preferences

Section 500.1197: Corn-based Plastics

In awarding contracts requiring the procurement of plastic products, preference may be given to an otherwise qualified bidder or offeror who will fulfill the contract through the use of plastic products made from Illinois corn by-products.

Illinois Administrative Code

Title 44: Government Contracts, Grantmaking, Procurement, Property Management

Part 500: Purchases and Contracts

Subpart L: Preferences

Section 500.1199: Disabled Veterans

It is the goal of the State to promote and encourage the continued economic development of small businesses owned and controlled by qualified veterans and that qualified service-disabled veteran-owned small businesses (referred to as SDVOSB) and veteran-owned small businesses (referred to as VOSB) participate in the State's procurement process as both prime contractors and subcontractors [30 ILCS 500/45-57]. Upon direction of the CPO, the OAG may establish goals and other such preferences for contracting or subcontracting with SDVOSB and VOSB that are certified by the Department of Veterans' Affairs and the Department of Central Management Services.

INDIANA

INDIANA RESIDENT BIDDER PREFERENCE

Title 4: State Offices and Administration

Article 13.6: State Public Works

Chapter 6: Bid Opening Award of Contracts

Section 2.5: Preference Rules

(a) As used in this section, "out-of-state business" refers to a business that is not an Indiana business.

(b) The department may adopt rules under IC 4-22-2 to give a preference to an Indiana business that submits a bid under this article if all of the following apply:

(1) An out-of-state business submits a bid.

(2) The out-of-state business is a business from a state that gives public works preferences unfavorable to Indiana businesses.

(c) Rules adopted under subsection (b) must establish criteria for determining the following:

(1) Whether a bidder qualifies as an Indiana business under the rules.

(2) When another state's preference is unfavorable to Indiana businesses.

(3) The method by which the preference for Indiana businesses is to be computed.

(d) Rules adopted under subsection (b) may not give a preference to an Indiana business that is more favorable to the Indiana business than the other state's preference is to the other state's businesses.

Title 5: State and Local Administration

Article 22: Public Purchasing

Chapter 15: Purchasing Preferences

Section 16: Price Preference for Supplies That Contain Recycled or Post-Consumer Materials

(a) This section does not apply when the purchase description is limited to a supply that meets the description set forth in subsection (b).

(b) There is a price preference for supplies that contain recycled materials or post-consumer materials.

(c) The amount of the price preference and the recycled materials' composition of the supplies must be set by one (1) of the following:

(1) Rules adopted by the governmental body.

(2) Policies established by the purchasing agency.

(3) The solicitation.

The preference shall be set to maximize the use of recycled materials when economically practical.

(d) A price preference set under subsection (c) may not be less than ten percent (10%) or exceed fifteen percent (15%).

Title 5: State and Local Administration

Article 22: Public Purchasing

Chapter 15: Purchasing Preferences

Section 18: Price Preference for Soybean Oil Based Ink

(a) Notwithstanding section 1 of this chapter, this section does not apply to a purchase of supplies by any of the following:

(1) A political subdivision.

(2) A state educational institution.

(b) This section does not apply when the purchase description is limited to soybean oil based ink.

(c) There is a price preference of ten percent (10%) for soybean oil based ink.

Title 5: State and Local Administration

Article 22: Public Purchasing

Chapter 15: Purchasing Preferences

Section 19: Price Preference for Soy Diesel/Bio Diesel

(a) This section does not apply when the purchase description is limited to a fuel of which at least twenty percent (20%) by volume is soy diesel/bio diesel.

(b) As used in this section, "soy diesel/bio diesel" includes fuels (other than alcohol) that are primarily esters derived from biological materials, including oilseeds and animal fats, for use in compression and ignition engines.

(c) There is a price preference of ten percent (10%) for soy diesel/bio diesel.

(d) The price preference under this section applies to a purchase of fuel of which at least twenty percent (20%) by volume is soy diesel/bio diesel.

Title 5: State and Local Administration

Article 22: Public Purchasing

Chapter 15: Purchasing Preferences

Section 20: Preferences to Indiana Businesses; Rules

(a) This section does not apply to the state lottery commission created by IC 4-30-3-1.

(b) As used in this section, "out-of-state business" refers to a business that is not an Indiana business.

(c) A governmental body may adopt rules to give a preference to an Indiana business that submits an offer for a purchase under this article if all of the following apply:

(1) An out-of-state business submits an offer for the purchase.

(2) The out-of-state business is a business from a state that gives purchase preferences unfavorable to Indiana businesses.

(d) Rules adopted under subsection (c) must establish criteria for determining the following:

(1) Whether an offeror qualifies as an Indiana business under the rules.

(2) When another state's preference is unfavorable to Indiana businesses.

(3) The method by which the preference for Indiana businesses is to be computed.

(e) Rules adopted under subsection (c) may not give a preference to an Indiana business that is more favorable to the Indiana business than the other state's preference is to the other state's businesses.

(f) Rules adopted under subsection (c) must provide that a contract shall be awarded to the lowest responsive and responsible offeror, regardless of the preference provided under this section, if:

(1) the offeror is an Indiana business; or

(2) the offeror is a business from a state bordering Indiana and the offeror's home state does not provide a preference to the home state's businesses more favorable than is provided by Indiana law to Indiana businesses.

Title 5: State and Local Administration

Article 22: Public Purchasing

Chapter 15: Purchasing Preferences

Section 20.5: "Indiana Business"; Criteria; Price Preferences; Awarding of Contracts; Exception

(a) This section applies only to a contract awarded by a state agency.

(b) As used in this section, "Indiana business" refers to any of the following:

(1) A business whose principal place of business is located in Indiana.

(2) A business that pays a majority of its payroll (in dollar volume) to residents of Indiana.

(3) A business that employs Indiana residents as a majority of its employees.

(4) A business that makes significant capital investments in Indiana.

(5) A business that has a substantial positive economic impact on Indiana as defined by criteria developed under subsection (c).

(c) The Indiana department of administration shall consult with the Indiana economic development corporation in developing criteria for determining whether a business is an Indiana business under subsection (b). The Indiana department of administration may consult with the Indiana economic development corporation to determine whether a particular business meets the requirements of this section and the criteria developed under this subsection.

(d) There are the following price preferences for supplies purchased from an Indiana business:

(1) Five percent (5%) for a purchase expected by the state agency to be less than five hundred thousand dollars ($500,000).

(2) Three percent (3%) for a purchase expected by the state agency to be at least five hundred thousand dollars ($500,000) but less than one million dollars ($1,000,000).

(3) One percent (1%) for a purchase expected by the state agency to be at least one million dollars ($1,000,000).

(e) If an Indiana business offers to provide supplies manufactured, assembled, or produced in Indiana, and if two (2) or more bids submitted were the same, the following price preference is available to the Indiana business, in addition to the price preference available under subsection (d):

(1) Three percent (3%) for a purchase expected by the state agency to be less than five hundred thousand dollars ($500,000).

(2) Two percent (2%) for a purchase expected by the state agency to be at least five hundred thousand dollars ($500,000) but less than one million dollars ($1,000,000).

(3) One percent (1%) for a purchase expected by the state agency to be at least one million dollars ($1,000,000).

The Indiana department of administration shall adopt rules under IC 4-22-2 to establish guidelines for determining when supplies are manufactured or assembled in Indiana.

(f) A business that wants to claim a preference provided under this section must do all of the following:

(1) State in the business's bid that the business claims the preference provided by this section.

(2) Provide the following information to the department:

(A) The location of the business's principal place of business. If the business claims the preference as an Indiana business described in subsection (b)(1), a statement explaining the reasons the business considers the location named as the business's principal place of business.

(B) The amount of the business's total payroll and the amount of the business's payroll paid to Indiana residents.

(C) The number of the business's employees and the number of the business's employees who are Indiana residents.

(D) If the business claims the preference as an Indiana business described in subsection (b)(4), a description of the capital investments made in Indiana and a statement of the amount of those capital investments.

(E) If the business claims the preference as an Indiana business described in subsection (b)(5), a description of the substantial positive economic impact the business has on Indiana.

Title 5: State and Local Administration

Article 22: Public Purchasing

Chapter 15: Purchasing Preferences

Section 20.9: Price Preferences for Local Indiana Businesses

(a) This section applies only to a contract awarded by a political subdivision if the political subdivision provides in the solicitation that this section applies to the purchase.

(b) As used in this section, "affected county" refers to an Indiana county:

(1) in which the political subdivision awarding a contract under this article is located; or

(2) that is adjacent to the county described in subdivision (1).

(c) As used in this section, "local Indiana business" refers to any of the following:

(1) A business whose principal place of business is located in an affected county.

(2) A business that pays a majority of its payroll (in dollar volume) to residents of affected counties.

(3) A business that employs residents of affected counties as a majority of its employees.

(4) A business that makes significant capital investments in the affected counties as defined in rules adopted by the political subdivision.

(5) A business that has a substantial positive economic impact on the affected counties as defined by criteria in rules adopted by the political subdivision.

(d) There are the following price preferences for supplies purchased from a local Indiana business:

(1) Five percent (5%) for a purchase expected by the purchasing agency to be less than fifty thousand dollars ($50,000).

(2) Three percent (3%) for a purchase expected by the purchasing agency to be at least fifty thousand dollars ($50,000) but less than one hundred thousand dollars ($100,000).

(3) One percent (1%) for a purchase expected by the purchasing agency to be at least one hundred thousand dollars ($100,000).

(e) Notwithstanding subsection (d), a purchasing agency may award a contract to the lowest responsive and responsible offeror, regardless of the preference provided in this section, if the lowest responsive and responsible offeror is a local Indiana business.

(f) A business that wants to claim a preference provided under this section must do all the following:

(1) State in the business's bid that the business claims the preference provided by this section.

(2) Provide the following information to the purchasing agency:

(A) The location of the business's principal place of business. If the business claims the preference as a local Indiana business described in subsection (c)(1), a statement explaining the reasons the business considers the location named as the business's principal place of business.

(B) The amount of the business's total payroll and the amount of the business's payroll paid to residents of affected counties.

(C) The number of the business's employees and the number of the business's employees who are residents of affected counties.

(D) If the business claims the preference as a local Indiana business described in subsection (c)(4), a description of the capital investments made in the affected counties and a statement of the amount of those capital investments.

(E) If the business claims the preference as a local Indiana business described in subsection (c)(5), a description of the substantial positive economic impact the business has on the affected counties.

Title 5: State and Local Administration

Article 22: Public Purchasing

Chapter 15: Purchasing Preferences

Section 22: Absolute Preference to Coal Mined in Indiana

(a) This section does not apply to the state lottery commission created by IC 4-30-3-1.

(b) This section does not apply if federal law requires the use of low Sulphur coal in the circumstances for which the coal is purchased.

(c) Whenever a purchasing agent purchases coal for use as fuel, the purchasing agent shall give an absolute preference to coal mined in Indiana.

Title 5: State and Local Administration

Article 22: Public Purchasing

Chapter 15: Purchasing Preferences

Section 23: Price Preference for Supplies to Indiana Small Business and Veteran Owned Small Business

(a) A governmental body shall give a fifteen percent (15%) preference for supplies to:

(1) an Indiana small business (as defined in IC 5-22-14-1); or

(2) a veteran owned small business (as defined in IC 4-13-16.5-1);

that submits an offer for purchase under this article.

(b) The governmental body may adopt rules to establish criteria to carry out this section.

Title 5: State and Local Administration

Article 22: Public Purchasing

Chapter 15: Purchasing Preferences

Section 23.5: Price Preference for Indiana Agricultural Products

(a) A governmental body may give up to a ten percent (10%) price preference for agricultural products grown, produced, or processed in Indiana.

(b) A governmental body may adopt rules to establish criteria to carry out this section.

IOWA

IOWA RESIDENT BIDDER PREFERENCE

Title 1: State Sovereignty and Management

Chapter 8A: Department of Administrative Services

Section 8A.311: Competitive bidding - preferences - reciprocal application - direct purchasing

8A.311.1:

a. All equipment, supplies, or services procured by the department shall be purchased by a competitive bidding procedure as established by rule. However, the director may exempt by rule purchases of noncompetitive items and purchases in lots or quantities too small to be effectively purchased by competitive bidding. Preference shall be given to purchasing Iowa products and purchases from Iowa-based businesses if the Iowa-based business bids submitted are comparable in price to bids submitted by out-of-state businesses and otherwise meet the required specifications. If the laws of another state mandate a percentage preference for businesses or products from that state and the effect of the preference is that bids of Iowa businesses or products that are otherwise low and responsive are not selected in the other state, the same percentage preference shall be applied to Iowa businesses and products when businesses or products from that other state are bid to supply Iowa requirements.

b. The department and each state agency shall provide notice in an electronic format available to the public of every competitive bidding opportunity offered by the department or the state agency as provided in section 73.2, subsection 2. The department may establish by rule requirements relating to such notice. A competitive bidding opportunity that is not preceded by a notice that satisfies the requirements of this paragraph is void and shall be rebid. A request for proposals for architectural or engineering services may be posted electronically by a department or state agency.

8A.311.12:

The state and its political subdivisions shall give preference to purchasing Iowa products and purchasing from Iowa-based businesses if the bids submitted are comparable in price to those submitted by other bidders and meet the required specifications.

8A.311.21:

Preference shall be given to purchasing American-made products and purchases from American-based businesses if the life cycle costs are comparable to those products of foreign businesses and which most adequately fulfill the department's need.

8A.311.23:

a. The state, through the department, shall give a preference to purchasing equipment, supplies, or services from or awarding public improvement contracts pursuant to subsection 11 to an Iowa-based business as provided under paragraph "b", as appropriate, if the bid submitted is comparable in price to those submitted by other bidders and meets the required specifications. However, before giving the preference, the department shall confirm with the Iowa employer support of the guard and reserve committee that the requirements of paragraph "b" have been met by the Iowa-based business.

b. To receive a preference as provided by this subsection, the Iowa-based business employer shall have adopted policies beyond those otherwise required by law to support employees who are officers or enlisted persons in the national guard and organized reserves of the armed forces of the United States consistent with standards adopted by the Iowa employer support of the guard and reserve committee. To be eligible for such preference, an employer shall submit to the committee a copy of the applicable policies adopted by the employer and shall sign and submit to the committee a statement of support of persons in the employ of the employer who serve in the national guard and the reserves, recognizing the vital role of the national guard and the reserves, and pledging all of the following:

(1) To neither deny employment nor limit or reduce job opportunities because of an employee's service in the national guard or organized reserves of the armed forces of the United States.

(2) To grant leaves of absence during a period of military duty or training.

(3) To ensure that all employees are aware of the employer's policies and the requirements of section 29A.43.

Title 2: Elections and Official Duties

Chapter 73: Preferences

Section 73.1: Preference - conditions

1. Every commission, board, committee, officer, or other governing body of the state, or of any county, township, school district or city, and every person acting as contracting or purchasing agent for any such commission, board, committee, officer, or other governing body shall use only those products and provisions grown and coal produced within the state of Iowa, when they are found in marketable quantities in the state and are of a quality reasonably suited to the purpose intended, and can be secured without additional cost over foreign products or products of other states. This section shall apply to horticultural products grown in this state even if the products are not in the stage of processing

that the agency usually purchases the product. However, this section does not apply to a school district purchasing food while the school district is participating in the federal school lunch or breakfast program.

2. All requests for proposals for materials, products, supplies, provisions, and other needed articles and services to be purchased at public expense shall not knowingly be written in such a way as to exclude an Iowa-based company capable of filling the needs of the purchasing entity from submitting a responsive proposal.

Title 2: Elections and Official Duties

Chapter 73: Preferences

Section 73.6: Iowa coal

It shall be unlawful for any commission, board, county officer or other governing body of the state, or of any county, township, school district or city, to purchase or use any coal, except that mined or produced within the state by producers who are, at the time such coal is purchased and produced, complying with all the workers' compensation and mining laws of the state. The provisions of this section shall not be applicable if coal produced within the state cannot be procured of a quantity or quality reasonably suited to the needs of such purchaser, nor if the equipment now installed is not reasonably adapted to the use of coal produced within the state, nor if the use of coal produced within the state would materially lessen the efficiency or increase the cost of operating such purchaserâ€™s heating or power plant, nor to mines employing miners not now under the provisions of the workers' compensation Act or who permit the miners to work in individual units in their own rooms.

Title 2: Elections and Official Duties

Chapter 73A: Public Contracts and Bonds

Section 73A-21: Reciprocal resident bidder and resident labor force preference by state, its agencies, and political subdivisions - penalties

2. Notwithstanding this chapter, chapter 73, chapter 309, chapter 310, chapter 331, or chapter 384, when a contract for a public improvement is to be awarded to the lowest responsible bidder, a resident bidder shall be allowed a preference as against a nonresident bidder from a state or foreign country if that state or foreign country gives or requires any preference to bidders from that state or foreign country, including but not limited to any preference to bidders, the imposition of any type of labor force preference, or any other form of preferential treatment to bidders or laborers from that state or foreign country. The preference allowed shall be equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident. In the instance of a resident labor force preference, a nonresident bidder shall apply the same resident labor force preference to a public improvement in this state as would be required in the construction of a public improvement by the state or foreign country in which the nonresident bidder is a resident.

3. If it is determined that this may cause denial of federal funds which would otherwise be available, or would otherwise be inconsistent with requirements of any federal law or regulation, this section shall be suspended, but only to the extent necessary to prevent denial of the funds or to eliminate the inconsistency with federal requirements.

4. The public body involved in a public improvement shall require a nonresident bidder to specify on all project bid specifications and contract documents whether any preference as described in subsection 2 is in effect in the nonresident bidder's state or country of domicile at the time of a bid submittal.

Administrative Code

Title 11: Administrative Services Department

Chapter 117: Procurement of Goods and Services of General Use

Section 11.117.5: Exemptions from competitive procurement

11--117.5(3) c. Procurement of product manufactured in Iowa.

An agency may conduct a competitive procurement for a product that IPI manufactures or formulates if the competitive procurement requires that the product must be manufactured in Iowa. In such procurements, IPI shall be allowed to submit a bid to provide the product. If a vendor other than IPI is the lowest responsible bidder, the agency shall obtain written verification that the vendor's product is manufactured in Iowa before making the award.

Administrative Code

Title 761: Transportation Department

Chapter 20: Procurement of Equipment, Materials, Supplies, and Services

Section 761.20.4: Formal advertising procedures and requirements

20.4(6) Recommendation of award.

b. Tied responses. Responses which are equal in all respects and are tied in price shall be resolved among the tied bidders by giving first preference to an Iowa bidder and second preference to the bidder who satisfactorily performed a contract the previous year for the same item at the same location. If the tie involves bidders with equal standing, the award shall be determined by lot among these bidders. A tied bidder or the bidder's representative may witness the determination by lot.

Administrative Code

Title 761: Transportation Department

Chapter 20: Procurement of Equipment, Materials, Supplies, and Services

Section 761.20.5: Limited solicitation procedures and requirements

20.5(4) Award.

The award shall be offered to that responsible bidder whose response meets the requirements of the solicitation and is the most advantageous to the department. An Iowa bidder will be given preference over an out-of-state bidder when responses are equal in all respects and are tied in price.

KANSAS

KANSAS RESIDENT BIDDER PREFERENCE

Chapter 75: State Departments, Public Officers, and Employees

Article 37: Department of Administration

Section 75-3740: Competitive bids; bid preferences to certain businesses; reports to legislature; rules and regulations; building contracts; bid records; definitions.

(a) Except as provided by K.S.A. 75-3740b, and amendments thereto, and subsections (b) and (k), all contracts and purchases made by or under the supervision of the director of purchases or any state agency for which competitive bids are required shall be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, and other conditions imposed in the call for bids.

(b) A contract shall be awarded to a certified business or disabled veteran business which is also a responsible bidder, whose total bid cost is not more than 10% higher than the lowest competitive bid. Such contract shall contain a promise by the certified business that the percentage of employees that are individuals with disabilities will be main-

tained throughout the contract term and a condition that the certified business shall not subcontract for goods or services in an aggregate amount of more than 25% of the total bid cost.

(c) The director of purchases shall have power to decide as to the lowest responsible bidder for all purchases, but if:

(1)

(A) A responsible bidder purchases from a qualified vendor goods or services on the list certified by the director of purchases pursuant to K.S.A. 75-3317 et seq., and amendments thereto, the dollar amount of such purchases made during the previous fiscal year shall be deducted from the original bid received from such bidder for the purpose of determining the lowest responsible bid, except that such deduction shall not exceed 10% of the original bid received from such bidder; or

(B) a responsible bidder purchases from a certified business the dollar amount of such purchases made during the previous fiscal year shall be deducted from the original bid received from such bidder for the purpose of determining the lowest responsible bid, except that such deduction shall not exceed 10% of the original bid received from such bidder;

(2) the dollar amount of the bid received from the lowest responsible bidder from within the state is identical to the dollar amount of the bid received from the lowest responsible bidder from without the state, the contract shall be awarded to the bidder from within the state; and

(3) in the case of bids for paper products specified in K.S.A. 75-3740b, and amendments thereto, the dollar amounts of the bids received from two or more lowest responsible bidders are identical, the contract shall be awarded to the bidder whose bid is for those paper products containing the highest percentage of recycled materials.

Chapter 75: State Departments, Public Officers, and Employees

Article 37: Department of Administration

Section 75-3740a: State and local government contracts; bidders domiciled in other states.

To the extent permitted by federal law and regulations whenever the state of Kansas or any agency, department, bureau or division thereof or any municipality of the state including, but not limited to, county, school district, improvement district or other public body lets bids for contracts for the erection, construction, alteration or repair of any public building or structure or any addition thereto or for any public work or improvement or for any purchases of any goods, merchandise, materials, supplies or equipment of any kind, the contractor domiciled outside the state of Kansas, to be successful, shall submit a bid the same percent less than the lowest bid submitted by a responsible Kansas contractor as would be required of such Kansas domiciled contractor to succeed over the bidding contractor domiciled outside Kansas on a like contract let in such contractor's domiciliary state.

Chapter 75: State Departments, Public Officers, and Employees

Article 37: Department of Administration

Section 75-3740b: Purchase of recycled paper; requirements; price preference.

(c) In determining the lowest responsible bidder for any purchase of newsprint or high grade bleached printing or writing paper, the director of purchases of the department of administration, or any other state officer or employee authorized to make purchases directly for a state agency, shall give the following price preferences to any bidder whose bid is for newsprint or high grade bleached printing or writing paper containing not less than 50% waste paper by weight unless the requirements of subsection (b) have been met:

(1) For the fiscal years beginning July 1, 1991, and July 1, 1992, 20%;

(2) For the fiscal year beginning July 1, 1993, 15%;

(3) For the fiscal year beginning July 1, 1994, 10%; and

(4) For fiscal years beginning on and after July 1, 1995, 5%.

KENTUCKY

KENTUCKY RESIDENT BIDDER PREFERENCE

Chapter 45A: Kentucky Model Procurement Code

Section: 45A.050: Centralization of procurement -- Exemptions -- Reciprocal preference for resident bidders.

(1) Except as provided in KRS 45A.800 to 45A.835 and KRS Chapters 175, 176, 177, and 180, all rights, powers, duties, and authority relating to the procurement of supplies, services, and construction, and the management, control, warehousing, sale, and disposal of supplies, services, and construction now vested in or exercised by any state agency under the several statutes relating thereto, are hereby transferred to the secretary of the Finance and Administration Cabinet as provided in this code, subject to the provisions of subsection (2) of this section.

(2) Unless otherwise ordered by the secretary of the Finance and Administration Cabinet, the acquisition of the following shall not be required through the Finance and Administration Cabinet:

(a) Works of art for museum and public display;

(b) Published books, maps, periodicals, and technical pamphlets; and

(c) Services of visiting speakers, professors, and performing artists.

(3) The Finance and Administration Cabinet shall include in all state agency price contracts for the purchase of materials or supplies a provision that, as approved by the secretary of the Finance and Administration Cabinet, any political subdivision, including cities of all classes, counties, school districts, or special districts, may participate in these contracts to the same extent as the Commonwealth. Any political subdivision may purchase materials and supplies in accordance with a contract for supplies and materials entered into by the Finance and Administration Cabinet for the Commonwealth, including those contracts negotiated by the cabinet with vendors who maintain a General Services Administration price agreement as provided in KRS 45A.045(8). Political subdivisions of the Commonwealth must comply with other provisions of the Kentucky Revised Statutes which require purchase by competitive bidding, before participating in the contract, unless the state contract has been let by competitive bidding, or the contract was negotiated as provided in KRS 45A.045(8).

Chapter 45A: Kentucky Model Procurement Code

Preference for Resident Bidders

Section: 45A.494: Reciprocal preference to be given by public agencies to resident bidders -- List of states -- Administrative regulations.

(1) Prior to a contract being awarded to the lowest responsible and responsive bidder on a contract by a public agency, a resident bidder of the Commonwealth shall be given a preference against a nonresident bidder registered in any state that gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the nonresident bidder.

(2) A resident bidder is an individual, partnership, association, corporation, or other business entity that, on the date the contract is first advertised or announced as available for bidding:

(a) Is authorized to transact business in the Commonwealth; and

(b) Has for one (1) year prior to and through the date of the advertisement, filed Kentucky corporate income taxes, made payments to the Kentucky unemployment insurance fund established in KRS 341.490, and maintained a Kentucky workers' compensation policy in effect.

(3) A nonresident bidder is an individual, partnership, association, corporation, or other business entity that does not meet the requirements of subsection (2) of this section.

(4) If a procurement determination results in a tie between a resident bidder and a nonresident bidder, preference shall be given to the resident bidder.

(5) This section shall apply to all contracts funded or controlled in whole or in part by a public agency.

(6) The Finance and Administration Cabinet shall maintain a list of states that give to or require a preference for their own resident bidders, including details of the preference given to such bidders, to be used by public agencies in determining resident bidder preferences. The cabinet shall also promulgate administrative regulations in accordance with KRS Chapter 13A establishing the procedure by which the preferences required by this section shall be given.

(7) The preference for resident bidders shall not be given if the preference conflicts with federal law.

(8) Any public agency soliciting or advertising for bids for contracts shall make KRS 45A.490 to 45A.494 part of the solicitation or advertisement for bids.

Chapter 45A: Kentucky Model Procurement Code

Miscellaneous Procurement Provisions

Section 45A.640: Agricultural Product Preference

By January 1, 2003, the secretary of the Finance and Administration Cabinet shall issue guidelines to the various agencies identified by the Commissioner of Agriculture in KRS 260.035 directing the manner in which those agencies shall employ the state's procurement process to support and encourage the growth of Kentucky's agricultural economy. Notwithstanding the provisions of KRS Chapter 45A, the secretary of the Finance and Administration Cabinet shall make necessary changes to administrative regulations and cabinet policy in accordance with this section and KRS 45A.035, 45A.095, 45A.645, and 260.035.

Chapter 45A: Kentucky Model Procurement Code

Miscellaneous Procurement Provisions

Section 45A.645: Agencies to purchase Kentucky-grown products meeting quality standards and pricing requirements if available -- Reports -- Marketing assistance -- Annual report -- Vendors' duties.

(1)

(a) If purchasing agricultural products, state agencies, as defined by KRS 45A.505, shall purchase Kentucky-grown agricultural products if the products are available and if the vendor can meet the applicable quality standards and pricing requirements of the state agency.

(2)

(b) Before a state agency may purchase Kentucky-grown agricultural products, the vendor shall be required to participate in the Kentucky Proud™ Program established by KRS 260.017, and shall provide to the purchasing officer written certification that the agricultural products under consideration for purchase meet the definition of Kentucky-grown agricultural product.

(3) If a contract is awarded to a vendor that supplies agricultural products that are raised or produced outside the United States or its territories, the vendor shall be required to identify the country in which the agricultural product was raised or produced if the vendor is the producer or packager of the product or if the vendor is not the producer or packager, provided the information is available to the vendor from the producer or packager of the product. The producer or packager shall clearly label that information on any containers or packages holding the product.

LOUISIANA

LOUISIANA RESIDENT BIDDER PREFERENCE

Louisiana Executive Order

BJ 10-16: Small Purchase Procedures

SECTION 1: All departments, institutions, boards, commissions, budget units, and agencies of the executive branch of state government, and the officers and employees thereof, (hereafter "agency") shall observe, be guided by, and implement the specific directives on small purchase procedures set forth in this Order. This Order in no way affects or changes the purchasing authority delegated to an agency by the chief procurement officer as defined in R.S. 39:1556(3). No provision of this Order shall be construed as a limitation on the number of quotations to be solicited prior to making a purchase or procurement. Louisiana businesses, especially small and emerging businesses, small entrepreneurships, and veterans or service-connected disabled veteran-owned small entrepreneurships should be utilized to the greatest extent possible when soliciting prices.

Title 27: Louisiana gaming Control

Section 27.246: Utilization of Louisiana goods and services; employment criteria

A. In purchasing or contracting for goods and services, the casino gaming operator and the corporation shall give preference and priority to Louisiana residents, laborers, vendors, and suppliers except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operational efficiency. In considering applicants for employment, the casino gaming operator and the corporation shall give preference and priority to Louisiana residents, and no less than eighty percent of the persons employed by either the casino gaming operator or the corporation must have been residents of the state for at least one year immediately prior to employment. If any contract or other agreement to which either the casino gaming operator or the corporation is a party, contains a provision or clause establishing a different percentage or requiring more than fifty percent of the persons employed to be residents of any one parish, any such provision or clause shall be null and void and unenforceable as against public policy.

B. Additionally, in selecting the casino operator, the corporation shall give preferences to a casino operator who demonstrates the willingness and ability to purchase and contract for goods and services from or with Louisiana residents, laborers, vendors, and suppliers.

Title 38: Public Contracts, Works, and Improvements

Section 38.2184: Preference given to supplies, material, or equipment produced or offered by Louisiana citizens

Preference given to supplies, material, or equipment produced or offered by Louisiana citizens

All public entities shall, in making purchase of supplies, material, or equipment, give preference to supplies, material, or equipment produced or offered by Louisiana citizens, the cost to the public entity and the quality being equal.

Title 38: Public Contracts, Works, and Improvements

Section 38.2225: Preference in letting contracts for public work

A. If a nonresident contractor bidding on public work in the state of Louisiana is domiciled in a state that provides a percentage preference in favor of contractors domiciled in that state over Louisiana resident contractors for the same type of work, then every Louisiana resident contractor shall be granted the same preference over contractors domiciled in the other state favoring contractors domiciled therein whenever the nonresident contractor bids on public work in Louisiana.

B. Any local law, either by legislative act or otherwise, ordinance, or executive order enacted prior to the effective date of this Act, or enacted hereinafter in conflict with this Section, or granting any local contractor or subcontractor preference over other Louisiana resident contractors shall be contrary to the provision of this Section.

C. The Department of Transportation and Development and the office of facility planning and control within the division of administration shall keep on file a list of all states with a bid preference.

D. The provisions and requirements of this Section shall not be waived by any public entity.

Title 38: Public Contracts, Works, and Improvements

Section 38.2225.1: Contracts in which the state or political subdivision are participants; preferences; assistance; exclusions

A. When a participating state agency lets a contract for a public works project that is to be administered by or paid for, in whole or in part by state funds, the agency may require as a condition of letting the contract that not less than eighty percent of the persons employed in fulfilling that contract shall be residents of the state of Louisiana.

B.

(1) When a participating political subdivision lets a contract for a public works project that is to be administered by or paid for, in whole or in part, by said political subdivision's funds, the governing authority of the political subdivision may require, as a condition of letting the contract, that not less than eighty percent of the persons employed in fulfilling that contract be residents of the state of Louisiana.

(2) In addition, when the governing authority of Calcasieu Parish may, upon a finding that there is substantial cause to counteract grave economic and social ills, require, as a condition of letting contracts for public works to be paid for solely with parish funds, that not less than fifty percent of the persons employed in fulfilling that contract be residents of Calcasieu Parish. Notwithstanding the provisions of this Paragraph, management personnel and persons whose skills are unavailable for performing the work may be excluded from the requirements of this Paragraph, as said governing authority may determine and provide for in the bid specifications.

C. The Louisiana Workforce Commission, upon request of any state agency, the governing authority of a political subdivision, or a contractor awarded a contract under the provision of this Section, shall assist in identifying craftsmen, laborers, and any other personnel necessary to comply with the requirements of this Section.

D. Notwithstanding the provisions of this Section, management personnel, and persons whose skills are unavailable for performing the work, shall be excluded from the requirements of this Section.

Title 38: Public Contracts, Works, and Improvements

Section 38.2251: Preference for products produced or manufactured in Louisiana; exceptions

A. As used in this Section, the following terms shall have the following meanings ascribed to them:

(1) "Assembled" means the process of putting together all component parts of an item of equipment by the manufacturer when the assembly plant is located within the territorial borders of the state of Louisiana. "Assembled" also means the assembly of computers and related equipment when such assembly takes place in Louisiana. "Assembled" shall not mean the process of reassembling parts packed for shipping purposes.

(2) "Louisiana products" means products which are manufactured, processed, produced, or assembled in Louisiana.

(3) "Manufactured" means the process of making a product suitable for use from raw materials by hand or by machinery. "Manufactured" shall not mean the process of assembling component parts.

(4) "Meat" and "meat product" means beef, veal, pork, mutton, poultry, and other meats, and products made from those meats.

(5) "Other products" includes "other meat", "other meat products", "other seafood", and "other seafood products" and means products which are produced, manufactured, grown, processed, and harvested outside the state.

(6) "Processed" means the alteration of any raw product altered from its original state to enhance its value or render it suitable for further refinement or marketing.

(7) "Produced" means the process of manufacturing, planting, cultivating, growing, or harvesting.

(8) "Seafood" means crawfish, catfish, other fish, shrimp, oysters, crabs, underutilized species, and other seafood and freshwater food.

B. Notwithstanding any other provision of this Section to the contrary, each procurement officer, purchasing agent, or similar official who procures or purchases agricultural or forestry products, including meat, seafood, produce, eggs, paper and paper products under the provisions of this Chapter shall procure or purchase Louisiana products provided all of the following conditions are met:

(1) The bidder certifies in the bid submitted that the product meets the criteria of a Louisiana product.

(2) The product is equal or better than equal in quality to other products.

(3) The cost of the Louisiana product shall not exceed the cost of other products by more than ten percent except as otherwise provided in this Chapter as a specific exception.

C. In addition to the requirements listed in Subsection B of this Section, the following products shall meet the following specific requirements:

(1) Produce shall be produced in Louisiana and produce products shall be produced and processed in Louisiana.

(2) Eggs shall be laid in Louisiana and egg products shall be processed from eggs laid in Louisiana.

(3) Meat and meat products shall be processed in Louisiana from animals that originated in Louisiana, as evidenced by traceability documentation supplied by the manufacturer.

(4)

(a) Seafood shall be:

(i) Harvested in Louisiana seas or other Louisiana waters; or

(ii) Harvested by a person who holds a valid appropriate commercial fishing license issued under R.S. 56:1 et seq.

(b) Products produced from such seafood shall be processed in Louisiana.

(5) Domesticated catfish shall be processed in Louisiana from animals which were grown in Louisiana.

(6) Paper and paper products shall be manufactured or converted in Louisiana. For the purposes of this Paragraph, "manufactured" shall mean the process of making a product suitable for use from raw materials by hand or by machinery, and "converted" shall mean the process of converting roll stock into a sheeted and fully packaged product in a full-time converting operation. For paper supplied in wrapped reams, each carton and each individual ream shall be clearly labeled with the name of the manufacturer or converter and the location within Louisiana where such paper is manufactured or converted. For paper and paper products supplied in bulk or in other forms, the smallest unit of packaging shall be clearly labeled with the name of the manufacturer or converter and the location within Louisiana where such paper or paper product is manufactured or converted.

(7) All other agricultural or forestry products shall be produced, manufactured, or processed in Louisiana.

D. Notwithstanding any other provision of this Section to the contrary, each procurement officer, purchasing agent, or similar official who procures or purchases products under the provisions of this Part shall procure or purchase meat and meat products which are further processed in Louisiana under the grading and certification service of the Louisiana Department of Agriculture and Forestry and which are equal in quality to other meat and meat products, provided the cost of the further processed meat and meat products does not exceed the cost of other meat or meat products by more than seven percent.

E. Notwithstanding any other provision of this Section to the contrary, each procurement officer, purchasing agent, or similar official who procures or purchases products under the provisions of this Part shall procure or purchase domesticated or wild catfish which are processed in Louisiana but grown outside of Louisiana and which are equal in quality to domesticated or wild catfish which are processed outside of Louisiana provided the cost of the domesticated or wild catfish which are processed in Louisiana does not exceed the cost of the domesticated or wild catfish which are processed outside of Louisiana by more than seven percent.

F. The provisions of this Section shall not apply to a drainage district or sewerage and water board located in the city of New Orleans wherein the cost of products produced or manufactured in the state of Louisiana does not exceed by more than five percent the cost of products which are equal in quality to products produced or manufactured outside of the state in purchases of one million dollars or more, as provided by Acts 880 and 693 of the 1985 Regular Session of the Louisiana Legislature.

G. Notwithstanding any other provision of this Section to the contrary, each procurement officer, purchasing agent, or similar official who procures or purchases products under the provisions of this Part shall procure or purchase produce processed in Louisiana but grown outside of Louisiana and which is equal in quality to produce processed and grown outside of Louisiana provided the cost of the produce processed in Louisiana does not exceed the cost of the produce processed outside of Louisiana by more than seven percent.

H. Except as otherwise provided in this Section, each procurement officer, purchasing agent, or similar official who procures or purchases materials, supplies, or equipment under the provisions of this Chapter may purchase materials, supplies, or equipment which are Louisiana products, as defined in Paragraph (A)(2) of this Section, and which are equal in quality to other materials, supplies, or equipment, provided that all of the following conditions are met:

NOTE: Paragraph (1) as amended by Acts 2000, 1st Ex. Sess., No. 123, effective until held invalid.

(1) The cost of the Louisiana products does not exceed the cost of other materials, supplies, or equipment which are manufactured, processed, produced, or assembled outside the state by more than ten percent.

NOTE: Paragraph (1) effective if Acts 2000, 1st Ex. Sess., No. 123, is held invalid.

(1) The cost of the Louisiana products does not exceed the cost of other materials, supplies, or equipment which are manufactured, processed, produced, or assembled outside the state by more than seven percent.

(2) The vendor of Louisiana products agrees to sell the products at the same price as the lowest bid offered on such products.

NOTE: Paragraph (3) as amended by Acts 2000, 1st Ex. Sess., No. 123, effective until held invalid.

(3) In cases where more than one bidder offers Louisiana products which are within ten percent of the lowest bid, the bidder offering the lowest bid on Louisiana products is entitled to accept the price of the lowest bid made on such products.

NOTE: Paragraph (3) effective if Acts 2000, 1st Ex. Sess., No. 123, is held invalid.

(3) In cases where more than one bidder offers Louisiana products which are within seven percent of the lowest bid, the bidder offering the lowest bid on Louisiana products is entitled to accept the price of the lowest bid made on such products.

I. The provisions of this Section shall not apply to the procurement or purchase of fire fighting or rescue equipment.

J. Notwithstanding any other provision of this Section to the contrary, such preferences shall only apply to bidders whose Louisiana business workforce is comprised of a minimum of fifty percent Louisiana residents.

K. Notwithstanding any other provision of this Section to the contrary, such preference shall not apply to Louisiana products whose source is a clay which is mined or originates in Louisiana, and which is manufactured, processed, or refined in Louisiana for sale as an expanded clay aggregate form different than its original state. No provision of this Subsection shall affect the preferences applicable to brick manufacturers.

L. The provisions of this Section shall not apply to treated wood poles and piling.

Title 38: Public Contracts, Works, and Improvements

Section 38.2251.1: Preference for milk and dairy products produced or processed in this state

Every person acting as a purchasing agent for any agency, board, commission, department, or other instrumentality of the state or of a parish, municipality, or other unit of local government, including a levee board, drainage district, school board, or special district, shall purchase milk and dairy products produced or processed in this state which are equal in quality to milk and dairy products produced or processed outside the state, provided the cost of the milk or dairy products produced or processed in this state does not exceed by more than ten percent the cost of milk or dairy products of equal quality which are produced or processed outside the state.

Title 38: Public Contracts, Works, and Improvements

Section 38.2251.2: Preference for steel rolled in Louisiana

A. When purchasing steel, every person acting as purchasing agent for any agency, board, commission, department, or other instrumentality of the state or of a parish, municipality, or other unit of local government, including a levee board, drainage district, school board, or special dis-

trict, shall purchase steel rolled in this state which is equal in quality to steel rolled outside the state, provided the cost of steel rolled in this state does not exceed by more than ten percent the cost of steel which is rolled outside the state.

B. The provisions of this Section shall not apply when sufficient quantities of steel rolled in Louisiana are not available.

Title 38: Public Contracts, Works, and Improvements

Section 38.2253: Preference to firms doing business in state

In making any purchase it shall be the duty of the officer, purchasing agent, board, district or commission, all things being equal, to give preference to firms doing business in the State of Louisiana. However, this preference shall be inferior to and superseded in instances of conflict with that preference granted by R.S. 38:2251.

Title 38: Public Contracts, Works, and Improvements

Section 38.2255: Printing contracts; bids

To better facilitate the collection of sales taxes and other taxes in the purchase of printing, lithographing, embossing, engraving, binding, record books, printed supplies, stationery and office supplies and equipment, every board, district, commission, department, institution, or the purchasing agent thereof, and all officers and officials of the state and all parishes, municipalities and political subdivisions thereof, shall purchase the same from Louisiana firms and all printing, lithographing, embossing, engraving, and binding in connection therewith shall be done in the State of Louisiana by Louisiana firms and by Louisiana labor, and all bonds, if required, given by contractors for such printing, lithographing, embossing, binding, record books, printed supplies, stationery and office supplies and equipment shall so state; provided, however, that where the purchase is of certain specialized forms and printing, such as continuous forms, margin punched forms, football tickets, 24 sheet poster, music printing, steel dye and lithographed bonds, decalcomanias, revenue stamps, lithographing and bronzing on acetate, college annuals, fine edition binding, and books, this statute shall not apply.

Except as to specialized forms hereinabove provided, such contracts shall be let to the lowest responsible bidder who is a Louisiana firm, who will comply with the terms of this statute, unless the bid submitted by any firm outside the State of Louisiana is at least three percent lower than the lowest bid submitted by a Louisiana firm. If, for any reason, the purchaser shall be of the opinion that the public interest will be promoted thereby, it may, at any proposed letting of any of said contracts, reject any and all bids and invite new proposals.

Title 38: Public Contracts, Works, and Improvements

Section 38.2256: Supplies not ordinarily obtainable from Louisiana firms

In the purchase of said supplies not ordinarily obtainable from Louisiana firms, it shall be permissible to purchase from non-resident firms which are authorized to do business in the state of Louisiana, which maintain an office in the state where payment for supplies may be made, and are otherwise qualified to do business in the state; provided, however, that in the awarding of such contracts Louisiana firms shall first be given an opportunity to furnish said supplies and shall be given preference.

Title 39: Public Finance

Section 39.1594: Competitive sealed bidding

I. Resident business preference. In state contracts awarded by competitive sealed bidding, resident businesses shall be preferred to non-resident businesses where there is a tie bid and where there will be no sacrifice or loss in quality.

Title 39: Public Finance

Section 39.1604: Preference for all types of products produced, manufactured, assembled, grown, or harvested in Louisiana; exceptions

B. Notwithstanding any other provision of this Section to the contrary, each procurement officer, purchasing agent, or similar official who procures or purchases agricultural or forestry products, including meat, seafood, produce, eggs, paper or paper products under the provisions of this Chapter shall procure or purchase Louisiana products provided all of the following conditions are met:

(1) The bidder certifies in the bid submitted that the product meets the criteria of a Louisiana product.

(2) The product is equal to or better than equal in quality to other products.

(3) The cost of the Louisiana product shall not exceed the cost of other products by more than ten percent, except as otherwise provided in this Chapter as a specific exception.

C. In order to qualify as Louisiana products for the purpose of this Section, the following products shall meet the following requirements:

(1) Produce shall be produced in Louisiana and produce products shall be produced and processed in Louisiana.

(2) Eggs shall be laid in Louisiana and egg products shall be processed from eggs laid in Louisiana.

(3) Meat and meat products shall be processed in Louisiana from animals that originated in Louisiana, as evidenced by traceability documentation supplied by the manufacturer.

(4)

(a) Seafood shall be:

(i) Harvested in Louisiana seas or other Louisiana waters.

(ii) Harvested by a person who holds a valid appropriate commercial fishing license issued under R.S. 56:1 et seq.

(b) Products produced from such seafood shall be processed in Louisiana.

(5) Domesticated catfish shall be processed in Louisiana from animals which were grown in Louisiana.

(6) Paper and paper products shall be manufactured or converted in Louisiana. For the purposes of this Paragraph, "manufactured" shall mean the process of making a product suitable for use from raw materials by hand or by machinery, and "converted" shall mean the process of converting roll stock into a sheeted and fully packaged product in a full-time converting operation. For paper supplied in wrapped reams, each carton and each individual ream shall be clearly labeled with the name of the manufacturer or converter and the location within Louisiana where such paper is manufactured or converted. For paper and paper products supplied in bulk or in other forms, the smallest unit of packaging shall be clearly labeled with the name of the manufacturer or converter and the location within Louisiana where such paper or paper product is manufactured or converted.

(7) All other agricultural or forestry products shall be produced, manufactured, or processed in Louisiana.

D. Notwithstanding any other provision of this Section to the contrary, each procurement officer, purchasing agent, or similar official who procures or purchases products under the provisions of this Chapter shall procure or purchase meat and meat products which are further pro-

cessed in Louisiana under the grading and certification service of the Louisiana Department of Agriculture and Forestry and which are equal in quality to other meat and meat products, provided the cost of the further processed meat and meat products does not exceed the cost of other meat or meat products by more than seven percent.

E. Notwithstanding any other provision of this Section to the contrary, each procurement officer, purchasing agent, or similar official who procures or purchases products under the provisions of this Part shall procure or purchase domesticated or wild catfish which are processed in Louisiana but grown outside of Louisiana and which are equal in quality to domesticated or wild catfish which are processed outside of Louisiana provided the cost of the domesticated or wild catfish which are processed in Louisiana does not exceed the cost of the domesticated or wild catfish which are processed outside of Louisiana by more than seven percent.

F. Notwithstanding any other provision of this Section to the contrary, each procurement officer, purchasing agent, or similar official who procures or purchases products under the provisions of this Part shall procure or purchase produce processed in Louisiana but grown outside of Louisiana and which is equal in quality to produce processed and grown outside of Louisiana, provided the cost of the produce processed in Louisiana does not exceed the cost of the produce processed outside of Louisiana by more than seven percent.

G. Notwithstanding any other provision of this Section to the contrary, each procurement officer, purchasing agent, or similar official who procures or purchases products under the provisions of this Chapter shall procure or purchase eggs or crawfish which are further processed in Louisiana under the grading service of the Louisiana Department of Agriculture and Forestry and which are equal in quality to other eggs or crawfish, provided the cost of the further processed eggs or crawfish does not exceed the cost of other eggs or crawfish by more than seven percent.

H. Except as otherwise provided in this Section, each procurement officer, purchasing agent, or similar official who procures or purchases materials, supplies, products, provisions, or equipment under the provisions of this Chapter may purchase such materials, supplies, products, provisions, or equipment which are produced, manufactured, or assembled in Louisiana, as defined in R.S. 38:2251(A), and which are equal in quality to other materials, supplies, products, provisions, or equipment, provided that all of the following conditions are met:

(1) The cost of such items does not exceed the cost of other items which are manufactured, processed, produced, or assembled outside the state by more than ten percent.

(2) The vendor of such Louisiana items agrees to sell the items at the same price as the lowest bid offered on such items.

(3) In cases where more than one bidder offers Louisiana items which are within ten percent of the lowest bid, the bidder offering the lowest bid on Louisiana items is entitled to accept the price of the lowest bid made on such items.

I. Notwithstanding any other provision of this Section to the contrary, such preferences shall apply only to bidders whose Louisiana business workforce is comprised of a minimum of fifty percent Louisiana residents.

J. Notwithstanding any other provision of this Section to the contrary, the preference provided in Subsection H of this Section shall not apply to Louisiana products whose source is a clay which is mined or originates in Louisiana, and which is manufactured, processed or refined in Louisiana for sale as an expanded clay aggregate form different than its original state. No provision of this Subsection shall affect the preferences applicable to brick manufacturers.

K. The provisions of this Section shall not apply to treated wood poles and piling.

Title 39: Public Finance

Section 39.1604.1: Preference in awarding contracts

A. In the awarding of contracts by any public entity, except contracts for the construction, maintenance, or repair of highways and streets, and contracts financed in whole or in part by contributions or loans from any agency of the United States government, where both in-state and out-of-state vendors are bidding, in-state vendors shall be given a preference in the same manner that any of the out-of-state vendors would be given on a comparative bid in their own state. If one party to a joint venture is qualified under this Section as a vendor domiciled in Louisiana, this qualification shall extend to all parties to the joint venture. For the purpose of this Section, a foreign corporation which was qualified to do business in the state of Louisiana in the manner required by law more than six months prior to the advertising of bids on a contract shall be considered to be a vendor domiciled in the state of Louisiana for the purpose of awarding the contract.

B. For purposes of determination of the lowest responsible bidder, when letting contracts where bids are received from in-state vendors and out-of-state vendors, local sales and use taxes shall be excluded from the bid.

C. The provisions and requirements of this Section shall not be waived by any public entity.

Title 39: Public Finance

Section 39.1604.2: Preference in letting contracts for public work

A.

(1) In the letting of contracts for public work by any public entity, except contracts financed in whole or in part by contributions or loans from any agency of the United States government:

(a) Preference shall be given to contractors domiciled in the state of Louisiana over contractors domiciled in a state that provides for a preference in favor of contractors domiciled in that state over contractors domiciled in the state of Louisiana for the same type of work.

(b) Contractors domiciled in the state of Louisiana are to be granted the same preference over contractors domiciled in such state favoring contractors domiciled therein with a preference over contractors domiciled in the state of Louisiana in the same manner and on the same basis and to the same extent that such preference may be granted in letting contracts for the same type of work by such other state to contractors domiciled therein over contractors domiciled in the state of Louisiana.

(2) If one party to a joint venture is qualified under this Section as a contractor domiciled in Louisiana, this qualification shall extend to all parties to the joint venture.

(3) For the purpose of this Section, a foreign corporation that has qualified to do business in the state of Louisiana in the manner required by law more than six months prior to the advertising for bids on a contract for public work shall be considered to be a contractor domiciled in the state of Louisiana for the purpose of letting the contract.

B. The provisions and requirements of this Section shall not be waived by any public entity.

Title 39: Public Finance

Section 39.1604.3: Preference in awarding contracts for certain services

In the awarding of contracts by any public entity, for services to organize or administer rodeos and livestock shows, where state-owned fa-

cilities will be used to house or contain such activities, and where both in-state and out-of-state vendors are bidding, in-state vendors shall be given preference, provided such services are equal in quality and do not exceed in cost by more than ten percent those services available from outside the state.

Title 39: Public Finance

Section 39.1604.5: Preference for items purchased from Louisiana retailers

A. When purchasing items at retail, every procurement officer under the provisions of this Chapter or other person acting as purchasing agent shall purchase items from a retail dealer located in the state of Louisiana which items are equal in quality to items purchased from a retail dealer located outside the state, provided the cost of items purchased from a retail dealer located in this state does not exceed by more than ten percent the cost of items purchased from a retail dealer located outside the state.

B. A retail dealer shall qualify for the preference if the dealer can show that he has paid Louisiana corporate income, corporate franchise, and inventory taxes or any combination thereof during the previous twelve-month period.

C. Retailers domiciled in the state of Louisiana are to be granted the same preference over retailers domiciled in the state favoring retailers domiciled therein with a preference over retailers domiciled in the state of Louisiana in the same manner and on the same basis and to the same extent that such preference may be granted in purchasing items of the same type by such other state to retailers domiciled therein over retailers domiciled in the state of Louisiana.

Title 39: Public Finance

Section 39.1604.6: Preference for steel rolled in Louisiana

A. When purchasing steel, every person acting as purchasing agent for any agency, board, commission, department, or other instrumentality of the state or of a parish, municipality, or other unit of local government, including a levee board, drainage district, school board, or special district, shall purchase steel rolled in this state which is equal in quality to steel rolled outside the state, provided the cost of steel rolled in this state does not exceed by more than ten percent the cost of steel which is rolled outside the state.

B. The provisions of this Section shall not apply when sufficient quantities of steel rolled in Louisiana are not available.

Title 39: Public Finance

Section 39.1800.6: Hiring preference

State and local governmental subdivisions employees whose employment becomes subject to a contract with a private prison contractor shall be given a hiring preference by the contractor for available positions for which they qualify. Louisiana residents shall be given a hiring preference in the staffing of new facilities constructed under the provisions of this Chapter. The provisions of R.S. 42:1121 shall not be applicable to this Section and Chapter.

Title 48: Roads, Bridges, and Ferries

Section 48.255.6: Preference in letting contracts for public works

A. If a nonresident contractor bidding on a department project is domiciled in a state that provides a percentage preference in favor of contractors domiciled in that state over Louisiana resident contractors for the same type of work, then every Louisiana resident contractor shall be granted the same preference over contractors domiciled in the other state favoring contractors domiciled therein whenever the nonresident contractor bids on public work in Louisiana.

B. The provisions and requirements of this Section shall not be waived by any department.

Title 48: Roads, Bridges, and Ferries

Section 48.255.7: Contracts in which the department is a participant; preferences; assistance; exclusions

A. When the department lets a contract for a public works project that is to be administered by or paid for, in whole or in part by state funds, the agency may require as a condition of letting the contract that not less than eighty percent of the persons employed in fulfilling that contract shall be residents of the state of Louisiana.

B. The Louisiana Workforce Commission, upon request of any state agency, the governing authority of a political subdivision, or a contractor awarded a contract under the provision of this Section, shall assist in identifying craftsmen, laborers, and any other personnel necessary to comply with the requirements of this Section.

C. Notwithstanding the provisions of this Section, management personnel and persons whose skills are unavailable for performing the work shall be excluded from the requirements of this Section.

D. This Section shall not apply where federal funding participation does not allow application of this Section to the contract and will result in the loss of such federal funding.

MAINE

MAINE RESIDENT BIDDER PREFERENCE

Title 5: Administrative Procedures and Services

Part 4: Finance

Chapter 155: Purchases

Section 5.1825-B: Bids, awards, contracts and grants

1. Purchases by competitive bidding. The Director of the Bureau of General Services shall purchase collectively all goods and services for the State or any department or agency of the State in a manner that best secures the greatest possible economy consistent with the required grade or quality of the goods or services. Except as otherwise provided by law, the Director of the Bureau of General Services shall make purchases of goods or services needed by the State or any department or agency of the State through competitive bidding. [PL 1991, c. 780, Pt. Y, §70 (AMD).]

2. Waiver. The requirement of competitive bidding may be waived by the Director of the Bureau of General Services when: [PL 2011, c. 555, §1 (AMD).]

A. The procurement of goods or services by the State for county commissioners pursuant to Title 30-A, section 124, involves the expenditure of $2,500 or less, and the interests of the State would best be served; [PL 1999, c. 105, §1 (AMD).]

B. The Director of the Bureau of General Services is authorized by the Governor or the Governor's designee to make purchases without competitive bidding because in the opinion of the Governor or the Governor's designee an emergency exists that requires the immediate procurement of goods or services; [PL 1995, c. 119, §1 (AMD).]

C. After reasonable investigation by the Director of the Bureau of General Services, it appears that any required unit or item of supply, or brand of that unit or item, is procurable by the State from only one source; [PL 1991, c. 780, Pt. Y, §70 (AMD).]

D. It appears to be in the best interest of the State to negotiate for the procurement of petroleum products; [PL 1989, c. 785, §2 (NEW).]

E. The purchase is part of a cooperative project between the State and the University of Maine System, the Maine Community College System, the Maine Maritime Academy or a private, nonprofit, regionally accredited institution of higher education with a main campus in this State involving:

(1) An activity assisting a state agency and enhancing the ability of the university system, community college system, Maine Maritime Academy or a private, nonprofit, regionally accredited institution of higher education with a main campus in this State to fulfill its mission of teaching, research and public service; and

(2) A sharing of project responsibilities and, when appropriate, costs; [PL 2011, c. 555, §1 (AMD).]

F. The procurement of goods or services involves expenditures of $10,000 or less, in which case the Director of the Bureau of General Services may accept oral proposals or bids; or [PL 1999, c. 105, §2 (AMD).]

G. The procurement of goods or services involves expenditures of $10,000 or less, and procurement from a single source is the most economical, effective and appropriate means of fulfilling a demonstrated need. [PL 1999, c. 105, §3 (AMD).]

8. Tie bids. The Director of the Bureau of General Services shall award contracts, grants or purchases to in-state bidders or to bidders offering commodities produced or manufactured in the State if the price, quality, availability and other factors are equivalent. [PL 2015, c. 179, §2 (AMD).]

9. Determination of best-value bidder. In determining the best-value bidder, the Director of the Bureau of General Services or any department or agency of the State shall, for the purpose of competitively awarding a contract or grant, add a percent increase on the bid of a nonresident bidder equal to the percent, if any, of the preference given to that bidder in the state in which the bidder resides. [PL 2015, c. 179, §2 (AMD).]

Title 26: Labor and Industry

Chapter 15: Preference to Maine Works and Contractors

Section 26.1301: Local residents preferred; exception

The State, counties, cities and towns, and every charitable or educational institution which is supported in whole or in part by aid granted by the State or by any municipality shall, in the awarding of contracts for constructing, altering, repairing, furnishing or equipping its buildings or public works, give preference to workmen and to bidders for such contracts who are residents of this State, provided the bids submitted by such resident bidders are equally favorable with bids submitted by contractors from without the State. This section shall not apply to construction or repairs amounting to less than $1,000 or to emergency work or to state road work. Any contract for public improvement that is awarded by the State or any department or agency of the State is subject to the competitive bidding process established under Title 5, chapter 155, subchapter I-A.

MARYLAND

MARYLAND RESIDENT BIDDER PREFERENCE

Article: State Finance and Procurement (GSF)

Section: 14.401

(b) When a unit uses competitive sealed bidding to award a procurement contract, the unit may give a preference to the resident bidder who submits the lowest responsive bid from a resident bidder if:

(1) the resident bidder is a responsible bidder;

(2) a responsible bidder whose principal office or operation is in another state submits the lowest responsive bid;

(3) the state in which the nonresident bidder's principal office is located or the state in which the nonresident bidder has its principal operation through which it would provide supplies or services gives a preference to its residents; and

(4) a preference does not conflict with a federal law or grant affecting the procurement contract.

(c) When a unit uses competitive sealed proposals to award a procurement contract, the unit may give a preference to resident offerors if:

(1) a responsible offeror whose principal office or operation is in another state submits a proposal;

(2) the state in which the nonresident offeror's principal office is located or the state in which the nonresident offeror has its principal operation through which it would provide the subject of the contract gives a preference to its residents; and

(3) the preference does not conflict with a federal law or grant affecting the procurement contract.

(d)

(1) At the request of the unit, a nonresident bidder or nonresident offeror submitting a proposal for a State project shall provide a copy of the current statute, resolution, policy, procedure, or executive order that pertains to the treatment of nonresident bidders or nonresident offerors by:

(i) the state in which the nonresident bidder's or nonresident offeror's principal office is located; and

(ii) the state in which the nonresident bidder or nonresident offeror has its principal operation through which it would provide supplies or services.

(2) A unit may give a preference under this section that is identical to any of the following preferences, or any combination of them:

(i) the preference that the state in which the nonresident bidder's or nonresident offeror's principal office is located gives to its residents; or

(ii) the preference that the state in which the nonresident bidder or nonresident offeror has its principal operation through which it would provide supplies or services gives to its residents.

Article: State Finance and Procurement (GSF)

Section: 14.407

(a)

(1) In this section the following words have the meanings indicated.

(2) "Locally grown food" means food grown in the State.

(3) "Percentage price preference" means the percent by which a responsive bid from a responsible bidder whose product is a locally grown food may exceed the lowest responsive bid submitted by a responsible bidder whose product is not a locally grown food.

(b) The Board shall adopt regulations that require State schools and facilities to establish a percentage price preference, not to exceed 5%, for the purchase of locally grown food.

(c) A percentage price preference under this section may not be used in conjunction with any other percentage price preference established under this title.

(d) Each State school and facility shall review the procurement specifications currently used and, to the extent practicable, require the use of a percentage price preference in their purchase of locally grown food.

(e)

(1) Except as provided in paragraph (2) of this subsection, this section is broadly applicable to all procurements by State schools and facilities if the locally grown food is consistent with the requirements of the bid specification.

(2) Only to the extent necessary to prevent the denial of federal money or eliminate the inconsistency with federal law, this section does not apply to a procurement by a State school or facility if it is determined that compliance with this section would:

(i) cause denial of federal money; or

(ii) be inconsistent with the requirements of federal law.

MASSACHUSETTS

MASSACHUSETTS RESIDENT BIDDER PREFERENCE

Part I: Administration of the Government

Title II: Executive and Administrative Officers of the Commonwealth

Chapter 7: Executive Office for Administration and Finance

Section 22: Purchase of supplies and equipment; rules and regulations; duties of state purchasing agent

(17) A preference in the purchase of supplies and materials, other considerations being equal, in favor, first, of supplies and materials manufactured and sold within the commonwealth, with a proviso that the state purchasing agent may, where practicable, allow a further preference in favor of such supplies and materials manufactured and sold in those cities and towns within the commonwealth which have been designated as depressed areas. For the purpose of this section a depressed area shall be considered as cities and towns which are designated as Groups D, E or F, in the Department of Labor of the United States publication entitled "Area Trends in Employment and Unemployment", or which are listed in said publication as areas which have substantial or persistent unemployment and second, of supplies and materials manufactured and sold elsewhere within the United States.

Part I: Administration of the Government

Title II: Executive and Administrative Officers of the Commonwealth

Chapter 7: Executive Office for Administration and Finance

Section 23B: Preference for products grown in or produced from products grown in commonwealth

(a) Notwithstanding any general or special law to the contrary, and to the extent permitted by federal law, a state agency, authority or trustees or officers of a state college or university designated by such trustees when purchasing products of agriculture as defined in section 1A of chapter 128, including but not limited to, fruits, vegetables, eggs, dairy products, meats, crops, horticultural products or products processed into value added products as part of a Massachusetts farm operation, shall prefer products grown in the commonwealth or products produced using products grown in the commonwealth as well as fish, seafood, and other aquatic products.

(b) To effectuate the preference for those products of agriculture grown or produced using locally-grown products, the state purchasing agent responsible for procuring the products on behalf of a state agency, authority or trustees or officers of a state college or university designated by such trustees shall, in advertising for bids, contracts or otherwise procuring products of agriculture, make reasonable efforts to facilitate the purchase of such products of agriculture grown or produced using products grown in the commonwealth.

(c) The state purchasing agent responsible for procuring the products on behalf of a state agency or authority shall purchase the products of agriculture grown or produced using products grown in the commonwealth, unless the price of the goods exceeds, by more than 10 per cent, the price of products of agriculture grown or produced using products grown outside of the commonwealth.

Part I: Administration of the Government

Title II: Executive and Administrative Officers of the Commonwealth

Chapter 7: Executive Office for Administration and Finance

Section 22O: Preferential procurement of products or services within the commonwealth

Notwithstanding any general or special law to the contrary relating to procurement, and to the extent permitted by federal law, a state agency or authority shall establish a preference for the procurement of products or services from businesses, as defined in section 3A of chapter 23A, with their principal place of business in the commonwealth. In addition, the operational services division shall endeavor to ensure that in any fiscal year no less than 15 per cent of statewide procurement contracts are entered into with businesses, as so defined, which:

(i) are independently owned and operated;

(ii) have a principal place of business in the commonwealth;

(iii) have been in business for at least 1 year; and

(iv) are defined as a small business under applicable federal law or are defined by the division as small businesses pursuant to the small business purchasing program

Massachusetts Executive Order

No 523: Establishing the Massachusetts small business purchasing program

WHEREAS, in order to encourage the growth of existing Small Businesses, and in accordance with all applicable laws, special consideration should be given by state agencies to Small Businesses when such agencies are purchasing commodities and services to meet their business needs.

MICHIGAN

MICHIGAN RESIDENT BIDDER PREFERENCE

Chapter 18: Department of Management and Budget

Act 431 of 1984: The Management and Budget Act

Document 431-1984-2: Article 2

Section 18-1261: Supplies, materials, services, insurance, utilities, third party financing, equipment, printing, and other items; purchase; contract; preference; discretionary decisions by department; competitive solicitation; exceptions; delegation of procurement authority; lease or installment purchases; directives; cooperative purchasing agreement; preference to disabled veteran; representation in contract that person not engaged in boycott; exemption from freedom of information act; definitions.

(1) The department shall provide for the purchase of, the contracting for, and the providing of supplies, materials, services, insurance, utilities, third party financing, equipment, printing, and all other items as needed by state agencies for which the legislature has not otherwise expressly provided. If consistent with federal statutes, in all purchases made by the department, all other things being equal,

preference shall be given to products manufactured or services offered by Michigan-based firms or by facilities with respect to which the operator is designated as a clean corporate citizen under part 14 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.1401 to 324.1429, or to biobased products whose content is sourced in this state. The department shall solicit competitive bids from the private sector whenever practicable to efficiently and effectively meet the state's needs. The department shall first determine that competitive solicitation of bids in the private sector is not appropriate before using any other procurement method for an acquisition.

(8) In awarding a contract under this section, the department shall give a preference of up to 10% of the amount of the contract to a qualified disabled veteran. If the qualified disabled veteran otherwise meets the requirements of the contract solicitation and with the preference is the lowest bidder, the department shall enter into a procurement contract with the qualified disabled veteran under this act. If 2 or more qualified disabled veterans are the lowest bidders on a contract, all other things being equal, the qualified disabled veteran with the lowest bid shall be awarded the contract under this act.

Chapter 18: Department of Management and Budget

Act 431 of 1984: The Management and Budget Act

Document 431-1984-2: Article 2

Section 18-1268: Bidder for state contract as Michigan business; certification; significant business presence required; verification; disclosure; reciprocal preference; list of states giving preference to in-state bidders; waiver of entitlement to claim preference; fraud; felony; penalty; review; recommendations; applicability.

(4) Only a bidder that has certified that it is a Michigan business is entitled to have the department apply a reciprocal preference in its favor against a business that submits a bid from a state which applies a preference law against out-of-state bidders. A bidder that does not certify that it is a Michigan business shall indicate in its bid the state in which it maintains its principal place of business for the purpose of applying that state's preference law against the bidder.

(5) If the low bid for a state procurement exceeds $100,000.00 and is from a business located in a state which applies a preference law against out-of-state businesses, the department shall prefer a bid from a Michigan business in the same manner in which the out-of-state bidder would be preferred in its home state.

Chapter 24: Printing and State Documents

Act 153 of 1937: State Printing

Section 24.61: State printing and legislative printing; requirements; exceptions; preference.

(1) All printing that this state is chargeable, or that is paid for with funds appropriated wholly or in part by this state, excepting printing for primary school districts, counties, townships, cities, villages, or legal publications ordered for or by elective state officers, shall bear the label of the branch of the allied printing trades council of the locality in which it is printed,

(2) For all printing described in subsection (1), all other things being equal, preference shall be given for printing offered by Michigan-based firms or by facilities with respect to which the operator is designated as a clean corporate citizen under part 14 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.1401 to 324.1429.

Chapter 45: Counties

Act 307 of 1917: Purchase of Supplies

Section 45.85: Purchasing agent; duties; estimates of county officers; advertisement for bids; manner of purchase, criteria.

When the same article is estimated for by 2 or more offices, departments or institutions, but of different brands or grades, the purchasing agent may determine which of the brands or grades shall be purchased so as to produce uniformity in use by all the offices, departments and institutions: Provided, That other things being equal, supplies offered by bidders who have an established local business in the county shall have preference.

MINNESOTA

MINNESOTA RESIDENT BIDDER PREFERENCE

16A - 16E: Administration and Finance

Chapter 16C: State Procurement

Section 16C.06: Procurement Requirements

Subd. 7. Other states with resident preference.

Acquisition of goods and services must be awarded according to the provisions of this chapter except that a resident vendor shall be allowed a preference over a nonresident vendor from a state that gives or requires a preference to vendors from that state. The preference shall be equal to the preference given or required by the state of the nonresident vendor.

Subd. 8. Federally funded projects exempt.

Subdivision 7 does not apply to a contract for any project in which federal funds are expended.

Subd. 10. Preferences not cumulative.

The preferences provided for under subdivision 7 and sections 16C.0725 and 16C.16 are not cumulative. The total percentage of preference granted on a contract may not exceed the highest percentage of preference allowed for that contract under any one of these statutory sections.

16A - 16E: Administration and Finance

Chapter 16C: State Procurement

Section 16C.073: Purchase and Use of Paper Stock; Printing

Subd. 2. Purchases.

(a) Whenever practicable, a public entity shall:

(9) purchase paper which has been made on a paper machine located in Minnesota.

16A - 16E: Administration and Finance

Chapter 16C: State Procurement

Section 16C.16: Designation of Procurements From Small Businesses

Subd. 6. Purchasing methods.

(a) The commissioner may award up to a six percent preference for specified goods or services to small targeted group businesses.

(b) The commissioner may award a contract for goods, services, or construction directly to a small business or small targeted group business without going through a competitive solicitation process up to a total contract award value, including extension options, of $25,000.

(c) The commissioner may designate a purchase of goods or services for award only to small businesses or small targeted group businesses if the commissioner determines that at least three small businesses or small targeted group businesses are likely to respond to a solicitation.

Subd. 6a. Veteran-owned small businesses.

(a) Except when mandated by the federal government as a condition of receiving federal funds, the commissioner shall award up to a six percent preference, but no less than the percentage awarded to any other group under this section, on state procurement to certified small businesses that are majority-owned and operated by veterans

Subd. 7. Economically disadvantaged areas.

(a) The commissioner may award up to a six percent preference on state procurement to small businesses located in an economically disadvantaged area.

(b) The commissioner may award a contract for goods, services, or construction directly to a small business located in an economically disadvantaged area without going through a competitive solicitation process up to a total contract award value, including extension options, of $25,000.

(c) The commissioner may designate a purchase of goods or services for award only to a small business located in an economically disadvantaged area if the commissioner determines that at least three small businesses located in an economically disadvantaged area are likely to respond to a solicitation.

83A - 84: Natural Resources

Chapter 84: Department of Natural Resources

Section 84.025: Contracts for Professional and Maintenance Services

Subd. 10. Recreational vehicles and boats used for public purposes.

The commissioner shall give preference to engine models manufactured in the United States. All all-terrain vehicles purchased by the commissioner must be manufactured in the state of Minnesota.

Minnesota Session Laws - 2013, Regular Session

Chapter 85 - H.F. No. 729

Article 6: Commerce and Consumer Protection Policy

Section 11: Solar Photovoltaic Modules

No solar photovoltaic module may be installed that is financed directly or indirectly, wholly or in part, with money appropriated in this act, unless the solar photovoltaic module is made in Minnesota as defined in Minnesota Statutes, section 16B.323, subdivision 1, paragraph (b).

Minnesota Administrative Rules

Administration Department

Chapter 1230: State Contracts

Bidding and Contracts

Part 1230.0900: Tied Bids

Subpart 1. Resolving tied bids.

Tied low bids for less than $2,500 must be resolved by a coin toss among the tied low bidders, except as provided in subpart 2. Except as provided in subpart 2, tied low bids for $2,500 or more must be referred to the director for disposition. The methods used to resolve tie bids may include requesting second pricing from the vendors or negotiating with the tied low bidders.

Subp. 2. Preference for Minnesota firms.

Whenever a tie involves a Minnesota firm and one whose place of business is outside the state of Minnesota, preference shall be given to the Minnesota firm.

Minnesota Administrative Rules

Administration Department

Chapter 1230: State Contracts

Small Business Procurement Program

Part 1230.1810: Proportional Utilization of Targeted Group, Economically Disadvantaged Area, and Veteran Owned Small Businesses.

The division shall attempt to achieve utilization of targeted group, economically disadvantaged area, and veteran-owned small businesses in proportion to their representation in the state's market area. In so doing, the division may use either of the following purchasing methods for making awards to businesses designated by the commissioner as targeted group, economically disadvantaged area, or veteran-owned small businesses.

B. A certified targeted group, economically disadvantaged area, or veteran-owned small business may be awarded up to a six percent preference in the amount offered over the lowest responsible offer from another vendor.

MISSISSIPPI

MISSISSIPPI RESIDENT BIDDER PREFERENCE

Title 19: Counties and County Officers

Chapter 13: Contracts, Claims and transaction of Business with Counties

Section 19-13-111: Bids and contracts to be definite.

All bids and contracts for stationery, blank books, office supplies and other things must be specific in stating the kinds or brands and qualities of all articles, as far as practicable; the weight per ream and material of all paper; the price per quire and the weight per ream of books and record books, with the style of binding and size of each kind of book duly classified; and, other things being equal, the several boards shall give the preference to those bids which are most specific as to the price and quality of the various articles. In case bids are in all respects equal between resident and nonresident bidders, the board of supervisors shall give preference to citizens of this state.

Title 31: Public Business, Bonds, and Obligations

Chapter 3: State Board of Public Contractors

Section 31-3-21: Bidding and awards.

(3) In the letting of public contracts preference shall be given to resident contractors, and a nonresident bidder domiciled in a state having laws granting preference to local contractors shall be awarded Mississippi public contracts only on the same basis as the nonresident bidder's state awards contracts to Mississippi contractors bidding under similar circumstances; and resident contractors actually domiciled in Mississippi, be they corporate, individuals, or partnerships, are to be granted preference over nonresidents in awarding of contracts in the same manner and to the same extent as provided by the laws of the state of domicile of the nonresident. When a nonresident contractor submits a bid for a public project, he shall attach thereto a copy of his resident state's current preference law, if any, pertaining to such state's treatment of nonresident contractors. Any bid submitted by a nonresident contractor which does not include the nonresident contractor's current state law shall be rejected and not considered for award. As used in this section, the term "resident contractors" includes a nonresident person, firm or corporation that has been qualified to do business in this state and has maintained a permanent full-time office in the State of Mississippi for two (2) years prior to submission of the bid and the subsidiaries and affiliates of such a person, firm or corporation. Any public agency awarding a contract shall promptly report to the Department of Revenue the following information:

(a) The amount of the contract.

(b) The name and address of the contractor reviewing the contract.

(c) The name and location of the project.

Title 31: Public Business, Bonds, and Obligations

Chapter 5: Public Works Contracts

Section 31-5-17: Resident labor used on public works.

Every public officer, contractor, superintendent, or agent engaged in or in charge of the construction of any state or public building or public work of any kind for the State of Mississippi or for any board, city commission, governmental agency, or municipality of the State of Mississippi shall employ only workmen and laborers who have actually resided in Mississippi for two (2) years next preceding such employment.

Title 31: Public Business, Bonds, and Obligations

Chapter 5: Public Works Contracts

Section 31-5-19: Procedure if resident labor not available.

In the event workmen or laborers qualified under the provisions of Section 31-5-17 are not available, then the contractor, officer, superintendent, agent, or person in charge of such work shall notify in writing the mayor of the city in which said work is being done, the president of the board of supervisors of the county in which said work is being done, the Governor where said work is being done for the State of Mississippi, and the president, chairman, or executive officer of such board, city commission, or governmental agency for which said work is being done, of such fact. Unless the mayor, Governor, president, executive officer, or chairman aforesaid, as the case may be, shall forthwith supply such contractor, officer, superintendent, agent, or person in charge of said works with the satisfactory workmen or laborers needed, said contractor, officer, superintendent, agent, or person shall be authorized to employ workmen or laborers who are not qualified under the provisions of Section 31-5-17 to make up the deficiency. Nothing herein shall be construed to prevent the State of Mississippi, any county, municipality, board, or commission from placing or letting any contract for the erection or construction of any public building or public work in the open market, or soliciting bids from persons, firms, or corporations without the State of Mississippi. Any person, persons, firm, or corporation from without the State of Mississippi that may obtain such contracts for public buildings or public works shall comply with the provisions of Section 31-5-17 upon undertaking the said contract or work.

Title 31: Public Business, Bonds, and Obligations

Chapter 5: Public Works Contracts

Section 31-5-23: State products used in public works.

In the construction of any building, highway, road, bridge, or other public work or improvement by the State of Mississippi or any of its political subdivisions or municipalities, only materials grown, produced, prepared, made and/or manufactured within the State of Mississippi should be used. Paint, varnish and lacquer shall be used which shall contain as vehicles tung oil and either ester gum or modified resin (with rosin as the principal base of constituents), and turpentine shall be used as solvent or thinner, all of which said products shall be produced in Mississippi. However, preference shall not be given to materials grown, produced, prepared, made and/or manufactured in the State of Mississippi when other materials of like quality produced without the State of Mississippi may be purchased or secured at less cost, or any other materials of better quality produced without the State of Mississippi can be secured at a reasonable cost.

Title 31: Public Business, Bonds, and Obligations

Chapter 7: Public Purchases

Section 31-7-15: Preferences for awarding contracts for commodities; procurement of products made from recovered materials; state agencies to purchase products manufactured or sold by Mississippi Industries for the Blind whenever economically feasible.

(1) Whenever two (2) or more competitive bids are received, one or more of which relates to commodities grown, processed or manufactured within this state, and whenever all things stated in such received bids are equal with respect to price, quality and service, the commodities grown, processed or manufactured within this state shall be given preference. A similar preference shall be given to commodities grown, processed or manufactured within this state whenever purchases are made without competitive bids, and when practical the Department of Finance and Administration may by regulation establish reasonable preferential policies for other commodities, giving preference to resident suppliers of this state.

(2) Any foreign manufacturing company with a factory in the state and with over fifty (50) employees working in the state shall have preference over any other foreign company where both price and quality are the same, regardless of where the product is manufactured.

(3) On or before January 1, 1991, the Department of Finance and Administration shall adopt bid and product specifications to be utilized by all state agencies that encourage the procurement of commodities made from recovered materials. Preference in awarding contracts for commodities shall be given to commodities offered at a competitive price.

Title 31: Public Business, Bonds, and Obligations

Chapter 7: Public Purchases

Section 31-7-16: Purchase of certain equipment capable of being manufactured or assembled in separate units.

In the event equipment is required which is capable of being manufactured or assembled in separate units such as school bus chassis and bodies or other bodies of equipment installed upon chassis, and there is a manufacturer of such bodies located within the State of Mississippi, a public purchase may be made of such chassis and such body or equipment as separate items.

Title 31: Public Business, Bonds, and Obligations

Chapter 7: Public Purchases

Section 31-7-18: Purchase of certain motor vehicles.

In addition to the method of purchasing authorized in this chapter, said governing authorities are hereby authorized to accept the lowest bid received from a motor vehicle dealer domiciled within the county of the governing authority for the purchase of any motor vehicle having a gross vehicle weight rating of less than twenty-six thousand (26,000) pounds that shall not exceed a sum equal to three percent (3%) greater than the price or cost which the dealer pays the manufacturer, as evidenced by the factory invoice for the motor vehicle. In the event said county does not have an authorized motor vehicle dealer, said board or governing authority may, in like manner, receive bids from motor vehicle dealers in any adjoining county.

Title 31: Public Business, Bonds, and Obligations

Chapter 7: Public Purchases

Section 31-7-47: Preference to resident contractors.

In the letting of public contracts, preference shall be given to resident contractors, and a nonresident bidder domiciled in a state, city, county, parish, province, nation or political subdivision having laws granting

preference to local contractors shall be awarded Mississippi public contracts only on the same basis as the nonresident bidder's state, city, county, parish, province, nation or political subdivision awards contracts to Mississippi contractors bidding under similar circumstances. Resident contractors actually domiciled in Mississippi, be they corporate, individuals or partnerships, are to be granted preference over nonresidents in awarding of contracts in the same manner and to the same extent as provided by the laws of the state, city, county, parish, province, nation or political subdivision of domicile of the nonresident.

Title 73: Professions and Vocations

Chapter 13: Engineers and Land Surveyors

Section 73-13-45: Public works.

(2)

(a) In the awarding of public contracts for professional engineering services, preference shall be given to resident professional engineers over those nonresident professional engineers domiciled in a state having laws which grant a preference to the professional engineers who are residents of that state. Nonresident professional engineers shall be awarded Mississippi public contracts only on the same basis as the nonresident professional's state awards contracts to Mississippi professional engineers under similar circumstances. When a nonresident professional engineer submits a proposal for a public project, he shall attach thereto a copy of his resident state's current statute, resolution, policy, procedure or executive order pertaining to such state's treatment of nonresident professional engineers. Resident professional engineers actually domiciled in Mississippi, be they corporate, individuals or partnerships, shall be granted preference over nonresidents in the awarding of contracts in the same manner and to the same extent as provided by the laws of the state of domicile of the nonresident. As used in this section, the term "resident professional engineer" includes a nonresident person, firm or corporation that has been qualified to do business in this state and has maintained a permanent full-time office in the State of Mississippi for not less than two (2) years prior to submitting a proposal for a public project, and the subsidiaries and affiliates of such a person, firm or corporation.

(b) The provisions of this subsection shall not apply to any contract for any project upon which federal funds would be withheld because of the preference requirements of this subsection.

MISSOURI

MISSOURI RESIDENT BIDDER PREFERENCE

Title IV Executive Branch

Chapter 34: State Purchasing and Printing

Section 34.070: Preference to Missouri products and firms.

In making purchases, the commissioner of administration or any agent of the state with purchasing power shall give preference to all commodities and tangible personal property manufactured, mined, produced, processed, or grown within the state of Missouri, to all new generation processing entities defined in section 348.432, except new generation processing entities that own or operate a renewable fuel production facility or that produce renewable fuel, and to all firms, corporations or individuals doing business as Missouri firms, corporations or individuals, when quality is equal or better and delivered price is the same or less. The commissioner of administration or any agent of the state with purchasing power may also give such preference whenever competing bids, in their entirety, are comparable. For purposes of this section, "commodities" shall include forest products and bricks or any agricultural product that has been processed or otherwise had value added to it in this state.

Title IV Executive Branch

Chapter 34: State Purchasing and Printing

Section 34.073: Missouri businesses, performance of jobs or services, preference, when.

1. In letting contracts for the performance of any job or service, all agencies, departments, institutions, and other entities of this state and of each political subdivision of this state shall give preference to all firms, corporations, or individuals doing business as Missouri firms, corporations, or individuals, or which maintain Missouri offices or places of business, when the quality of performance promised is equal or better and the price quoted is the same or less. The commissioner of administration may also give such preference whenever competing bids, in their entirety, are comparable.

2. Notwithstanding the requirements of subsection 1 of this section, the commissioner of administration shall give further preference as required by section 34.076.

Title IV Executive Branch

Chapter 34: State Purchasing and Printing

Section 34.074: Disabled veterans, state and political subdivision contracts, preference to...

3. In letting contracts for the performance of any job or service, all agencies, departments, institutions, and other entities of this state and of each political subdivision of this state shall give a three-point bonus preference to service-disabled veteran businesses doing business as Missouri firms, corporations, or individuals, or which maintain Missouri offices or places of business.

4. In implementing the provisions of subsection 3 of this section, the following shall apply:

(1) The commissioner of administration shall have the goal of three percent of all such contracts described in subsection 3 of this section to be let to such veterans;

(2) If no or an insufficient number of such veterans doing business in this state submit a bid or proposal for a contract let by an agency, department, institution, or other entity of the state or a political subdivision, such goal shall not be required and the provisions of subdivision (1) of this subsection shall not apply

Title IV Executive Branch

Chapter 34: State Purchasing and Printing

Section 34.076: Out-of-state contractors or products for public works, requirements, ...

1. To the extent permitted by federal laws and regulations, whenever the state of Missouri, or any department, agency or institution thereof or any political subdivision shall let for bid any contract to a contractor for any public works or product, the contractor or bidder domiciled outside the boundaries of the state of Missouri shall be required, in order to be successful, to submit a bid the same percent less than the lowest bid submitted by a responsible contractor or bidder domiciled in Missouri as would be required for such a Missouri domiciled contractor or bidder to succeed over the bidding contractor or bidder domiciled outside Missouri on a like contract or bid being let in the person's domiciliary state and, further, the contractor or bidder domiciled outside the boundaries of Missouri shall be required to submit an audited financial statement as would be required of a Missouri domiciled contractor or bidder on a like contract or bid being let in the domiciliary state of that contractor or bidder.

2. Subsection 1 of this section shall not apply to any contractor who is qualified for bidding purposes with the department of transportation and submits a successful bid wherein part of or all funds are furnished by the United States.

3. Subsection 1 of this section shall not apply to any public works or product transportation where the bid is less than five thousand dollars.

Title IV Executive Branch

Chapter 34: State Purchasing and Printing

Section 34.080: Institutions to use coal from Missouri or adjoining states, when -- ...

1. That the board of trustees or other officer or officers in charge of every institution in the state of Missouri which is supported in whole or in part by public funds, and who are required to purchase coal for fuel purposes in the operation of any such institution, shall be required to purchase and use coal which is mined in the state of Missouri or an adjoining state, if the cost of coal mined in the state of Missouri or an adjoining state is not greater than the cost of coal mined in any other state or states, including the cost of transportation.

Title VI: County, Township and Political Subdivision Government

Chapter 50: County Finances, Budget and Retirement Systems

Section 50.780: Commissions may permit officers to purchase supplies direct -- liability

1. It shall hereafter be unlawful for any county or township officer in any county to which sections 50.760 to 50.790 apply to purchase any supplies not contracted for as provided in sections 50.760 to 50.790 for the officer's official use and for which payment is by law required to be made by the county unless the officer shall first apply to and obtain from the county commission an order in writing and under the official seal of the commission for the purchase of such supplies, and in all cases where the supplies requested by such officer have been contracted for by the county commission as provided in sections 50.760 to 50.790, the order shall be in the form of a requisition by said officer addressed to the person, firm, company or corporation with whom or which the county commission has made a contract for such supplies, and presented to the county commission for approval or disapproval; and unless approval be given such requisition shall not be filled and any such requisition filled without such approval shall not be paid for out of county funds. The county shall not be liable for any debts for supplies except debts contracted as provided in sections 50.760 to 50.790. The best price and the quality of supplies shall be considered and supplies of a higher price or quality than is reasonably required for the purposes to which they are to be applied shall not be purchased or contracted for. Preference to merchants and dealers within their counties may be given by such commissioners, provided the price offered is not above that offered elsewhere.

Code of State Regulations

Title 6: Department of Higher Education and Workforce Development

Division 250: University of Missouri

Chapter 3: Policies of the Board of Curators

CSR 250.3.020: Preference for Missouri Products

(1) In keeping with the policy of the state of Missouri as declared in the statutory law, the Board of Curators of the University of Missouri has adopted the following policy respecting preference for Missouri products and Missouri firms:

(B) This policy shall be applicable to the construction and repair of buildings, and to the making of purchases, including, not by way of limitation, the purchase of coal for fuel purposes;

(C) The commodities and services covered by this policy shall include the products of the mines, forests and quarries of the state of Missouri, and all materials, commodities, products, supplies, provisions and all other articles produced, manufactured, mined or grown within the state of Missouri, and shall also apply to contractual services;

(D) In addition to the commodities, products, supplies and provisions mentioned in 6 CSR 250-3.020(1)(C), preference shall be given to all firms, corporations or individuals doing business as Missouri firms, corporations or individuals;

(E) Preference shall be given in respect to any commodities, products, materials, supplies, provisions and all other articles produced, manufactured, mined or grown within the state of Missouri and in respect to services when they are of a quality suitable for the purpose intended provided that quality and fitness of articles shall always be considered in determining the right to preference;

(F) Preference need not be given to Missouri products, materials, supplies, provisions, commodities and other articles unless they are found in marketable quantities in the state;

(G) Preference shall be given to Missouri products, materials, supplies, provisions, commodities and other articles and services mentioned in 6 CSR 250-3.020(1)(C) only when they can be secured without additional cost over foreign products or the products of other states

(2) By virtue of the foregoing policy and by virtue of statutory authority, preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within, or which are the products of the mines, forests and quarries of the state of Missouri. By virtue of the foregoing policy, preference will also be given to all firms, corporations or individuals doing business as Missouri firms, corporations or individuals.

(3) Corporations not incorporated under the laws of Missouri and firms whose members are not residents of the state of Missouri and individuals not residents of the state of Missouri who have and maintain within the state of Missouri a regular place of business for the transaction of their business shall be deemed doing business as Missouri firms, corporations or individuals when consideration is being given to bids for acceptance by the university.

MONTANA

MONTANA RESIDENT BIDDER PREFERENCE

Title 18: Public Contracts

Chapter 1: Public Contracts Generally

Part 1: Preferences and General Matters

Section 18-1-102: State contracts to lowest bidder - reciprocity

(1) In order to provide for an orderly administration of the business of the state of Montana in awarding public contracts for the purchase of goods and for construction, repair, and public works of all kinds, a public agency shall, except as provided in Title 18, chapter 2, part 5, award:

(a) a public contract for construction, repair, or public works to the lowest responsible bidder without regard to residency. However, a resident bidder must be allowed a preference on a contract against the bid of a nonresident bidder from any state or country that enforces a preference for resident bidders. The preference given to resident bidders of this state must be equal to the preference given in the other state or country.

(b) a public contract for the purchase of goods to the lowest responsible bidder without regard to residency. However, a resident must be allowed a preference on a contract against the bid of a nonresident if the state or country of the nonresident enforces a preference for residents. The preference must be equal to the preference given in the other state or country.

(2) The preferences in this section apply:

(a) whether the law requires advertisement for bids or does not require advertisement for bids; and

(b) to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant to federal laws.

Title 18: Public Contracts

Chapter 4: Montana Procurement Act

Part 3: Procurement Procedure

Section 18-4-303: Competitive sealed bidding

(8) If an award is made, it must be made with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, including the preferences established by Title 18, chapter 1, part 1. If all bids exceed available funds as certified by the appropriate fiscal officer and the lowest responsible and responsive bid does not exceed the funds by more than 5%, the director or the head of a purchasing agency may, in situations in which time or economic considerations preclude re-solicitation of a reduced scope, negotiate an adjustment of the bid price, including changes in the bid requirements, with the lowest responsible and responsive bidder in order to bring the bid within the amount of available funds.

(10) In case of a tie bid, preference must be given to the bidder, if any, offering American-made products or supplies.

NEBRASKA

NEBRASKA RESIDENT BIDDER PREFERENCE

Chapter 73: Public Lettings and Contracts

Section 73.101.01: Resident bidder, defined; preference

When a public contract is to be awarded to the lowest responsible bidder, a resident bidder shall be allowed a preference over a nonresident bidder from a state which gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the nonresident bidder. Resident bidder as used in sections 73-101.01 and 73-101.02 shall mean any person, partnership, foreign or domestic limited liability company, association, or foreign or domestic corporation authorized to engage in business in the State of Nebraska and which has met the residency requirement of the state of the nonresident bidder necessary for receiving the benefit of that state's preference law on the date when any bid for a public contract is first advertised or announced or has had a bona fide establishment for doing business within this state for the length of time established by the state of the nonresident bidder necessary for receiving the benefit of that state's preference law on the date when any bid for a public contract is first advertised or announced. Any contract entered into without compliance with sections 73-101.01 and 73-101.02 shall be null and void.

Chapter 73: Public Lettings and Contracts

Section 73-107: Resident disabled veteran or business located in designated enterprise zone; preference; contract not in compliance with section; null and void.

(1) When a state contract is to be awarded to the lowest responsible bidder, a resident disabled veteran or a business located in a designated enterprise zone under the Enterprise Zone Act shall be allowed a preference over any other resident or nonresident bidder if all other factors are equal.

(2) For purposes of this section, resident disabled veteran means any person

(a) who resides in the State of Nebraska, who served in the United States Armed Forces, including any reserve component or the National Guard, who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), and who possesses a disability rating letter issued by the United States Department of Veterans Affairs establishing a service-connected disability or a disability determination from the United States Department of Defense and

(b)

(i) who owns and controls a business or, in the case of a publicly owned business, more than fifty percent of the stock is owned by one or more persons described in subdivision (a) of this subsection and

(ii) the management and daily business operations of the business are controlled by one or more persons described in subdivision (a) of this subsection.

Chapter 81: State Administrative Departments

Section 81-15159: Legislative findings and intent; state purchases; preference requirements.

(2) It is the intent of the Legislature that the state, as a major consumer and an example for others, should assist resource recovery by making a concerted effort to use recyclable and recycled products and encourage other levels of government and the private sector to follow its example. When purchasing products, materials, or supplies for use by the State of Nebraska, the Department of Administrative Services, the University of Nebraska, and any other state agency making such purchases shall give preference to and purchase products, materials, and supplies which are manufactured or produced from recycled material or which can be readily reused or recycled after their normal use. Preference shall also be given to the purchase of corn-based biodegradable plastics and road deicers, depending on the availability and suitability of such products. Such preference shall not operate when it would result in the purchase of products, materials, or supplies which are of inadequate quality or substantially higher cost.

Chapter 82: State Culture and History

Section 82-323: Nebraska Arts Council; artists; how chosen.

The Nebraska Arts Council shall give a preference to regional artists in its selection of and commissioning of artists for projects under sections 82-317 to 82-329, 85-106 to 85-106.03, and 85-304 to 85-304.03.

Nebraska Administrative Code

Administrative Services, Department of

Title 9: Material Division

Chapter 4: Awarding of Contract

Section 9-4-003: Tie Bids and Preference

Bids which are equal in all respects and tied in price shall be resolved by drawing lots. Nebraska vendors shall be given preference. Tie bids involving more than one Nebraska vendor shall be resolved by drawing lots among the Nebraska vendors. A resident bidder shall be allowed a preference as against a non-resident bidder from a state which gives or requires a preference to bidders from that state. The preference shall be

equal to the preference given or required by the state of the non-resident bidder.

A resident bidder means any person, partnership, association, or foreign or domestic corporation authorized to engage in business in the State of Nebraska and who shall have met the residency requirement of the state of the non-resident bidder, necessary for receiving the benefit of that state's preference law on the date when any bid for a public contract is first advertised or announced, or shall have had a bona fide establishment for doing business within this state for the length of time established by the state of the non-resident bidder, necessary for receiving the benefit of that state's preference law on the date when any bid for a public contract is first advertised or announced.

NEVADA

NEVADA RESIDENT BIDDER PREFERENCE

Title 27: Public Property and Purchasing

Chapter 333: Purchasing: State

NRS 333.300: Notices of proposed purchases; purchase by formal contract; solicitation; preferences; emergency purchases.

5. In awarding contracts for the purchase of supplies, materials and equipment, if two or more lowest bids are identical, the Administrator shall:

(a) If the lowest bids are by bidders resident in the State of Nevada, accept the proposal which, in the discretion of the Administrator, is in the best interests of this State.

(b) If the lowest bids are by bidders resident outside the State of Nevada:

(1) Accept the proposal of the bidder who will furnish goods or commodities produced or manufactured in this State; or

(2) Accept the proposal of the bidder who will furnish goods or commodities supplied by a dealer resident in the State of Nevada.

Title 27: Public Property and Purchasing

Chapter 333: Purchasing: State

NRS 333.3354: Preference for bid or proposal submitted by Nevada-based business: Amount of preferences.

1. If a business that qualifies as a Nevada-based business submits a:

(a) Bid to furnish commodities that was solicited pursuant to NRS 333.300, the bid shall be deemed to be 5 percent lower than the bid actually submitted; or

(b) Proposal to contract for services, the score assigned to the proposal pursuant to NRS 333.335 shall be deemed to be 5 percent higher than the score actually awarded.

2. The preference described in subsection 1 may not be:

(a) Combined with any other preference.

(b) Granted for the award of any contract which uses federal money unless such a preference is authorized by federal law.

(c) Granted for the award of any contract procured on a multistate basis.

Title 27: Public Property and Purchasing

Chapter 333: Purchasing: State

NRS 333.3366: Preference for bid or proposal submitted by local business owned and operated by veteran with service-connected disability: Amount of preference.

1. For the purpose of awarding a formal contract solicited pursuant to subsection 2 of NRS 333.300 or awarding a contract for the services of a person as an independent contractor pursuant to subsection 1 of NRS 333.700, if a local business owned and operated by a veteran with a service-connected disability submits a bid or proposal for such a contract and is a responsive and responsible bidder, the bid or proposal shall be deemed to be 5 percent lower than the bid or proposal actually submitted.

2. The preference described in subsection 1 may not be combined with any other preference.

NEW HAMPSHIRE

NEW HAMPSHIRE RESIDENT BIDDER PREFERENCE

Title I: The State and Its Government

Chapter 21-I: Department of Administrative Services

Section 21-I:11-b: Identical Qualified Lowest Bids, Proposals, or Quotations.

I. The purpose of this section is to promote procurement practices and procedures which the general court believes will improve the state's procurement process while at the same time establishing a vendor selection procedure which, among other things, is specifically geared toward reducing unemployment and stimulating economic growth in this state.

II. To promote business in this state, when qualified lowest bids, proposals, or quotations are received by the division of procurement and support services at the same price, the division's selection or recommendation for selection shall, if the process is not cancelled by the state, be made by drawing lots, provided, however, that if only one of the vendors offering that price has a principal place of business in New Hampshire, that vendor shall, if the process is not cancelled by the state, be selected or recommended for selection. When qualified lowest bids, proposals, or quotations are received at the same price from more than one vendor which has a principal place of business in New Hampshire, selection or recommendation for selection shall, if the process is not cancelled by the state, be made by drawing lots from among the vendors with a principal place of business in New Hampshire.

NEW JERSEY

NEW JERSEY RESIDENT BIDDER PREFERENCE

Title 52: State Government, Departments and Officers

Section 52:32-1.4: Retaliatory discrimination

Any bidder with its principal place of business located in another state which has provisions of state law, rules or regulations causing disadvantage to any bidder for a public contract to provide like goods, services or both to that state because the bidder's principal place of business is located outside of that state shall have like conditions applied to it in a manner pursuant to regulations issued by the State Treasurer when bidding for a public contract in this State. The provisions of this act may be waived with respect to a bidder, if the State Treasurer, on the basis of economic or other circumstances, determines it to be in the best interest of the State.

Title 52: State Government, Departments and Officers

Section 52:32-1.6: Review, modification of bid, product specifications relative to "Jersey Fresh," "Jersey Grown," "Made with Jersey Fresh" products or commodities; enhanced visibility; rules, regulations.

1. a. The Director of the Division of Purchase and Property in the Department of the Treasury shall, upon consultation with the Department of Agriculture, review and modify all bid and product specifications

relating to the purchase of agricultural and horticultural products and commodities, so that the specifications do not discriminate against, but encourage, the maximum purchase of "Jersey Fresh," "Jersey Grown," other agricultural food products and commodities grown or raised in New Jersey, and "Made With Jersey Fresh" baked goods or other food products baked or made with "Jersey Fresh" products. In purchasing any agricultural or horticultural products, commodities, or goods for use by the various agencies and departments of the State government, for the entities defined in section 1 of P.L.1959, c.40 (C.52:27B-56.1), or for any county, municipality or school district pursuant to P.L.1969, c.104 (C.52:25-16.1 et al.), the Director of the Division of Purchase and Property, to the maximum extent possible, shall make contracts available for "Jersey Fresh," "Jersey Grown," other agricultural food products and commodities grown or raised in New Jersey, and "Made With Jersey Fresh" baked goods or other food products baked or made with "Jersey Fresh" products, unless the director determines it to be inconsistent with the public interest or the cost to be unreasonable.

New Jersey Administrative Code

Title 17: Treasury - General

Chapter 12: Division of Purchase and Property

Subchapter 2: Advertised Procurement Procedures

Section 17:12-2.13: Preference laws; out-of-State vendors

(b) Pursuant to the provisions of N.J.S.A. 52:32-1.4 et seq., the Director shall apply on a reciprocal basis against an out-of-State bidder any in-state preference that is applied in favor of that bidder by the state or locality in which the bidder maintains its principal place of business.

(f) Consistent with the procedures and practices of the Division, the Director shall reasonably apply any reciprocal in-State preference in a similar manner and to similar effect as the other state or locality. Where an in-state preference is applied by another state or locality in the form of a percentage which is added to or subtracted from bidders' prices, markups, or discounts, the Director shall similarly apply the same percentage against an affected out-of-State bidder. Where an in-state preference is applied by another state or a locality in the form of a categorical rejection of certain proposals, the Director shall apply a similar categorical rejection against an affected out-of-State bidder.

NEW MEXICO

NEW MEXICO RESIDENT BIDDER PREFERENCE

Chapter 13: Public Purchases and Property

Article 1: Procurement

Section 13-1-21: Application of Preferences

B. Except as provided in Subsection C of this section, when a public body makes a purchase using a formal bid process, the public body shall deem a bid submitted by a:

(1) resident business to be five percent lower than the bid actually submitted; or

(2) resident veteran business with annual gross revenues of up to three million dollars ($3,000,000) in the preceding tax year to be ten percent lower than the bid actually submitted.

C. When a public body makes a purchase using a formal bid process and the bids are received for both recycled content goods and nonrecycled content goods, the public body shall deem:

(1) bids submitted for recycled content goods from any business, except a resident veteran business, to be five percent lower than the bids actually submitted; or

(2) bids submitted for recycled content goods from a resident veteran business with annual gross revenues of up to three million dollars ($3,000,000) in the preceding tax year to be ten percent lower than the bids actually submitted.

D. When a public body makes a purchase using a formal request for proposals process, not including contracts awarded on a point-based system, the public body shall award an additional:

(1) five percent of the total weight of all the factors used in evaluating the proposals to a resident business; and

(2) ten percent of the total weight of all the factors used in evaluating the proposals to a resident veteran business that has annual gross revenues of up to three million dollars ($3,000,000) in the preceding tax year.

E. When a public body makes a purchase using a formal request for proposals process, and the contract is awarded based on a point-based system, the public body shall award additional points equivalent to:

(1) five percent of the total possible points to a resident business; or

(2) ten percent of the total possible points to a resident veteran business that has annual gross revenues of up to three million dollars ($3,000,000) in the preceding tax year.

F. When a joint bid or joint proposal is submitted by a combination of resident veteran, resident or nonresident businesses, the preference provided pursuant to Subsection B, C, D or E of this section shall be calculated in proportion to the percentage of the contract, based on the dollar amount of the goods or services provided under the contract, that will be performed by each business as specified in the joint bid or proposal.

G. A resident veteran business shall not benefit from the preference pursuant to this section for more than ten consecutive years. A person that is an owner of a business that is a resident veteran business shall not benefit from the preference pursuant to this section for more than ten consecutive years. A person shall not benefit from the provisions of this section based on more than one business concurrently.

H. A public body shall not award a business both a resident business preference and a resident veteran business preference.

Chapter 13: Public Purchases and Property

Article 1: Procurement

Section 13-1-22: Resident business and resident contractor certification.

A. To receive a resident business preference pursuant to Section 13-1-21 NMSA 1978 or a resident contractor preference pursuant to Section 13-4-2 NMSA 1978, a business or contractor shall submit with its bid or proposal a copy of a valid resident business certificate or valid resident contractor certificate issued by the taxation and revenue department.

B. An application for a resident business certificate shall include an affidavit from a certified public accountant setting forth that the business is licensed to do business in this state and that:

(1) the business has paid property taxes or rent on real property in the state and paid at least one other tax administered by the state in each of the three years immediately preceding the submission of the affidavit;

(2) if the business is a new business, the owner or majority of owners has paid property taxes or rent on real property in the state and has paid at least one other tax administered by the state in each of the three years immediately preceding the submission of the affidavit and has not applied for a resident business or resident contractor certificate pursuant to this section during that time period;

(3) if the business is a relocated business, at least eighty percent of the total personnel of the business in the year immediately preceding the submission of the affidavit were residents of the state and that, prior to the submission of the affidavit, the business either leased real property for ten years or purchased real property greater than one hundred thousand dollars ($100,000) in value in the state; or

(4) if the business is a previously certified business or was eligible for certification, the business has changed its name, has reorganized into one or more different legal entities, was purchased by another legal entity but operates in the state as substantially the same commercial enterprise or has merged with a different legal entity but operates in the state as substantially the same commercial enterprise.

C. An application for a resident contractor certificate shall include an affidavit from a certified public accountant setting forth that the contractor is currently licensed as a contractor in this state and that:

(1) the contractor has:

(a) registered with the state at least one vehicle; and

(b) in each of the five years immediately preceding the submission of the affidavit: 1) paid property taxes or rent on real property in the state and paid at least one other tax administered by the state; and 2) paid unemployment insurance on at least three full-time employees who are residents of the state; provided that if a contractor is a legacy contractor, the requirement of at least three full-time employees who are residents of the state is waived;

(2) if the contractor is a new contractor, the owner or majority of owners has paid property taxes or rent on real property in the state and has paid at least one other tax administered by the state in each of the five years immediately preceding the submission of the affidavit and has not applied for a resident business or resident contractor certificate pursuant to this section during that time period;

(3) if the contractor is a relocated business, at least eighty percent of the total personnel of the business in the year immediately preceding the submission of the affidavit were residents of the state and that, prior to the submission of the affidavit, the contractor either leased real property for ten years or purchased real property greater than one hundred thousand dollars ($100,000) in value in the state; or

(4) if the contractor is a previously certified contractor or was eligible for certification, the contractor has changed its name, has reorganized into one or more different legal entities, was purchased by another legal entity but operates in the state as substantially the same enterprise or has merged with a different legal entity but operates in the state as substantially the same commercial enterprise.

Chapter 13: Public Purchases and Property

Article 1: Procurement

Section 13-1-120: Competitive sealed qualifications-based proposals; architects; engineers; landscape architects; surveyors; selection process.

B. The appropriate selection committee shall select, ranked in the order of their qualifications, no less than three businesses deemed to be the most highly qualified to perform the required services, after considering the following criteria together with any criteria, except price, established by the using agency authorizing the project:

(2) capacity and capability of the business, including any consultants, their representatives, qualifications and locations, to perform the work, including any specialized services, within the time limitations;

(4) proximity to or familiarity with the area in which the project is located;

(5) the amount of design work that will be produced by a New Mexico business within this state

Chapter 13: Public Purchases and Property

Article 4 Public Works Contracts

Section 13-4-1: Public works contracts

It is the duty of every office, department, institution, board, commission or other governing body or officer thereof of this state or of any political subdivision thereof to award all contracts for the construction of public works or for the repair, reconstruction, including highway reconstruction, demolition or alteration thereof, to a resident contractor whenever practicable.

Chapter 13: Public Purchases and Property

Article 4 Public Works Contracts

Section 13-4-2: Application of preference

B. For the purpose of awarding a public works contract using a formal bid process, a public body shall deem a bid submitted by a:

(1) resident contractor to be five percent lower than the bid actually submitted; or

(2) resident veteran contractor with annual gross revenues of up to three million dollars ($3,000,000) in the preceding tax year to be ten percent lower than the bid actually submitted.

C. When a public body awards a contract using a formal request for proposals process, not including contracts awarded on a point-based system, the public body shall award an additional:

(1) five percent of the total weight of all the factors used in evaluating the proposals to a resident contractor; or

(2) ten percent of the total weight of all the factors used in evaluating the proposals to a resident veteran contractor that has annual gross revenues of up to three million dollars ($3,000,000) in the preceding tax year.

D. When a public body makes a purchase using a formal request for proposals process, and the contract is awarded based on a point-based system, the public body shall award an additional of the equivalent of:

(1) five percent of the total possible points to a resident contractor; or

(2) ten percent of the total possible points to a resident veteran contractor that has annual gross revenues of up to three million dollars ($3,000,000) in the preceding tax year.

E. When a joint bid or joint proposal is submitted by a combination of resident veteran, resident or nonresident contractors, the preference provided pursuant to Subsection B, C or D of this section shall be calculated in proportion to the percentage of the contract, based on the dollar amount of the goods or services provided under the contract, that will be performed by each contractor as specified in the joint bid or joint proposal.

F. A resident veteran contractor shall not benefit from the preference pursuant to this section for more than ten consecutive years. A person that is an owner of a business that is a resident veteran contractor shall not benefit from the preference pursuant to this section for more than ten consecutive years. A person shall not benefit from the provisions of this section based on more than one business concurrently.

G. A public body shall not award a contractor both a resident contractor preference and a resident veteran contractor preference.

Chapter 63: Railroads and Communications

Article 9F: Telecommunications relay system

Section 63-9F-6: Telecommunications relay system

B. The commission shall invite proposals or bids, or both, from telecommunications companies to design and implement a telecommunications relay system. The commission shall comply with the provisions of the Procurement Code [13-1-28 to 13-1-199 NMSA 1978] in contracting for the services and property required. The commission shall consider the factors of price and the interest of the community of impaired individuals in having access to a high quality and technologically advanced system. New Mexico residency shall be given a weight of five percent of the total weight of all evaluation factors in a proposal evaluation. Any business that qualifies as a "resident business" as defined in Section 13-1-21 NMSA 1978 shall receive a five percent preference. In the procurement process, the commission shall request and consider the recommendations of the communications assistants who have provided the voice relay service used in the state.

New Mexico Administrative Code

Title 1: General Government Administration

Chapter 4: State Procurement

1.4.1 NMAC: Procurement Code Regulations

1.4.1.25: Statutory Preferences

Statutory preferences to be applied in determining low bidder or low offeror. New Mexico law provides certain statutory preferences to resident businesses, resident veteran businesses, resident contractors and resident veteran contractors as well as for recycled content goods (13-1-21 and 13-1-22 NMSA 1978). These preferences must be applied in regard to invitations for bids and requests for proposals in accordance with statute in determining the lowest bidder or offeror.

New Mexico Administrative Code

Title 1: General Government Administration

Chapter 4: State Procurement

1.4.2 NMAC: Resident Business and Manufacturer Preferences

1.4.2.8: Application of Preferences

A. Bids from nonresident businesses and resident businesses: When bids are received only from nonresident businesses and resident businesses and the lowest responsible bid is from a nonresident business, the contract shall be awarded to the resident business whose bid is nearest to the bid price of the otherwise low nonresident business bidder if the bid price of the resident bidder is made lower than the bid price of the nonresident business when multiplied by a factory [*sic*] of 0.95.

B. Bids from nonresident businesses and resident manufacturers: When bids are received only from nonresident businesses and resident manufacturers and the lowest responsible bid is from a nonresident business, the contract shall be awarded to the resident manufacturer whose bid is nearest to the bid price of the otherwise low nonresident business bidder if the bid price of the resident manufacturer is made lower than the bid price of the nonresident business when multiplied by a factor of 0.95.

C. Bids from resident businesses and resident manufacturers: When bids are received only from resident businesses and resident manufacturers and the lowest responsible bid is from a resident business, the contract shall be awarded to the resident manufacturer whose bid is nearest to the bid price of the otherwise low resident business bidder if the bid price of the resident manufacturer is made lower than the bid price of the resident business when multiplied by a factor of 0.95.

D. Bids from resident manufacturers, resident businesses and nonresident businesses and the lowest responsible bid is from a resident business: When bids are received from resident manufacturers, resident businesses and nonresident businesses and the lowest responsible bid is from a resident business, the contract shall be awarded to the resident manufacturer whose bid is nearest to the bid price of the otherwise low resident business bidder if the bid price of the resident manufacturer is made lower than the bid price of the resident business when multiplied by a factor of 0.95.

E. Bids from resident manufacturers, resident businesses and nonresident businesses and the lowest responsible bid is from a nonresident business: When bids are received from resident manufacturers, resident businesses and nonresident businesses and the lowest responsible bid is from a nonresident business, the contract shall be awarded to the resident manufacturer whose bid is nearest to the bid price of the otherwise low nonresident business bidder if the bid price of the resident manufacturer is evaluated as lower than the bid price of the nonresident business when multiplied by a factor of 0.95. If there is no resident manufacturer eligible for award under this provision, then the contract shall be awarded to the resident business whose bid is nearest to the bid price of the otherwise low nonresident business bidder if the bid price of the resident business is made lower than the bid price of the nonresident business when multiplied by a factor of 0.95.

(1) When bids are received for virgin content goods only or for recycled content goods only, Subsections 8.3 and 8.4 [now Subsections C and D of 1.4.2.8 NMAC] shall apply.

(2) When bids are received for both recycled content goods and virgin content goods and the lowest responsible bid is for virgin content goods, the contract shall be awarded to:

(a) a resident manufacturer offering the lowest bid on recycled content goods of equal quality if the bid price of the resident manufacturer when multiplied by a factor of .90 is made lower than the otherwise low virgin content goods bid price;

(b) a resident business offering a bid on recycled content goods of equal quality if:

(i) the bid price of no resident manufacturer following application of the preference allowed in 8.5.2.1 of this subsection [now Subparagraph (a) of Paragraph (2) of Subsection E of 1.4.1.8 NMAC] can be made sufficiently low; and

(ii) the lowest bid price of the resident business when multiplied by a factor of .90 is made lower than the otherwise low virgin content goods bid price; or

(c) a nonresident business or nonresident manufacturer offering recycled content goods of equal quality if:

(i) the bid price of no resident business or resident manufacturer following application of the preference allowed in 8.5.2.1 or 8.5.2.2 of this subsection [now Subparagraph (a) or (b) of Paragraph (2) of Subsection E of 1.4.2.8 NMAC] can be made sufficiently low; and

(ii) the lowest bid price of a nonresident offering recycled content goods when multiplied by a factor of .95 is made lower than the otherwise low virgin content bid price.

(3) When bids are received for both recycled content goods and virgin content goods, and the lowest responsible bid is for recycled content goods offered by a nonresident business or nonresident manufacturer, the contract shall be awarded to:

(a) a resident manufacturer offering the lowest bid on recycled content goods of equal quality if the bid price of the resident manufacturer

when multiplied by a factor of .95 is made lower than the otherwise low recycled content goods bid price; or

(b) a resident business offering a bid on recycled content goods of equal quality if:

(i) the bid price of no resident manufacturer following application of the preference allowed in 8.5.3.1 of this subsection can be made sufficiently low; and

(ii) the lowest bid price of the resident business when multiplied by a factor of .95 is made lower than the otherwise low recycled content goods bid price offered by a nonresident business or manufacturer.

(4) When bids are received for both recycled content goods and virgin content goods, and the lowest responsible bid is for recycled content goods offered by a resident business, the contract shall be awarded to a resident manufacturer offering the lowest bid on recycled content goods of equal quality if the bid price of the resident manufacturer when multiplied by a factor of .95 is made lower than the otherwise low recycled content goods bid price.

New Mexico Administrative Code

Title 1: General Government Administration

Chapter 4: State Procurement

1.4.3 NMAC: Resident Contractor Preference

1.4.3.8: Application of Preferences

A. Bids from nonresident contractors and resident contractors. When bids are received only from nonresident contractors and resident contractors and the lowest responsible bid is from a nonresident contractor, the contract shall be awarded to the resident contractor whose bid is nearest to the bid price of the otherwise low nonresident contractor if the bid price of the resident contractor is made lower than the bid price of the nonresident contractor when multiplied by a factor of 0.95. Any contract executed in violation of this subsection shall be void and of no effect.

B. Resident business and resident manufacturer preferences inapplicable. The resident contractor preference is the only bidding preference that applies to the awarding of public works construction contracts. The resident business preference and the resident manufacturer preference shall not be considered in the awarding of such contracts under any circumstances.

NEW YORK

NEW YORK RESIDENT BIDDER PREFERENCE

PBA - Public Authorities

Article 9: General Provisions

Title 4: Contracts of Public Authorities

Section 2879: Procurement Contracts

1. Every public authority and public benefit corporation, a majority of the members of which consist of persons either appointed by the governor or who serve as members by virtue of holding a civil office of the state, or a combination thereof, (such entities to be hereinafter in this section referred to as "corporation") shall adopt by resolution comprehensive guidelines which detail the corporation's operative policy and instructions regarding the use, awarding, monitoring and reporting of procurement contracts. Guidelines approved by the corporation shall be annually reviewed and approved by the corporation.

3. The guidelines approved by the corporation shall include, but not be limited to the following:

(n) Policies to promote the participation by New York state business enterprises and New York state residents in procurement contracts, including, but not limited to:

(i) providing for the corporation to collect and to consult the specifications of New York state business enterprises in developing specifications for any procurement contract for the purchase of goods where possible, practicable, feasible and consistent with open bidding, except for procurement contracts for which the corporation would be expending funds received from another state. The corporation shall, where feasible, make use of the stock item specification forms prepared by the commissioner of general services, and where necessary, consult with the commissioner of the office of general services, in developing such specifications and make such determinations; and

(ii) with the cooperation of the department of economic development and through cooperative efforts with contractors, providing for the notification of New York state business enterprises of opportunities to participate as subcontractors and suppliers on procurement contracts let by the corporation in an amount estimated to be equal to or greater than one million dollars and promulgating procedures which will assure compliance by contractors with such notification. Once awarded the contract such contractors shall document their efforts to encourage the participation of New York state business enterprises as suppliers and subcontractors on procurement contracts equal to or greater than one million dollars. Documented efforts by a successful contractor shall consist of and be limited to showing that such contractor has

(a) solicited bids, in a timely and adequate manner, from New York state business enterprises including certified minority and women-owned business, or

(b) contacted the New York state department of economic development to obtain listings of New York state business enterprises, or

(c) placed notices for subcontractors and suppliers in newspapers, journals and other trade publications distributed in New York state, or

(d) participated in bidder outreach conferences.

If the contractor determines that New York state business enterprises are not available to participate on the contract as subcontractors or suppliers, the contractor shall provide a statement indicating the method by which such determination was made. If the contractor does not intend to use subcontractors on the contract, the contractor shall provide a statement verifying such intent; and

(o) For the purposes of this section, a "New York state business enterprise" means a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, goods which are sought by the corporation and which are substantially manufactured, produced or assembled in New York state, or services which are sought by the corporation and which are substantially performed within New York state. (p) For the purposes of this section, a "New York resident" means a natural person who maintains a fixed, permanent and principal home located within New York state and to which such person, whenever temporarily located, always intends to return.

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(c) In including any additional business enterprises on invitations to bid for the procurement of goods or services, the chief executive officer of the corporation shall not include any foreign business enterprise which has its principal place of business located in a discriminatory jurisdiction contained on the list prepared by the commissioner of economic development pursuant to subdivision six of section one hundred sixty-five of the state finance law, except, however, business enterprises which are New York state business enterprises as defined by this sec-

tion. The corporation may waive the application of the provisions of this section whenever the chief executive officer of the corporation determines in writing that it is in the best interests of the state to do so. The chief executive officer of the corporation shall deliver each such waiver to the commissioner of economic development.

(d) A corporation shall not enter into a contract with a foreign business enterprise which has its principal place of business located in a discriminatory jurisdiction contained on the list prepared by the commissioner of economic development pursuant to subdivision six of section one hundred sixty-five of the state finance law. The provisions of this section may be waived by the chief executive officer of the corporation if the chief executive officer of the corporation determines in writing that it is in the best interests of the state to do so. The chief executive officer of the corporation shall deliver each such waiver to the commissioner of economic development.

STF - State Finance

Article 11: State Purchasing

Section 163: Purchasing services and commodities

3. General provisions for purchasing commodities.

b. The commissioner shall:

(vii) assist the department of agriculture and markets and the department of economic development in providing a training program once per year, in each economic development region, established in article eleven of the economic development law, to encourage and increase participation in the procurement process, pursuant to this article, by small businesses, as defined in section one hundred thirty-one of the economic development law, including farms, selling food or food products grown, produced, harvested, or processed in New York state and assist such businesses in identifying such food or food products which may help to meet state agencies' needs.

6. Discretionary buying thresholds. Pursuant to guidelines established by the state procurement council: the commissioner may purchase services and commodities in an amount not exceeding eighty-five thousand dollars without a formal competitive process; state agencies may purchase services and commodities in an amount not exceeding fifty thousand dollars without a formal competitive process; and state agencies may purchase commodities or services from small business concerns or those certified pursuant to articles fifteen-A and seventeen-B of the executive law, or commodities or technology that are recycled or remanufactured in an amount not exceeding five hundred thousand dollars without a formal competitive process and for commodities that are food, including milk and milk products, grown, produced or harvested in New York state in an amount not to exceed two hundred thousand dollars, without a formal competitive process.

STF- State Finance

Article 11: State Purchasing

Section 165: Purchasing restrictions

6. Special provisions relating to retaliating against other jurisdictions which discriminate against New York state enterprises in their procurement of products and services.

a. As used in this subdivision, the following terms shall have the following meanings unless a different meaning appears from the context:

(i) "Discriminatory jurisdiction" shall mean any other country, nation, province, state or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of or otherwise discriminates against a New York state business enterprise in the procurement of commodities and services by the same or a non-governmental entity influenced by the same. Such discrimination may include, but is not limited to, any law, regulation, procedure or practice, terms of license, authorization, or funding or bidding rights which requires or encourages any agency or instrumentality of the state or political subdivision thereof or nongovernmental entity influenced by the same to discriminate against a New York state business enterprise.

c. In including any additional business enterprises on solicitations for the procurement of commodities or services, the commissioner and all state agencies shall not include any foreign business enterprise which has its principal place of business located in a discriminatory jurisdiction contained on the list prepared by the commissioner of economic development pursuant to paragraph b of this subdivision, except, however, business enterprises which are New York state business enterprises as defined by this subdivision.

d. A state agency shall not enter into a contract with a foreign business enterprise, as defined by this subdivision, which has its principal place of business located in a discriminatory jurisdiction contained on the list prepared by the commissioner of economic development pursuant to paragraph b of this subdivision. The provisions of this paragraph and paragraph c of this subdivision may be waived by the head of the state agency if the head of the state agency determines in writing that it is in the best interests of the state to do so. The head of the state agency shall deliver each such waiver to the commissioner of economic development.

NORTH CAROLINA

NORTH CAROLINA RESIDENT BIDDER PREFERENCE

Chapter 143: State Departments, Institutions, and Commissions

Article 3: Purchases and Contracts

G.S. 143-59: Preference given to North Carolina products and citizens, and articles manufactured by State agencies; reciprocal preferences.

(a) Preference. - The Secretary of Administration and any State agency authorized to purchase foodstuff or other products, shall, in the purchase of or in the contracting for foods, supplies, materials, equipment, printing or services give preference as far as may be practicable to such products or services manufactured or produced in North Carolina or furnished by or through citizens of North Carolina: Provided, however, that in giving such preference no sacrifice or loss in price or quality shall be permitted; and provided further, that preference in all cases shall be given to surplus products or articles produced and manufactured by other State departments, institutions, or agencies which are available for distribution.

(b) Reciprocal Preference. - For the purpose only of determining the low bidder on all contracts for equipment, materials, supplies, and services valued over twenty-five thousand dollars ($25,000), a percent of increase shall be added to a bid of a nonresident bidder that is equal to the percent of increase, if any, that the state in which the bidder is a resident adds to bids from bidders who do not reside in that state. Any amount due under a contract awarded to a nonresident bidder shall not be increased by the amount of the increase added by this subsection. On or before January 1 of each year, the Secretary of Administration shall electronically publish a list of states that give preference to in-State bidders and the amount of the percent increase added to out-of-state bids. All departments, institutions, and agencies of the State shall use this list when evaluating bids. If the reciprocal preference causes the nonresident bidder to no longer be the lowest bidder, the Secretary of Administration may waive the reciprocal preference. In determining whether to waive the reciprocal preference, the Secretary of Administration shall consider factors that include competition, price, product origination, and available resources.

(c) Definitions. - The following definitions apply in this section:

(1) Resident bidder. - A bidder that has paid unemployment taxes or income taxes in this State and whose principal place of business is located in this State.

(2) Nonresident bidder. - A bidder that is not a resident bidder as defined in subdivision (1) of this subsection.

(3) Principal place of business. - The principal place from which the trade or business of the bidder is directed or managed

(d) Exemptions. - Subsection (b) of this section shall not apply to contracts entered into under G.S. 143-53(a)(5) or G.S. 143-57.

Supplements:

G.S. 143-53(a)(5): Prescribing conditions under which purchases and contracts for the purchase, installment or lease-purchase, rental or lease of goods and services may be entered into by means other than competitive bidding, including, but not limited to, negotiation, reverse auctions, and acceptance of electronic bids. Notwithstanding the provisions of subsections (a) and (b) of this section, any waiver of competition for the purchase, rental, or lease of goods and services is subject to prior review by the Secretary, if the expenditure exceeds ten thousand dollars ($10,000). The Division may levy a fee, not to exceed one dollar ($1.00), for review of each waiver application.

G.S. 143-57: In case of any emergency or pressing need arising from unforeseen causes including but not limited to delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, the Secretary of Administration shall have power to obtain or authorize obtaining in the open market any necessary supplies, materials, equipment, printing or services for immediate delivery to any department, institution or agency of the State government. A report on the circumstances of such emergency or need and the transactions thereunder shall be made a matter of record promptly thereafter. If the expenditure exceeds ten thousand dollars ($10,000), the report shall also be made promptly thereafter to the Division of Purchase and Contract

Chapter 143: State Departments, Institutions, and Commissions

Article 3D: Procurement of Architectural, Engineering, and Surveying Services

G.S. 143-64.31: Declaration of public policy

(a1) A resident firm providing architectural, engineering, surveying, construction management at risk services, design-build services, or public-private partnership construction services shall be granted a preference over a nonresident firm, in the same manner, on the same basis, and to the extent that a preference is granted in awarding contracts for these services by the other state to its resident firms over firms resident in the State of North Carolina. For purposes of this section, a resident firm is a firm that has paid unemployment taxes or income taxes in North Carolina and whose principal place of business is located in this State.

Chapter 143: State Departments, Institutions, and Commissions

Article 3D: Procurement of Architectural, Engineering, and Surveying Services

G.S. 143-64.34: Exemption of certain projects

State capital improvement projects under the jurisdiction of the State Building Commission, capital improvement projects of The University of North Carolina, and community college capital improvement projects, where the estimated expenditure of public money is less than five hundred thousand dollars ($500,000), are exempt from the provisions of this Article.

North Carolina Executive Order 50 (February 17, 2010)

Enhanced Purchasing Opportunities For North Carolina Businesses

Governor: Beverly Eaves Perdue

2. I particularly direct the Secretary of Administration, through the authority given to him by the General Assembly pursuant to N.C. Gen. Stat. 143-59, to develop a price matching preference for North Carolina resident bidders on contracts for the purchase of goods so that qualified North Carolina companies whose price is within five percent 95%) or $10,000.00 of the lowest bid, whichever is less, may be awarded contracts with the State of North Carolina.

NORTH DAKOTA

NORTH DAKOTA RESIDENT BIDDER PREFERENCE

Title 44: Offices and Officers

Section 44-08: Miscellaneous Provisions

44-08-01: Preference to North Dakota bidders, sellers, and contractors.

1. The office of management and budget, any other state entity, and the governing body of any political subdivision of the state in purchasing any goods, merchandise, supplies, or equipment of any kind, or contracting to build or repair any building, structure, road, or other real property, shall give preference to bidders, sellers, or contractors resident in North Dakota. The preference must be equal to the preference given or required by the state of the nonresident bidder, seller, or contractor.

2. A state entity authorized to accept bids shall give preference to a resident North Dakota bidder when accepting bids for the provision of professional services, including research and consulting services. The preference must be equal to the preference given or required by the state of the nonresident bidder.

44-08-01.1. Bids to be sealed - Designation of time and place for opening - Preference for tie bids.

Notwithstanding any other provisions of the North Dakota Century Code, the governing bodies of the political subdivisions of the state of North Dakota shall accept only sealed bids, whenever by law or administrative decision they are required to call for, advertise, or solicit bids for the purchase of personal property and equipment. Whenever a political subdivision of this state calls for, advertises, or solicits sealed bids, it shall designate a time and place for the opening of such bids. If all of the bids are not rejected, the purchase must be made from the bidder submitting the lowest and best bid meeting or exceeding the specifications set out in the invitation for bids. In the event that two or more bids contain identical pricing or receive identical evaluation scores, preference must be given to bids submitted by North Dakota vendors.

Title 46: Printing Laws

Section 46-02: Printing and Binding, General Provisions

46-02-15. Public printing resident bidder preference.

If practicable, all state, county, and other political subdivision public printing, binding, and blank book manufacturing, blanks, and other printed stationery must be awarded to a resident North Dakota bidder as defined in section 44-08-02.

Supplement:

44-08-02. Resident North Dakota bidder, seller, and contractor defined.

The term "a resident North Dakota bidder, seller, or contractor" when used in section 44-08-01, unless the context thereof clearly provides otherwise, means a bidder, seller, or contractor who has maintained a

bona fide place of business within this state for at least one year prior to the date on which a contract was awarded.

Title 48: Public Buildings

Section 48-05: General Regulations

48-05-02.1. Purchase of coal by the state and political subdivisions.

The state and all of its institutions, all political subdivisions, and all public schools, when purchasing coal for heating purposes, shall give preference to bidders supplying coal mined in North Dakota if such coal, on an aggregate basis, will provide equivalent British thermal units of heating value in comparison to coal mined elsewhere, if the total bid price of the coal mined in North Dakota and delivered is not higher than the total bid price of coal mined elsewhere and delivered, and if state air pollution permits to operate would not limit the use of North Dakota coal due to emissions limits. In evaluating the comparable price of North Dakota coal versus other coal, the state and its institutions, political subdivisions, and public schools may include any ash handling costs that may be associated with the use of North Dakota coal. The state or any of its institutions, any political subdivision, or any public school, when advertising for or reviewing bids for the purchase of coal for heating purposes, may not mandate the use of any particular type of coal or the region where the coal is to be mined.

North Dakota Administrative Code

Title 4: Management and Budget, Office of

Article 4-12: State Procurement Practices

Chapter 4-12-11: Evaluation of Bids or Proposals

4-12-11-02. Application of preference for North Dakota vendors.

When considering bids or proposals from nonresident vendors, the procurement officer must determine whether the vendor's state of residence has a preference law. The state procurement office shall make publicly available a listing of state preference laws. The preference given to North Dakota bidders must be equal to the preference given or required by the state of the nonresident bidder, in accordance with North Dakota Century Code section 44-08-01.

4-12-11-05. Tie bids or proposals.

In the event of a tie bid or proposal, the procurement officer will ensure that any applicable preference has been applied to price in accordance with North Dakota Century Code section 44-08-01.

OHIO

OHIO RESIDENT BIDDER PREFERENCE

Title 1: State Government

Chapter 125: Department of Administrative Services - Office Services

125.09: Bid conditions or terms - preferences.

(A) Pursuant to section 125.07 of the Revised Code, the department of administrative services may prescribe such conditions under which competitive sealed bids will be received and terms of the proposed purchase as it considers necessary; provided, that all such conditions and terms shall be reasonable and shall not unreasonably restrict competition, and bidders may bid upon all or any item of the supplies or services listed in such notice. Those bidders claiming the preference for United States and Ohio products outlined in this chapter shall designate in their bids either that the product to be supplied is an Ohio product or that under the rules established by the director of administrative services they qualify as having a significant Ohio economic presence.

(B) The department may require that each bidder provide sufficient information about the energy efficiency or energy usage of the bidder's product or service.

(C) The director of administrative services shall, by rule adopted pursuant to Chapter 119. of the Revised Code, prescribe criteria and procedures for use by all state agencies in giving preference to United States and Ohio products as required by division (B) of section 125.11 of the Revised Code. The rules shall extend to:

(1) Criteria for determining that a product is produced or mined in the United States rather than in another country or territory;

(2) Criteria for determining that a product is produced or mined in Ohio;

(3) Information to be submitted by bidders as to the nature of a product and the location where it is produced or mined;

(4) Criteria and procedures to be used by the director to qualify bidders located in states bordering Ohio who might otherwise be excluded from being awarded a contract by operation of this section and section 125.11 of the Revised Code. The criteria and procedures shall recognize the level and regularity of interstate commerce between Ohio and the border states and provide that the non-Ohio businesses may qualify for award of a contract as long as they are located in a state that imposes no greater restrictions than are contained in this section and section 125.11 of the Revised Code upon persons located in Ohio selling products or services to agencies of that state. The criteria and procedures shall also provide that a non-Ohio business shall not bid on a contract for state printing in this state if the business is located in a state that excludes Ohio businesses from bidding on state printing contracts in that state.

(5) Criteria and procedures to be used to qualify bidders whose manufactured products, except for mined products, are produced in other states or in North America, but the bidders have a significant Ohio economic presence in terms of the number of employees or capital investment a bidder has in this state. Bidders with a significant Ohio economic presence shall qualify for award of a contract on the same basis as if their products were produced in this state.

Title 1: State Government

Chapter 125: Department of Administrative Services - Office Services

125.11 Contract award.

(E) The director of administrative services shall publish in the form of a model act for use by counties, townships, municipal corporations, or any other political subdivision described in division (B) of section 125.04 of the Revised Code, a system of preferences for products mined and produced in this state and in the United States and for Ohio-based contractors. The model act shall reflect substantial equivalence to the system of preferences in purchasing and public improvement contracting procedures under which the state operates pursuant to this chapter and section 153.012 of the Revised Code. To the maximum extent possible, consistent with the Ohio system of preferences in purchasing and public improvement contracting procedures, the model act shall incorporate all of the requirements of the federal "Buy America Act," 47 Stat. 1520 (1933), 41 U.S.C. 10a to 10d, as amended, and the rules adopted under that act.

Title 1: State Government

Chapter 125: Department of Administrative Services - Office Services

125.56 Printing to be executed within state - exception.

(A) Except as provided in division (B) of this section, all printing under sections 125.43 to 125.76 of the Revised Code, shall be executed pursuant to section 125.11 of the Revised Code.

(B) Division (A) of this section does not apply to printing contracts requiring special, security paper of a unique nature if compliance with division (A) will result in an excessive price for the product or acquiring a disproportionately inferior product.

(C) As used in this section, "excessive price" means a price that exceeds by more than five per cent the lowest price submitted on a non-Ohio bid.

Title 1: State Government

Chapter 153: Public Improvements

153.012 Preference to contractors having principal place of business in Ohio.

With respect to the award of any contract for the construction, reconstruction, improvement, enlargement, alteration, repair, painting or decoration of a public improvement, including any highway improvement, made by the state or in whole or in part supported by the state, except for a contract for products produced or mined in Ohio or for a contract financed in whole or in part by contributions or loans from any agency of the United States government, preference shall be given to contractors having their principal place of business in Ohio over contractors having their principal place of business in a state which provides a preference in that state in favor of contractors of that state for the same type of work. Where a preference is provided by another state for contractors of that state, contractors having their principal place of business in Ohio are to be granted in Ohio the same preference over them in the same manner and on the same basis and to the same extent as the preference is granted in letting contracts for the same type of work by the other state. If one party to a joint venture is a contractor having its principal place of business in Ohio, the joint venture shall be considered as having its principal place of business in Ohio.

Ohio Administrative Code

123:5 Division of Purchasing

Chapter 123:5-1 General Provisions

123:5-1-06 Implementation of domestic, Ohio bid preference.

(A) Procedure for applying bid preference for United States and Ohio products

(1) Bids will first be evaluated to determine whether a bid response is for a domestic source end product. Information furnished in the bid response by the bidder shall be relied upon but may be verified in making the determination. Any bid response that does not meet this requirement may be removed, except in those circumstances where the director of the department of administrative services or his designee determines compliance would result in the state paying an excessive price or acquiring an inferior product as described in paragraph (A)(3) of this rule.

(2) Following the determination at paragraph (A)(1) of this rule, the bids shall be evaluated so as to give preference to Ohio bids for products produced or mined in Ohio or a border state. If the Ohio bid preference is determined to be applied then the preferences under rules 123:5-1-14 and 123:5-1-16 of the Administrative Code shall not be applied. Where the preliminary analysis of bids identifies the apparent low bid as an Ohio bid or a border state bid, the director or the director's designee shall proceed with evaluation and award procedure provided for in rule 123:5-1-07 of the Administrative Code.

(3) Where the preliminary analysis identifies the apparent low bid as one other than an Ohio bid or border state bid, the director or the director's designee shall apply the following preferences:

(a) If the apparent low bid is one other than an Ohio bid or border state bid offering a domestic source end product, apply five per cent to the price. For purposes of the Ohio preference, "excessive price" shall be construed to mean a price that exceeds by more than five per cent the lowest price submitted on a non-Ohio bid.

(b) If the apparent low bidder offers a foreign product, apply six per cent to the price. For purposes of "Buy American," a price is excessive if the price on the lowest domestic or Ohio bid exceeds the lowest foreign price by more than six per cent.

(c) If sufficient competition does not exist or if it is determined that all prices are excessive, the department may cancel the bid in its entirety, may re-bid the intended purchase, or award the contract.

123:5-1-11 Model system of preference.

The department of administrative services establishes the following model system of preferences which may be used voluntarily by counties, townships, and municipalities for purchasing contracts. See the appendix to this rule which sets forth the model system of preferences in the form of a sample ordinance or resolution.

(B) Bid preference

(1) Following the determination at paragraph (A) of this rule, the bids shall be evaluated so as to give preference to Ohio bids for products produced or mine in Ohio or a border state.

(2) Where the preliminary analysis of bids identifies the apparent low bid as an Ohio bid or a border state bid, the county, township, or municipality shall proceed with evaluation and award procedure. Where the preliminary analysis identifies the apparent low bid as one other than an Ohio bid or a border state bid, the county, township, or municipality shall apply the following preferences:

(a) if the apparent low bid is one other than an Ohio bid or border state bid offering a domestic source end product, apply five per cent to the price. For purposes of the Ohio preference, "excessive price" shall be construed to mean a price that exceeds by more than five per cent the lowest price submitted on a non-Ohio bid.

(b) if the apparent low bidder offers a foreign product, apply six per cent to the price. For purposes of Buy American, a price is excessive if the price on the lowest domestic or Ohio bid exceeds the lowest foreign price by more than six per cent.

State of Ohio Procurement Manual

2.4 Procurement Considerations

2.4.1.3 Buy Ohio and Buy American

Buy Ohio and Buy American bid preferences are enabled by RC 125.09, RC 125.11, and OAC 123:5-1-06. These preferences permit bids containing products that are produced in Ohio or a border state, or the United States of America, to be selected for contract award even if they exceed prices offered in bids not containing Ohio, border state, or American products by no more than 5% or 6%, respectively. State Agencies should apply these preferences when making purchases under their direct purchase authority, specify which preference(s) will be applied in the solicitation, and request information as to the point of manufacture and the location of the supplier.

OKLAHOMA

OKLAHOMA RESIDENT BIDDER PREFERENCE

Title 19: Counties and County Officers

19-788: Contracts - Bids - Notice - Preference - Uncompleted contracts - Payment of personal property taxes.

(a) All contracts for county hospital construction work, alteration, additions, or repairs exceeding Five Thousand Dollars ($5,000.00) in any calendar year, shall be let to the lowest responsible bidder or bidders after notice of publication in a newspaper of general circulation published in the county where the work is to be done in two consecutive weekly issues of the newspaper. Each bid shall be accompanied by a certified or cashier's check equal to five percent (5%) of the bid or Ten Thousand Dollars ($10,000.00), whichever is the smaller, which shall be deposited with the board of control as a guaranty, and forfeited to the county treasurer to the credit of the county hospital fund in the event the successful bidder fails to comply with the terms of the proposal, and returned to the successful bidder on execution and delivery of the bond herein provided for, and the checks of the unsuccessful bidders shall be returned to them in accordance with the terms of the proposal.

(c) When quality and prices are equal preference shall be given materials produced within the State of Oklahoma, and preference shall also be given construction contractors domiciled, having and maintaining offices in and being citizen taxpayers of the State of Oklahoma.

(e) Five percent (5%) of the total amount of money due under contract with the board of control for county hospital construction work shall be retained by the board until the contractor to whom payment is due files with the board a certified copy of a personal tax receipt, showing payment of personal property taxes due on the contractor's equipment and supplies, from the county treasurer of the county wherein the property is assessed, or is required to be assessed, and evidence of having proper workmen's compensation coverage for employees as provided by Title 85 of the Oklahoma Statutes, Section 61.

Title 61. Public Buildings and Public Works

61-6. Public buildings - Home products - When to use.

From and after the passage and approval of this act, in the construction of all public buildings erected for the state; for any county for educational, eleemosynary, penal or other institution of the state, or for any county thereof, where the expense of construction is borne wholly or in part by the state, or county, by appropriation, by the issuance of bonds, or by taxation, preference shall be given to materials mined, quarried, manufactured or procured within the State of Oklahoma, provided that the same can be procured at no greater expense than like material or materials of equal quality from without the state.

Title 61. Public Buildings and Public Works

61-9. Oklahoma labor and materials in construction or repair of state institutions.

The Governor, the Director of Central Services, the Board of Regents for Higher Education, and any agent or agency of the State of Oklahoma who shall be authorized to expend funds for the construction or repair of state institutions provided for pursuant to Section 31 of Article X of the State Constitution, shall include in all contracts for repair or construction a provision requiring employment of Oklahoma labor and the use of Oklahoma materials in doing such construction and repair if such Oklahoma labor and materials are available, and the quality of such labor or materials meet the standards of labor and material available from outside the state and can be procured at a cost no higher than the same quality of labor or material available from outside this state.

Title 61. Public Buildings and Public Works

61-10. Preference for Oklahoma labor and materials in certain construction.

The Governor, the Director of Central Services, the Oklahoma State Regents for Higher Education, and any agent or agency of the State of Oklahoma who shall be authorized to expend funds for the construction or repair of state institutions provided for pursuant to Section 33 of Article X of the State Constitution, shall include in all contracts for repair or construction a provision requiring employment of Oklahoma labor and the use of Oklahoma materials in doing such construction and repair wherever such Oklahoma labor and materials are available and the quality of such labor or materials meet the standards of labor and material available from outside the state and can be procured at a cost no higher than the same quality of labor or material available from outside this state.

Title 61. Public Buildings and Public Works

61-14. Preference to Oklahoma-domiciled contractors.

To the extent permitted by federal laws and regulations, whenever the State of Oklahoma, or any department, agency or institution thereof or any city, town or county shall let for bid any contract to a contractor for any public works, the contractor domiciled outside the boundaries of Oklahoma shall be required, in order to be successful, to submit a bid the same percent less than the lowest bid submitted by a responsible contractor domiciled in Oklahoma as would be required for such an Oklahoma domiciled contractor to succeed over the bidding contractor domiciled outside Oklahoma on a like contract being let in his domiciliary state.

Title 61. Public Buildings and Public Works

61-103. Governing law - Solicitation and award of contracts.

B. Notwithstanding subsection A of this section, in awarding public construction contracts exceeding Fifty Thousand Dollars ($50,000.00), counties, cities, other local units of government and any public trust with a county or a municipality as its sole beneficiary may provide for a local bid preference of not more than five percent (5%) of the bid price if the awarding public agency determines that there is an economic benefit to the local area or economy. Provided, however, the local bidder or contractor must agree to perform the contract for the same price and terms as the bid proposed by the nonlocal bidder or contractor. Any bid preference granted hereunder must be in accordance with an established policy adopted by the governing body of the awarding public agency to clearly demonstrate the economic benefit to the local area or economy. Provided, further, no local bid preference shall be granted unless the local bidding entity is the second lowest qualified bid on the contract. The bid specifications shall clearly state that the bid is subject to a local bidder preference law. For purposes of this section, "local bid" means the bidding person is authorized to transact business in this state and maintains a bona fide establishment for transacting such business within this state. This provision does not apply to any construction contract for which federal funds are available for expenditure when its provisions may be in conflict with federal law or regulation.

Title 74. State Government

85-17A: Bidding preferences - Reciprocity - Awarding contracts.

A. State agencies shall not discriminate against bidders from states or nations outside Oklahoma, except as provided by this section. State agencies shall reciprocate the bidding preference given by other states or nations to bidders domiciled in their jurisdictions for acquisitions pursuant to The Oklahoma Central Purchasing Act. The State Purchasing Director shall annually prepare and distribute to certified procurement officers a schedule providing which states give bidders in their states a preference and the extent of the preference. This schedule shall be used by state agencies in evaluating bids.

B. For purposes of awarding contracts state agencies shall:

1. Give preference to goods and services that have been manufactured or produced in this state if the price, fitness, availability and quality are otherwise equal;

2. Give preference to goods and services from another state over foreign goods or services if goods or services manufactured or produced in this state are not equal in price, fitness, availability, or quality; and

3. Add a percent increase to the bid of a nonresident bidder equal to the percent, if any, of the preference given to the bidder in the state in which the bidder resides.

Title 74. State Government

85-44D Purchasing preference for products made from Oklahoma harvested trees.

A. It is the intent of the Legislature that all state agencies procure and use products or materials made from or utilizing materials from trees harvested in Oklahoma when such products or materials are available.

B. By July 1, 2011, the Purchasing Division of the Office of Management and Enterprise Services when accepting bids for state purchases of products and materials shall give preference to the suppliers of wood products made from or products manufactured utilizing materials from trees harvested in Oklahoma if the price for the products and materials is not substantially higher than the price for other wood products and materials and the quality and grade requirements are otherwise comparable.

C. By July 1, 2011, the Purchasing Division of the Office of Management and Enterprise Services shall promulgate rules and implement a program for extending state procurement specifications to products made from or manufactured utilizing materials from trees harvested in Oklahoma and identifying the products.

Title 74. State Government

85.44E. Disabled Veteran Business Enterprise Act - Definitions - Contracts - Implementation.

A. This act shall be known and may be cited as the "Disabled Veteran Business Enterprise Act".

C. In awarding contracts for the performance of any job or service, all agencies, departments, institutions and other entities of this state and of each political subdivision of this state shall give a three-point bonus preference to service-disabled veteran businesses doing business as Oklahoma firms, corporations or individuals, or which maintain Oklahoma offices or places of business.

D. In implementing the provisions of subsection C of this section, the following shall apply:

1. The Director of the Office of Management and Enterprise Services shall have the goal of three percent (3%) of all such contracts described in subsection C of this section to be awarded to such veterans; and

2. If an insufficient number of such veterans doing business in this state submit a bid or proposal for a contract by an agency, department, institution or other entity of the state or a political subdivision, such goal shall not be required and the provisions of paragraph 1 of this subsection shall not apply.

Title 74. State Government

85.52. Intent of Legislature - Implementation of act - Exemptions.

A. It is the intent of the Legislature that all state public entities comply with the provisions of the Oklahoma State Recycling and Recycled Materials Procurement Act. All political subdivisions of this state are encouraged to collect and recycle recoverable waste paper and recyclable materials to the greatest extent possible. The Office of Management and Enterprise Services shall coordinate recycling efforts among the state public entities. The Director of the Office of Management and Enterprise Services shall adopt such rules, regulations, and orders as are necessary for the implementation of the Oklahoma State Recycling and Recycled Materials Procurement Act. The rules and regulations at a minimum shall establish procedures for:

4. Assuring that the recoverable waste paper and recyclable materials are made available to private industries for collection and recycling at the greatest economic value and to the greatest extent feasible. The Office may execute multiple contracts as necessary for purposes including but not limited to serving other government entities and different geographic areas of the state. In addition to the preference provisions of Section 85.53 of this title, rules and regulations governing availability of recyclable materials shall give preference to private recyclable materials industries that operate in Oklahoma, and that will employ residents of the state to handle, transport and sort such materials.

OREGON

OREGON RESIDENT BIDDER PREFERENCE

Oregon Revised Statutes - 2019

Volume 7: Public Facilities and Finance

Title Number 26: Public facilities, contracting and insurance

Chapter 279A: Public Contracting - General Provisions

279A.120 Preference for Oregon goods and services; nonresident bidders

(1) As used in this section:

(a) "Nonresident bidder" means a bidder who is not a resident bidder.

(b) "Resident bidder" means a bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the bid whether the bidder is a "resident bidder" under this paragraph.

(2) For the purposes of awarding a public contract, a contracting agency shall:

(a) Give preference to goods or services that have been manufactured or produced in this state if price, fitness, availability and quality are otherwise equal; and

(b) Add a percent increase to the bid of a nonresident bidder equal to the percent, if any, of the preference given to the bidder in the state in which the bidder resides.

(3) When a public contract is awarded to a nonresident bidder and the contract price exceeds $10,000, the bidder shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the bidder may receive final payment on the public contract. The contracting agency shall satisfy itself that the requirement of this subsection has been complied with before the contracting agency issues a final payment on a public contract.

(4) The Oregon Department of Administrative Services on or before January 1 of each year shall publish a list of states that give preference to in-state bidders with the percent increase applied in each state. A contracting agency may rely on the names of states and percentages so published in determining the lowest responsible bidder without incurring any liability to any bidder.

279A.128 Preference for goods fabricated or processed within state or services performed within state

(1) As used in this section, "services" means services as defined in ORS 279A.010 (1)(kk) and personal services designated under ORS 279A.055.

(2)

(a) Notwithstanding provisions of law requiring a contracting agency to award a contract to the lowest responsible bidder or best proposer or provider of a quotation, a contracting agency that uses public funds to procure goods or services for a public use under ORS chapter 279B may give preference to procuring goods that are fabricated or processed, or services that are performed, entirely within this state if the goods or services cost not more than 10 percent more than goods that are not fabricated or processed, or services that are not performed, entirely within this state. If more than one bidder or proposer qualifies for the preference described in this subsection, the contracting agency may give a further preference to a qualifying bidder or proposer that resides in or is headquartered in this state.

(b) The contracting agency by order may set a higher percentage than the percentage set forth in paragraph (a) of this subsection if the contracting agency, in a written determination to support the order, finds good cause to set the higher percentage and explains the contracting agency's reasons and evidence for the finding.

(3) Notwithstanding ORS 279C.320 (1), subsection (2) of this section does not apply to emergency work, minor alterations, ordinary repairs or maintenance work for public improvements or to other construction contracts described in ORS 279C.320 (1).

279C.325 Limitation on contracting agency awarding contract to nonresident education service district.

A contracting agency may not award a public improvement contract, a contract for a public works, as defined in ORS 279C.800, or a contract for personal services, as defined in ORS 279C.100, to a nonresident bidder, as defined in ORS 279A.120, that is an education service district.

Oregon Administrative Rules

2020 Administrative Rules Compilation

Chapter 125: Department of Administrative Services

125-246-0310 Reciprocal Preferences

(1) When evaluating Offers according to OAR 125-247-0255 through 125-247-0260, 125-249-0390 or 125-249-0640 through 125-249-0660, Authorized Agencies must add a percentage increase to the Offer of a Nonresident Offeror equal to the percentage, if any, of the preference that would be given to that Offeror in the state in which the Offeror resides. An Authorized Agency may rely on the list maintained by the Department according to ORS 279A.120(4) to determine:

(a) Whether the Nonresident Offeror's state gives preference to in-state Offerors; and if so,

(b) The amount of such preference (Percentage).

(2) Authorized Agencies must add a percentage to the Offer that matches the Percentage described in Section (1) before determining Tie-Offers in accordance with OAR 125-246-0300.

Oregon Administrative Rules

2020 Administrative Rules Compilation

Chapter 137: Department of Justice

137-046-0300 Preference for Oregon Goods and Services

(1) Tiebreaker Preference and Award When Offers Are Identical. Under ORS 279A.120, when a Contracting Agency receives Offers identical in price, fitness, availability and quality, and chooses to Award a Contract, the Contracting Agency shall Award the Contract based on the following order of precedence:

(a) The Contracting Agency shall Award the Contract to the Offeror among those submitting identical Offers who is offering Goods or Services, or both, or Personal Services, that are manufactured, produced or to be performed in Oregon.

(b) If two or more Offerors submit identical Offers, and they all offer Goods or Services, or both, or Personal Services, that are manufactured, produced or to be performed in Oregon, the Contracting Agency shall Award the Contract by drawing lots among the identical Offers. The Contracting Agency shall provide the Offerors who submitted the identical Page 237 of 724 Offers notice of the date, time and location of the drawing of lots and an opportunity for these Offerors to be present when the lots are drawn.

(5) Discretionary Preference and Award. Under ORS 279A.128, a Contracting Agency may provide, in a Solicitation Document for Goods, Services or Personal Services, a specified percentage preference of not more than ten percent for Goods fabricated or processed entirely in Oregon or Services or Personal Services performed entirely in Oregon. When the Contracting Agency provides for a preference under this Section, and more than one Offeror qualifies for the preference, the Contracting Agency may give a further preference to a qualifying Offeror that resides in or is headquartered in Oregon. A Contracting Agency may establish a preference percentage higher than ten percent by written order that finds good cause to establish the higher percentage and which explains the Contracting Agency's reasons and evidence for finding good cause to establish a higher percentage. A Contracting Agency may not apply the preferences described in this Section in a Procurement for emergency work, minor alterations, ordinary repairs or maintenance of public improvements, or construction work that is described in ORS 297C.320

137-048-0230: Ties Among Proposers

(2) If a Contracting Agency is selecting a Consultant on the basis of price alone, or on the basis of price and qualifications, and determines after the ranking of Proposers that two or more Proposers are identical in terms of price or are identical in terms of price and qualifications, then the Contracting Agency shall follow the procedure set forth in OAR 137-046- 0300, (Preferences for Oregon Goods and Services), to select the Consultant.

137-049-0390 Offer Evaluation and Award; Determination of Responsibility

(7) Evaluation of Bids: The Contracting Agency shall use only objective criteria to evaluate Bids as set forth in the ITB. The Contracting Agency shall evaluate Bids to determine which Responsible Offeror offers the lowest Responsive Bid.

(a) Nonresident Bidders. In determining the lowest Responsive Bid, the Contracting Agency shall, in accordance with OAR 137-046-0310, add a percentage increase to the Bid of a nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides.

Oregon Administrative Rules

2020 Administrative Rules Compilation

Chapter 731: Department of Transportation

731-005-0650 Offer Evaluation and Award

(4) Evaluation of Bids. ODOT shall use only objective criteria to evaluate Bids as set forth in the ITB. ODOT shall evaluate Bids to determine which Responsible Offeror offers the lowest Responsive Bid. In

determining the lowest Responsive Bid, ODOT shall add a percentage increase to the Bid of a nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides unless prohibited by federal requirements.

731-005-0660 Tie Offers

(1) Definition. Tie Offers are low tie Responsive Bids from Responsible Bidders or high tie Responsive Proposals from Responsible Proposers that are identical in price, fitness, availability and quality.

(2) Award. If awarded, ODOT shall award the Contract based on the following order of precedence:

(a) For projects not involving federal funds ODOT shall prefer the Offer of the Offeror whose principal offices or headquarters are located in Oregon.

731-148-0230 Ties Among Proposers

(2) If ODOT is selecting a Consultant on the basis of price alone, or on the basis of price and qualifications, and determines after the ranking of Proposers that two or more Proposers are identical in terms of price or are identical in terms of price and qualifications, then ODOT shall follow the procedure set forth in OAR 137-046-0300 (Preferences for Oregon Goods and Services) to select the Consultant.

PENNSYLVANIA

PENNSYLVANIA RESIDENT BIDDER PREFERENCE

Title 62: Procurement

§107. Reciprocal limitations.

(b) Legislative findings. It is hereby determined by the General Assembly to reaffirm the legislative findings contained in the act of November 28, 1986 (P.L.1465, No.146), known as the Reciprocal Limitations Act, and codified in this section:

(3) Some states apply a preference favoring in-state supplies or bidders or they apply a prohibition against the use of out-of-state supplies or bidders.

(4) The application of this preference or prohibition by other states diminishes or eliminates opportunities for bidders and manufacturers who reside in this Commonwealth to obtain construction contracts from or to sell supplies to states that have this preference, thereby resulting in the loss of business for resident bidders and manufacturers. Therefore, in order to offset or counteract the discriminatory practices of other states, discourage other states from applying a preference and ultimately to aid employment, help business and industry located in this Commonwealth, attract new business and industry to this Commonwealth and provide additional tax revenue both from those receiving contracts and those employed by contractors, the General Assembly hereby declares that it is the policy of this Commonwealth to respond in like manner against those states that apply preferences or prohibitions by giving a similar offsetting preference to residents in this Commonwealth and bidders offering supplies manufactured in this Commonwealth and by prohibiting the purchase or use of certain supplies, in accordance with the provisions of this section.

(c) Preference for supplies. In all procurements of supplies exceeding the amount established by the department for small procurements under section 514 (relating to small procurements), all Commonwealth agencies shall give preference to those bidders or offerors offering supplies produced, manufactured, mined, grown or performed in this Commonwealth as against those bidders or offerors offering supplies produced, manufactured, mined, grown or performed in any state that gives or requires a preference to supplies produced, manufactured, mined, grown or performed in that state. The amount of the preference shall be equal to the amount of the preference applied by the other state for that particular supply.

(d) Preference for resident bidders or offerors. When a contract for construction or supplies exceeding the amount established by the department for small procurements under section 514 is to be awarded, a resident bidder or offeror shall be granted a preference as against a nonresident bidder or offeror from any state that gives or requires a preference to bidders or offerors from that state. The amount of the preference shall be equal to the amount of the preference applied by the state of the nonresident bidder or offeror.

Pennsylvania Administrative Code

Title 4

Chapter 7a

7a.41. Commonwealth agency purchases.

All agencies under the jurisdiction of the Governor that purchase agricultural products shall, to the extent permitted by the laws and agreements of the United States and the Commonwealth and so as not to trigger the reciprocal preference laws of other states, purchase Pennsylvania-produced agricultural products when available at competitive prices.

Administrative Code of 1929 - Omnibus Amendments

Act of Dec. 23, 2003, P.L. 282, No. 47

Cl. 71, Session of 2003, No. 2003-47

Section 2420. State Heating Systems to be Fueled by Coal.

(a) The following words and phrases when used in this article shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Coal." Coal produced from mines in Pennsylvania or any mixture or synthetic derived, in whole or in part, from coal produced from mines in Pennsylvania.

"Mixture derived, in whole or in part, from coal." Includes, but is not limited to, both the intermittent and the simultaneous burning of natural gas with coal or a coal derivative if the intermittent or simultaneous burning of natural gas would:

(1) lower the cost of using coal or a coal derivative produced from mines in Pennsylvania; or

(2) enable coal or a coal derivative produced from mines in Pennsylvania to be burned in compliance with present and reasonably anticipated environmental laws and regulations.

RHODE ISLAND

RHODE ISLAND RESIDENT BIDDER PREFERENCE

Title 37: Public Property and Works

Chapter 37-2: State Purchases

37-2-8. Rhode Island foodstuffs.

When foodstuffs of good quality grown or produced in Rhode Island by Rhode Island farmers are available, the purchasing agent is directed to purchase those foodstuffs at the prevailing market prices when any of those foodstuffs are required by the state institutions.

37-2-59.1. Selection of professionals with place of business located in Rhode Island.

The state of Rhode Island and Providence Plantations has a large number of architectural, engineering, and consulting firms well qualified in their fields of endeavor. In instances where contracts are entirely sup-

ported by state funds, it is in the best interest of the state pursuant to the provisions of §§37-2-59 - 37-2-69 that all other things being equal, the services of these qualified and capable professionals with offices in Rhode Island, or secondly those professionals who propose a joint venture with a Rhode Island firm, be utilized.

37-2-80. Selection of vendors and services with place of business located in Rhode Island.

The State of Rhode Island and Providence Plantations has a large number of well-qualified vendors and service-oriented businesses. In instances where contracts are entirely supported by state funds and two (2) or more vendors or service providers are judged to be equal on all other factors, the chief purchasing officer shall select a vendor or service provider whose headquarters or primary place of business is located within the state or secondly select those entities that propose a joint venture with a vendor or service provider whose headquarters or primary place of business is within the state. This section shall not apply to contracts that are financed in part or in their entirety by the federal government, including, but not limited to, contracts supported by the Federal Highway Administration (FHA), the Federal Railroad Administration (FRA), the Federal Aviation Administration (FAA) or the Environmental Protection Agency (EPA).

SOUTH CAROLINA

SOUTH CAROLINA RESIDENT BIDDER PREFERENCE

Title 11: Public Finance

Chapter 35: South Carolina Consolidated Procurement Code

Section 11-35-1520: Competitive sealed bidding

(9) Tie Bids. If two or more bidders are tied in price while otherwise meeting all of the required conditions, awards are determined in the following order of priority:

(a) If there is a South Carolina firm tied with an out-of-state firm, the award must be made automatically to the South Carolina firm.

(b) Tie bids involving South Carolina produced or manufactured products, when known, and items produced or manufactured out of the State must be resolved in favor of the South Carolina commodity.

(c) Tie bids involving a business certified by the South Carolina Office of Small and Minority Business Assistance as a Minority Business Enterprise must be resolved in favor of the Minority Business Enterprise.

(d) Tie bids involving South Carolina firms must be resolved in favor of the South Carolina firm located in the same taxing jurisdiction as the governmental body's consuming location.

Section 11-35-1524: Resident vendor preference

(B)

(1) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease by seven percent the price of any offer for a South Carolina end product.

(2) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease by two percent the price of any offer for a United States end product. This preference does not apply to an item to which the South Carolina end product preference has been applied. (3) Whether award is to be made by item or lot, the preferences must be applied to the price of each line item of end product. A preference must not be applied to an item for which a bidder does not qualify. (4) If a contract is awarded to a bidder that received the award as a result of the South Carolina end product or United States end product preference, the contractor may not substitute a nonqualifying end product for a qualified end product. A substitution in violation of this item is grounds for debarment pursuant to Section 11-35-4220. If a contractor violates this provision, the State may terminate the contract for cause and, in addition, the contractor shall pay to the State an amount equal to twice the difference between the price paid by the State and the bidder's evaluated price for a substituted item.

(C)

(1) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease a bidder's price by seven percent if the bidder maintains an office in this State and either

(i) maintains at a location in South Carolina at the time of the bid an inventory of expendable items which are representative of the general type of commodities on which the award will be made and which have a minimum total value, based on the bid price, equal to the lesser of fifty thousand dollars or the annual amount of the contract;

(ii) is a manufacturer headquartered and having an annual payroll of at least one million dollars in South Carolina and the end product is made or processed from raw materials into a finished end product by that manufacturer or its affiliate (as defined in Section 1563 of the Internal Revenue Code); or

(iii) at the time of bidding, directly employs or has a documented commitment with individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to bidder for those individuals to provide those services exceeds fifty percent of the bidder's total bid price.

(D)

(1) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease a bidder's price by two percent if:

(b) at the time of the bidding, the subcontractor directly employs or has a documented commitment with individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to the subcontractor for those individuals to provide those services exceeds twenty percent of bidder's total bid price.

(2) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease a bidder's price by four percent if:

(b) at the time of the bidding, the subcontractor directly employs or has a documented commitment with individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to the subcontractor for those individuals to provide those services exceeds forty percent of bidder's total bid price.

Section 11-35-3215: Preference for resident design service; definitions; exceptions

(A) As used in this section:

(1) "Design services" means architect-engineer, construction management, or land surveying services as defined in Section 11-35-2910 and awarded pursuant to Section 11-35-3220.

(2) "Resident" means a business that employs, either directly or through consultants, an adequate number of persons domiciled in South Carolina to perform a majority of the design services involved in the procurement.

(D) In an evaluation conducted pursuant to Section 11-35-3220, a resident firm must be ranked higher than a nonresident firm if the agency selection committee finds the two firms otherwise equally qualified.

(E) This section does not apply to a procurement if either the procurement does not involve construction or the design services are a minor accompaniment to a contract for non-design services.

SOUTH DAKOTA

SOUTH DAKOTA RESIDENT BIDDER PREFERENCE

Title 5: Public Property, Purchases and Contracts

Chapter 18A: Public Agency Procurement--General Provisions

5-18A-22. Procurements exempt from chapters 5-18A through 5-18D.

The provisions of this chapter and chapters 5-18B, 5-18C, and 5-18D do not apply to:

(1) Any highway construction contract entered into by the Department of Transportation;

(2) Any contract for the purchase of supplies from the United States or its agencies or any contract issued by the General Services Administration;

(3) Any purchase of supplies or services, other than professional services, by purchasing agencies from any active contract that has been awarded by any government entity by competitive sealed bids or competitive sealed proposals or from any contract that was competitively solicited and awarded within the previous twelve months;

(4) Any equipment repair contract;

(5) Any procurement of electric power, water, or natural gas; chemical and biological products; laboratory apparatus and appliances; published books, maps, periodicals and technical pamphlets; works of art for museum and public display; medical supplies; communications technologies, computer hardware and software, peripheral equipment, and related connectivity; tableware or perishable foods;

(6) Any supplies, services, and professional services required for externally funded research projects at institutions under the control of the Board of Regents;

(7) Any property or liability insurance or performance bonds, except that the actual procurement of any insurance or performance bonds by any department of the state government, state institution, and state agency shall be made under the supervision of the Bureau of Administration;

(8) Any supplies needed by the Department of Human Services or the Department of Social Services or prison industries for the manufacturing of products;

(9) Any printing involving student activities, conducted by student organizations and paid for out of student fees, at institutions under the control of the Board of Regents. However, nothing in this subdivision exempts, from the requirements of this chapter and chapters 5-18B, 5-18C, and 5-18D, purchases that involve printing for other activities at institutions under the control of the Board of Regents;

(10) Any purchase of surplus property from another purchasing agency;

(11) Any animals purchased;

(12) Any purchase by a school district of perishable food, raw materials used in construction or manufacture of products for resale, or for transportation of students;

(13) Any authority authorized by chapters 1-16A, 1-16B, 1-16G, 1-16H, 1-16J, 5-12, or 11-11;

(14) Any seeds, fertilizers, herbicides, pesticides, feeds, and supplies used in the operation of farms by institutions under the control of the Board of Regents;

(15) Any purchase of supplies for any utility owned or operated by a municipality if the purchase does not exceed the limits established in §5-18A-14;

(16) For political subdivisions, any contract for asbestos removal in emergency response actions and any contract for services provided by individuals or firms for consultants, audits, legal services, ambulance services, architectural services and engineering, insurance, real estate services, or auction services;

(17) Any purchase of supplies or services from a contract established through a Midwestern Higher Education Compact group purchasing program by a competitive sealed bid or a competitive sealed proposal;

(18) Any contract concerning the custody, management, purchase, sale, and exchange of fund investments and research by the State Investment Council or Division of Investment; or

(19) For political subdivisions, any purchase of equipment involving the expenditure of less than fifty thousand dollars.

5-18A-25: Preferences to certain resident businesses, qualified agencies, and businesses using South Dakota supplies or services.

In awarding a contract, if all things are equal, including the price and quality of the supplies or services, a purchasing agency shall give preference:

(1) To a qualified agency if the other equal low bid or proposal was submitted by a business that was not a qualified agency;

(2) To a resident business if the other equal low bid or proposal was submitted by a nonresident business;

(3) To a resident manufacturer if the other equal low bid or proposal was submitted by a resident business that is not a manufacturer;

(4) To a resident business whose principal place of business is located in the State of South Dakota, if the other equal low bid or proposal was submitted by a resident business whose principal place of business is not located in the State of South Dakota; or

(5) To a nonresident business providing or utilizing supplies or services found in South Dakota, if the other equal low bid or proposal was submitted by a nonresident business not providing or utilizing supplies or services found in South Dakota.

In computing price, the cost of transportation, if any, including delivery, shall be considered.

5-18A-26. Resident bidder preferred over nonresident bidder from state or foreign province that has preference for resident bidders.

A resident bidder shall be allowed a preference on a contract against the bid of any bidder from any other state or foreign province that enforces or has a preference for resident bidders. The amount of the preference given to the resident bidder shall be equal to the preference in the other state or foreign province.

Title 5: Public Property, Purchases and Contracts

Chapter 18B: Procurement of Public Improvements

5-18B-6. Certification regarding labor provided by nonresident subcontractors.

Prior to execution of a public improvement contract, a successful bidder shall certify:

(1) That no more than twenty percent of the cost of labor included in the contract is being provided by nonresident subcontractors; or

(2) That more than twenty percent of the cost of labor included in the contract is being provided by nonresident subcontractors because resident contractors are not available and at competitive prices.

TENNESSEE

TENNESSEE RESIDENT BIDDER PREFERENCE

Title 12: Public Property, Printing, and Contracts

Chapter 3: Public Purchases

Part 11: Tennessee Minority-Owned, Woman-Owned, Service-Disabled Veteran-Owned, Business Owned by Persons with Disabilities, and Small Business Procurement and Contracting Act

12-3-1108. Preference to in-state meat producers by departments and agencies.

All departments, agencies and institutions of state government that purchase meat, meat food products or meat by-products, as defined in §53-7-202, with state funds shall give preference to producers located within the boundaries of this state when awarding contracts or agreements for the purchase of such meat or meat products, so long as the terms, conditions and quality associated with the in-state producers' proposals are equal to those obtainable from producers located elsewhere.

12-3-1109. Preference to in-state meat producers by schools.

All public education institutions using state funds to purchase meat, meat food products, or meat by-products, as defined in §53-7-202, shall give preference in awarding contracts or agreements for the purchase of such meat or meat products to producers located within the boundaries of this state so long as the terms, conditions and quality associated with the in-state producers' proposals are equal to those obtainable from producers located elsewhere.

12-3-1110. Preference to in-state coal mining companies.

Notwithstanding any provision of law to the contrary, all state agencies, departments, boards, commissions, institutions, institutions of higher education, schools and all other state entities shall purchase coal mined in this state if such coal is available at a delivered price that is equal to or less than coal mined outside the state.

12-3-1111. Preference to in-state natural gas producers.

Notwithstanding any provision of law to the contrary, all state agencies, departments, boards, commissions, institutions, institutions of higher education, schools and all other state entities shall purchase natural gas produced from wells located in the state if such gas is available at a price which is equal to or less than natural gas produced from wells located outside the state, transportation costs taken into account.

12-3-1113. Preference to goods produced or grown in this state, including agricultural products.

(a) Notwithstanding any other law to the contrary, all departments and agencies making purchases of goods, including agricultural products, shall give preference to those produced or grown in this state or offered by Tennessee respondents as follows:

(1) Goods produced in this state or offered by Tennessee respondents shall be given equal preference if the cost to the state and quality are equal; and

(2) Agricultural products grown in this state shall be given first preference and agricultural products offered by Tennessee respondents shall be given second preference, if the cost to the state and quality are equal.

(b) If goods, including agricultural products, produced or grown in this state or offered by Tennessee respondents 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.

(c) As used in this section:

(1) "Agricultural products" includes textiles and other similar products; and

(2) "Tennessee respondents" means a business:

(A) Incorporated in this state;

(B) That has its principal place of business in this state; or

(C) That has an established physical presence in this state.

(d) The commission and all state agencies making purchases of vegetation for landscaping purposes, including plants, shall give preference to Tennessee vegetation native to the region if the cost to the state is not greater and the quality is not inferior.

(e) All departments and agencies procuring services shall give preference to services offered by a Tennessee respondent if:

(1) The services meet state requirements regarding the service to be performed and expected quality; and

(2) The cost of the service does not exceed the cost of other similar services of similar expected quality that are not offered by a Tennessee respondent.

Title 12: Public Property, Printing, and Contracts

Chapter 4 Public Contracts

Part 8: Bidding Preferences

12-4-802. Allowance of bidding preferences -- Reciprocity.

Whenever the lowest responsible and responsive bidder on a public construction project in this state is a resident of another state which is contiguous to Tennessee and which allows a preference to a resident contractor of that state, a like reciprocal preference is allowed to the lowest responsible and responsive bidder on such project who is either a resident of this state or is a resident of another state which does not allow for a preference to a resident contractor of that state.

UTAH

UTAH RESIDENT BIDDER PREFERENCE

Title 63G: General Government

Chapter 6a: Utah Procurement Code

Part 10: Preferences

Section 1002: Reciprocal preference for providers of state products.

(1)

(a) An issuing procurement unit shall, for all procurements, give a reciprocal preference to those bidders offering procurement items that are produced, manufactured, mined, grown, or performed in Utah over those bidders offering procurement items that are produced, manufactured, mined, grown, or performed in any state that gives or requires a preference to procurement items that are produced, manufactured, mined, grown, or performed in that state.

(b) The amount of reciprocal preference shall be equal to the amount of the preference applied by the other state for that particular procurement item.

(c) In order to receive a reciprocal preference under this section, the bidder shall certify on the bid that the procurement items offered are produced, manufactured, mined, grown, or performed in Utah.

(d) The reciprocal preference is waived if the certification described in Subsection (1)(c) does not appear on the bid.

(2)

(a) If the responsible bidder submitting the lowest responsive bid offers procurement items that are produced, manufactured, mined, grown, or performed in a state that gives or requires a preference, and if another responsible bidder has submitted a responsive bid offering procurement items that are produced, manufactured, mined, grown, or performed in Utah, and with the benefit of the reciprocal preference, the bid of the other bidder is equal to or less than the original lowest bid, the issuing procurement unit shall:

(i) give notice to the bidder offering procurement items that are produced, manufactured, mined, grown, or performed in Utah that the bidder qualifies as a preferred bidder; and

(ii) make the purchase from the preferred bidder if the bidder agrees, in writing, to meet the low bid within 72 hours after notification that the bidder is a preferred bidder.

(b) The issuing procurement unit shall include the exact price submitted by the lowest bidder in the notice the issuing procurement unit submits to the preferred bidder.

(c) The issuing procurement unit may not enter into a contract with any other bidder for the purchase until 72 hours have elapsed after notification to the preferred bidder.

(3)

(a) If there is more than one preferred bidder, the issuing procurement unit shall award the contract to the willing preferred bidder who was the lowest preferred bidder originally.

(b) If there were two or more equally low preferred bidders, the issuing procurement unit shall comply with the rules of the rulemaking authority to determine which bidder should be awarded the contract.

(4) The provisions of this section do not apply if application of this section might jeopardize the receipt of federal funds.

Section 1003: Preference for resident contractors.

(1) As used in this section, "resident contractor" means a person, partnership, corporation, or other business entity that:

(a) either has its principal place of business in Utah or that employs workers who are residents of this state when available; and

(b) was transacting business on the date when bids for the public contract were first solicited.

(2)

(a) When awarding contracts for construction, an issuing procurement unit shall grant a resident contractor a reciprocal preference over a nonresident contractor from any state that gives or requires a preference to contractors from that state.

(b) The amount of the reciprocal preference shall be equal to the amount of the preference applied by the state of the nonresident contractor.

(3)

(a) In order to receive the reciprocal preference under this section, the bidder shall certify on the bid that the bidder qualifies as a resident contractor.

(b) The reciprocal preference is waived if the certification described in Subsection (2)(a) does not appear on the bid.

(4)

(a) If the responsible contractor submitting the lowest responsive bid is not a resident contractor whose principal place of business is in a state that gives or requires a preference to contractors from that state, and if a resident responsible contractor has also submitted a responsive bid, and, with the benefit of the reciprocal preference, the resident contractor's bid is equal to or less than the original lowest bid, the issuing procurement unit shall:

(i) give notice to the resident contractor that the resident contractor qualifies as a preferred resident contractor; and

(ii) issue the contract to the resident contractor if the resident contractor agrees, in writing, to meet the low bid within 72 hours after notification that the resident contractor is a preferred resident contractor.

(b) The issuing procurement unit shall include the exact price submitted by the lowest bidder in the notice that the issuing procurement unit submits to the preferred resident contractor.

(c) The issuing procurement unit may not enter into a contract with any other bidder for the construction until 72 hours have elapsed after notification to the preferred resident contractor.

(5)

(a) If there is more than one preferred resident contractor, the issuing procurement unit shall award the contract to the willing preferred resident contractor who was the lowest preferred resident contractor originally.

(b) If there were two or more equally low preferred resident contractors, the issuing procurement unit shall comply with the rules of the rulemaking authority to determine which bidder should be awarded the contract.

(6) The provisions of this section do not apply if application of this section might jeopardize the receipt of federal funds.

Utah Administrative Code

Administrative Services

Title R33: Purchasing and General Services

R33-10. Preferences.

R33-10-101. Providers of State Products.

(1) In addition to the reciprocal preference requirements contained in Section 63G-6a-1002 for the providers of procurement items produced, manufactured, mined, grown, or performed in Utah, Rule R33-10 outlines the process for award of a contract when there is more than one equally low preferred bidder. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(2) In the event there is more than one equally low preferred bidder, the chief procurement officer or head of a procurement unit with independent procurement authority shall consider the preferred bidders as tie bidders and shall follow the process specified in Section 63G-6a-608 and Rule R33-6-110

R33-10-102. Preference for Resident Contractors.

(1) In addition to the reciprocal preference requirements contained in Section 63G-6a-1003 for resident Utah contractors, this rule outlines the process for award of a contract when there is more than one equally low preferred resident contractor.

(2) In the event there is more than one equally low preferred resident contractor, the chief procurement officer or head of a procurement unit with independent procurement authority shall consider the preferred resident contractors as tie bidders and shall follow the process specified in Section 63G-6a-608 and Rule R33-6-110.

R33-6-111. Methods to Resolve Tie Bids.

(1) In accordance with Section 63G-6a-608, in the event of tie bids, the contract shall be awarded to the procurement item offered by a Utah resident bidder, provided the bidder indicated on the invitation to bid form that it is a Utah resident bidder.

(2) If a Utah resident bidder is not identified, the preferred method for resolving tie bids shall be for the chief procurement officer or head of a procurement unit with independent procurement authority by tossing a coin in the presence of a minimum of three witnesses with the firm first in alphabetical order being heads.

(3) Other methods to resolve a tie bid described in Section 63G-6a-608 may be used as deemed appropriate by the chief procurement officer or head of a procurement unit with independent procurement authority.

VERMONT

VERMONT RESIDENT BIDDER PREFERENCE

Title 29: Public Property and Supplies

Chapter 2: Art in State Buildings

Section 46: Use of funds

(a) Project sites that are funded from an appropriation or appropriations in one or more annual capital construction acts, shall be eligible for consideration by the advisory committee for the installation of one or more permanent works of art. For a project expected to receive capital appropriations from more than one capital construction act, eligibility may be determined by the estimated total cost of the project after the initial appropriation is made. In recommending a project site to the advisory committee, the Commissioner shall give priority to buildings and facilities that are frequently visited by members of the public.

(b) Priority in acquisitions and commissions of works of art shall be given to Vermont artists.

Title 3 Appendix: Executive orders

Chapter 003: Executive

Executive Order No. 3-75

...After consideration of all relevant factors, a bidder that adheres to the above best practices shall be given favorable consideration in the competitive bidding process. Favorable consideration shall be consistent with and not supersede any Secretary of Administration guidance that, all other considerations being equal, preference will be given to resident bidders of the State and/or products raised or manufactured in the State.

VIRGINIA

VIRGINIA RESIDENT BIDDER PREFERENCE

Title 2.2: Administration of Government

Chapter 43: Virginia Public Procurement Act

2.2-4324 Preference for Virginia products with recycled content and for Virginia firms

A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be decided by lot.

B. Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a price-matching preference, a like preference shall be allowed to responsive and responsible bidders who are residents of Virginia. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid shall not be considered. The Department of General Services shall post and maintain an updated list on its website of all states with an absolute preference for their resident contractors and those states that allow their resident contractors a percentage preference, including the respective percentage amounts. For purposes of compliance with this section, all public bodies may rely upon the accuracy of the information posted on this website.

C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

D. For the purposes of this section, a Virginia person, firm or corporation shall be deemed to be a resident of Virginia if such person, firm or corporation has been organized pursuant to Virginia law or maintains a principal place of business within Virginia.

2.2-4325: Preference for Virginia coal used in state facilities

In determining the award of any contract for coal to be purchased for use in state facilities with state funds, the Department of General Services shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more than four percent greater than the bid price of the low responsive and responsible bidder offering coal mined elsewhere

2.2-4328: Preference for local products and firms; applicability

A. The governing body of a county, city or town may, in the case of a tie bid, give preference to goods, services and construction produced in such locality or provided by persons, firms or corporations having principal places of business in the locality, if such a choice is available; otherwise the tie shall be decided by lot, unless §2.2-4324 applies.

WASHINGTON

WASHINGTON RESIDENT BIDDER PREFERENCE

Title 39: Public Contracts and Indebtedness

Chapter 39.04: Public Works

Section 39.04.380: Preference for resident contractors.

(3) In any bidding process for public works in which a bid is received from a nonresident contractor from a state that provides a percentage bidding preference, a comparable percentage disadvantage must be applied to the bid of that nonresident contractor. This subsection does not apply until the department of enterprise services has adopted the rules and procedures for reciprocity under subsection (2) of this section, or has determined and announced that rules are not necessary for implementation.

(4) A nonresident contractor from a state that provides a percentage bid preference means a contractor that:

(a) Is from a state that provides a percentage bid preference to its resident contractors bidding on public works contracts; and

(b) At the time of bidding on a public works project, does not have a physical office located in Washington.

(5) The state of residence for a nonresident contractor is the state in which the contractor was incorporated or, if not a corporation, the state where the contractor's business entity was formed.

(6) This section does not apply to public works procured pursuant to RCW 39.04.155, 39.04.280, or any other procurement exempt from competitive bidding.

Title 39: Public Contracts and Indebtedness

Chapter 39.26: Procurement of goods and services

Section 39.26.260: Preferences--In-state procurement.

The legislature finds that in-state preference clauses used by other states in procuring goods and services have a discriminatory effect against Washington vendors with resulting harm to this state's revenues and the welfare of this state's citizens. Chapter 183, Laws of 1983 is intended to promote fairness in state government procurement by requiring that, when appropriate, Washington exercise reciprocity with those states having in-state preferences, and it shall be liberally construed to that effect.

Title 43: State Government - Executive

Chapter 43.19: Department of enterprise services.

Section 43.19.748: Public printing for state agencies and municipal corporations--Exceptions to in-state requirements.

All printing, binding, and stationery work done for any state agency, county, city, town, port district, or school district in this state shall be done within the state, and all proposals, requests, or invitations to submit bids, prices, or contracts thereon, and all contracts for such work, shall so stipulate: PROVIDED, That whenever it is established that any such work cannot be executed within the state, or that the lowest charge for which it can be procured within the state, exceeds the charge usually and customarily made to private individuals and corporations for work of similar character and quality, or that all bids for the work or any part thereof are excessive and not reasonably competitive, the officers of any such public corporation may have the work done outside the state.

Washington Administrative Code

Title 200: Department of Enterprise Services

Chapter 200-300: Contracting for goods and services

Section 200-300-075: In-state preference bids.

The department of enterprise services shall make available a list of each state, relating to state purchasing practices, whose statutes or regulations grant a preference to bidders located within that state or goods manufactured within that state. This list shall be updated on an annual basis. The department of enterprise services shall notify agencies when the list is updated. In determining whether to assess a percentage increase against a bidder, and the amount of that increase, the purchasing agency will consider only the business address from which the bid was submitted. The purchasing agency will add the appropriate percentage increase to each bid bearing the address from a state with in-state preference rather than subtracting a like amount from Washington state bidders. This action will be used only when evaluating bids for award. In no instance shall the increase be paid to a bidder whose bid is accepted.

This WAC section applies only to competitive solicitations in accordance with chapter 39.26 RCW.

WEST VIRGINIA

WEST VIRGINIA RESIDENT BIDDER PREFERENCE

Chapter 5A: Department of Administration

Article 3: Purchasing Division

Section 5A-3-37: Reciprocal preference; preference for resident vendors for certain contracts.

(2) For purposes of this subsection, a successful bid shall be determined and accepted as follows:

(A) From an individual resident vendor who has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted or from a partnership, association, corporation resident vendor, or from a corporation nonresident vendor which has an affiliate or subsidiary which employs a minimum of 100 state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for four years immediately preceding the date on which the bid is submitted, if the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if the vendor has made written claim for the preference at the time the bid was submitted: Provided, That for purposes of this paragraph, any partnership, association, or corporation resident vendor of this state which does not meet the requirements of this paragraph solely because of the continuous four-year residence requirement, shall be considered to meet the requirement if at least 80 percent of the ownership interest of the resident vendor is held by another individual, partnership, association, or corporation resident vendor who otherwise meets the requirements of this paragraph, including the continuous four-year residency requirement: Provided, however, That the Purchasing Division shall promulgate rules relating to attribution of ownership among several resident vendors for purposes of determining the 80 percent ownership requirement; or

(B) From a resident vendor, if, for purposes of producing or distributing the motor vehicles or the construction and maintenance equipment and machinery used in highway and other infrastructure projects which are the subject of the vendor's bid and continuously over the entire term of the contract, on average at least 75 percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years, and the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if the vendor has certified the residency requirements of this paragraph and made written claim for the preference, at the time the bid was submitted; or

(C) From a nonresident vendor, which employs a minimum of 100 state residents or a nonresident vendor which has an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia and which employs a minimum of 100 state residents, if, for purposes of producing or distributing the motor vehicles or the construction and maintenance equipment and machinery used in highway and other infrastructure projects which are the subject of the vendor's bid and continuously over the entire term of the contract, on average at least 75 percent of the vendor's employees or the vendor's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years and the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if the vendor has certified the residency requirements of this paragraph and made written claim for the preference, at the time the bid was submitted; or

(D) From a vendor who meets either the requirements of both §5A-3-37(c)(2)(A) and §5A-3-37(c)(2)(B) of this code or §5A-3-37(c)(2)(A) and §5A-3-37(c)(2)(C) of this code, if the bid does not exceed the low-

est qualified bid from a nonresident vendor by more than five percent of the latter bid, and if the vendor has certified the residency requirements above and made written claim for the preference at the time the bid was submitted; or

(E) From an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted, if the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than three and one-half percent of the latter bid, and if the vendor has made written claim for the preference at the time the bid was submitted; or

(F) From a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects which are the subject of the vendor's bid and continuously over the entire term of the contract, on average at least 75 percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years and the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than three and one-half percent of the latter bid, and if the vendor has certified the residency requirements of this paragraph and made written claim for the preference, at the time the bid was submitted; or

(G) Notwithstanding any provisions of §5A-3-37(c)(2)(A), §5A-3-37(c)(2)(B), §5A-3-37(c)(2)(C), §5A-3-37(c)(2)(D), §5A-3-37(c)(2)(E), or §5A-3-37(c)(2)(F) of this code to the contrary, if any nonresident vendor that is bidding on the purchase of motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects by the director or by a state department is also certified as a small-, women-, or minority-owned business pursuant to §5A-3-59, the nonresident vendor shall be provided the same preference made available to any resident vendor under the provisions of this subdivision.

(3) If any of the requirements or provisions set forth in this section jeopardize the receipt of federal funds, then the requirement or provisions are void and of no force and effect for that specific project.

WISCONSIN

WISCONSIN RESIDENT BIDDER PREFERENCE

General Organization of the State, Except the Judiciary

Chapter 16: Department of administration.

Subchapter IV: Purchasing

Section 16.75: Buy on low bid, exceptions.

2. If a vendor is not a Wisconsin producer, distributor, supplier or retailer and the department determines that the state, foreign nation or subdivision thereof in which the vendor is domiciled grants a preference to vendors domiciled in that state, nation or subdivision in making governmental purchases, the department and any agency making purchases under s. 16.74 shall give a preference over that vendor to Wisconsin producers, distributors, suppliers and retailers, if any, when awarding the order or contract. The department may enter into agreements with states, foreign nations and subdivisions thereof for the purpose of implementing this subdivision.

Subchapter V: Engineering

Section 16.855: Construction project contracts.

(1r) If a bidder is not a Wisconsin firm and the department determines that the state, foreign nation or subdivision thereof in which the bidder is domiciled grants a preference to bidders domiciled in that state, nation or subdivision in making governmental purchases, the department shall give a preference over that bidder to Wisconsin firms, if any, when awarding the contract, in the absence of compelling reasons to the contrary. The department may enter into agreements with states, foreign nations and subdivisions thereof for the purpose of implementing this subsection.

Wisconsin Administrative Code

Department of Administration (ADM)

Chapter Adm 8: Bidding Process and Exceptions to Bidding

Adm 8.03: Basis for awards as a result of bidding.

(1) Lowest responsible bidder. The award of a contract for a procurement shall be made to the lowest responsible bidder, taking into account qualified bids from sheltered workshops, small businesses, and minority businesses.

(2) Rejection of bids. Any, and all, bids may be rejected. The reason for rejection shall be documented and made a part of the bid file.

(3) Discounts for early payment. Discounts for early payment may be taken into account in making awards only when all other conditions are equal.

(4) Tied bids. In the case of tie bids, an award shall be made to Wisconsin suppliers, in preference to out-of-state suppliers, as provided in s. 16.75 (1) (a), Stats. If the tie is between 2 Wisconsin bidders or 2 non-Wisconsin bidders, the successful bidder shall be selected by chance as determined by a witnessed and documented drawing of names or its equivalent.

WYOMING

WYOMING RESIDENT BIDDER PREFERENCE

Title 16: City, County, State and Local Powers

Chapter 6: Public Property

Article 1: Public Works and Contracts

Section 16-6-102: Resident contractors; preference limitation with reference to lowest bid or qualified response; decertification; denial of application for residency.

(a) If a contract is let by a public entity for a public work, the contract shall be let, if advertisement for bids or request for proposal is not required, to a resident of the state. If advertisement for bids is required, the contract shall be let to the responsible certified resident making the lowest bid if the certified resident's bid is not more than five percent (5%) higher than that of the lowest responsible nonresident bidder.

Section 16-6-103: Limitation on subcontracting by resident contractors.

A successful resident bidder shall not subcontract more than thirty percent (30%) of the work covered by his contract to nonresident contractors.

Section 16-6-104: Preference for Wyoming materials required in contracts.

Wyoming made materials and products, and Wyoming suppliers of products and materials of equal quality and desirability shall have preference over materials or products produced or supplied outside the state and any contract let shall so provide. The preference created by this section shall be applied in a manner identical to the preference for residence contractors in W.S. 16-6-102.

Section 16-6-105: Preference for Wyoming materials and Wyoming agricultural products required in public purchases; exception; cost differential; definition.

(a) A five percent (5%) materials preference for Wyoming materials shall be applied in public purchases, subject to the following:

(i) The preference requirement shall apply to all public entities;

(ii) As used in this section, "materials" means supplies, material, agricultural products, equipment, machinery and provisions to be used in a public work, including the regular maintenance and upkeep of a public work;

(iii) The preference shall be applied in favor of materials that are produced, manufactured or grown in this state, or that are supplied by a resident of the state who is competent and capable to provide the materials within the state of Wyoming;

(iv) Preference shall not be granted for materials of inferior quality to those offered by competitors outside of the state.

(b) As used in this section, "agricultural products" means any horticultural, viticultural, vegetable product, livestock, livestock product, bees or honey, poultry or poultry product, sheep or wool product, timber or timber product.

Article 2: Preference for State Laborers

Section 16-6-203: Required resident labor on public works projects; exception.

(a) Every person who is responsible for a public work shall employ only Wyoming laborers on the public work. Every contract for a public work let by any person shall contain a provision requiring that Wyoming labor be used except other laborers may be used when Wyoming laborers are not available for the employment from within the state or are not qualified to perform the work involved. The contract shall contain a provision requiring specific acknowledgement of the requirements of this section. A person required to employ Wyoming laborers may employ other than Wyoming laborers if:

(i) That person informs the nearest state workforce center of his employment needs at least eleven (11) days before work is commenced; and

(ii) The state workforce center certifies that the person's need for laborers cannot be filled from those Wyoming laborers listed with the Wyoming department of workforce services. The department shall respond to a person's request for certification within ten (10) days of the date the information is filed.

(b) Upon request by the workforce center, the general contractor shall provide the most recent construction schedule for the project.

Article 3: Public Printing Contracts

Section 16-6-301: Preference for resident bidders; exception; "resident" defined; violation.

(a) Whenever a contract is let by the state or any department thereof, or any of its subdivisions, for public printing, including reports of officers and boards, pamphlets, blanks, letterheads, envelopes and printed and lithographed matter of every kind and description whatsoever, the contract shall be let to the responsible resident making the lowest bid if the resident's bid is not more than ten percent (10%) higher than that of the lowest responsible nonresident bidder. Any successful resident bidder shall perform at least seventy-five percent (75%) of the contract within the state of Wyoming. This section shall not apply to any contract for the compilation, codification, revision, or digest of the statutes or case law of the state.

(b) As used in this section, "resident" means any person or business entity who has been a bona fide resident of this state as defined in W.S. 16-6-101(a)(i), for one (1) year or more immediately prior to bidding upon a contract, and who has an established printing plant in actual operation in the state of Wyoming immediately prior to bidding upon a contract.

(c) Any contract let or performed in violation of this section shall be null and void and no funds shall be paid for the performance thereof.

Article 8: Works of Art in Public Buildings

Section 16-6-803: Department of commerce to acquire works of art; advisory panel to consult in acquisition; procedure; public education programs.

(d) The department shall by rule and regulation establish the jury procedure for works of art acquired under this article, which shall at minimum:

(i) Give preference to Wyoming artists.

TRD-202004783
Don Neal
General Counsel, Operations and Support Legal Services
Comptroller of Public Accounts
Filed: November 12, 2020

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/16/20 - 11/22/20 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 11/16/20 - 11/22/20 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-202004763
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 10, 2020

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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 11/23/20 - 11/29/20 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 11/23/20 - 11/29/20 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-202004846

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 17, 2020

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Credit Union Department

Application to Expand Field of Membership

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application was received from Wharton County Teachers Credit Union, Wharton, Texas, to expand its field of membership. The proposal would permit persons who reside, work, worship or attend school within the boundaries of Wharton County, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.cud.texas.gov/page/bylaw-charter-applications. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202004861
John J. Kolhoff
Commissioner
Credit Union Department
Filed: November 18, 2020

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following application.

Application to Out of State Branch Office - Approved

Eastman CU, Longview, Texas - See *Texas Register* issue dated September 25, 2020.

TRD-202004859
John J. Kolhoff
Commissioner
Credit Union Department
Filed: November 18, 2020

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (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 31, 2020.** 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 commissions 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 commissions 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 31, 2020.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's 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: Aqua Texas, Incorporated; DOCKET NUMBER: 2019-1492-MWD-E; IDENTIFIER: RN101524833; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011249001, Sludge Provisions, Section II, Part F, by failing to submit a complete annual sludge report to the TCEQ by September 30th of each year; 30 TAC §305.125(1) and (4), TWC, §26.121(a)(1), and TPDES Permit Number WQ0011249001, Permit Conditions Number 2.d, 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; 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and TPDES Permit Number WQ0011249001, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and TPDES Permit Number WQ0011249001, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of sewage into or adjacent to any water in the state; 30 TAC §305.125(1), (5), and 11(C) and §319.7(a) and (c), and TPDES Permit Number WQ0011249001, Monitoring and Reporting Requirements Numbers 3.c and 3.c.i, by failing to properly record monitoring activities during effluent sampling; 30 TAC §305.125(1) and (9)(A) and TPDES Permit Number WQ0011249001, Monitoring and Reporting Requirements Number 7.c, by failing to report to the TCEQ in writing, any effluent violation which deviates from the permitted effluent limitation by more than 40% within five working days of becoming aware of the noncompliance; 30 TAC §305.125(1) and (11)(B) and §319.7(c) and TPDES Permit Number WQ0011249001, Monitoring and Reporting Requirements Numbers 3.b and 3.c.vi, by failing to maintain monitoring and reporting records at the facility and make them readily available for review by a TCEQ representative for a period of three years; 30 TAC §305.125(1) and (12) and TPDES Permit Number WQ0011249001, Permit Conditions Number 1.a, by failing to submit corrected information to the executive director (ED) after becoming aware of the failure to submit any relative facts in a permit application or in any report to the ED; 30 TAC §§305.125(1), 319.6 and 319.11, and TPDES Permit Number

WQ0011249001, Definitions and Standard Permit Conditions Number 1 and Monitoring and Reporting Requirements Numbers 2.a and 3.a, by failing to properly analyze effluent samples according to the permit; and 30 TAC §317.4(a)(8), by failing to test the reduced-pressure backflow assembly annually, and failing to equip all washdown hoses using potable water with atmospheric vacuum breakers located above the overflow level of the washdown area; PENALTY: $68,019; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Betway Parks, L.P.; DOCKET NUMBER: 2020-0935-PWS-E; IDENTIFIER: RN101439073; LOCATION: Cypress, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement covering land within 150 feet of the facility's well; PENALTY: $50; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: BNSF Railway Company; DOCKET NUMBER: 2020-0322-IWD-E; IDENTIFIER: RN103043865; LOCATION: Silsbee, Hardin County; TYPE OF FACILITY: diesel locomotive refueling and light maintenance facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0000745000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $6,563; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: BOBCAT TRUCKING, INCORPORATED dba Alamo Recycle Centers San Antonio Southwest Facility; DOCKET NUMBER: 2020-0913-MSW-E; IDENTIFIER: RN106439706; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: recycling center; RULES VIOLATED: 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: City of Teague; DOCKET NUMBER: 2020-1099-MWD-E; IDENTIFIER: RN102181716; LOCATION: Teague, Freestone County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010300001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $12,250; ENFORCEMENT COORDINATOR: Alyssa Loveday, (512) 239-5504; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: City of Timpson; DOCKET NUMBER: 2020-0746-MWD-E; IDENTIFIER: RN102805850; LOCATION: Timpson, Shelby County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010614002, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $2,875; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: Comal Ag Operations, LLC and Santa Rita Land & Cattle Holdings, Ltd.; DOCKET NUMBER: 2020-0754-SLG-E; IDENTIFIER: RN108531716; LOCATION: McQueeney, Guadalupe County; TYPE OF FACILITY: domestic septage land application site; RULES VIOLATED: 30 TAC §312.4(d) and TCEQ Domestic Septage Registration Number 711013, Section V. Standard Provisions, A. Limitations Number 5, by failing to ensure that only domestic septage is accepted and land applied at the site; PENALTY: $13,500; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: DAVE NIX; DOCKET NUMBER: 2020-0675-MSW-E; IDENTIFIER: RN110928926; LOCATION: Welch, Dawson County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §330.15(c), by failing to not cause, suffer, allow, or permit the dumping or disposal of municipal solid waste without the written authorization of the commission (repeat nuisance dumping of less than 20 cubic yards of waste only); PENALTY: $875; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 9900 West Interstate Highway 20, Suite 10c, Midland, Texas 79706, (432) 570-1359.

(9) COMPANY: DERICHEBOURG RECYCLING USA, INCORPORATED; DOCKET NUMBER: 2020-0713-WQ-E; IDENTIFIER: RN104772967; LOCATION: Houston, Harris County; TYPE OF FACILITY: recycling facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a), and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR05DM22, Part III, Sections A.1 and A.4, by failing to properly implement a Stormwater Pollution Prevention Plan; and 30 TAC §305.125(1), TWC, §26.121(a), and TPDES General Permit Number TXR05DM22, Part IV, Section B.1, by failing to conduct benchmark monitoring requirements; PENALTY: $8,544; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: River Road Villas, LLC; DOCKET NUMBER: 2020-0847-PWS-E; IDENTIFIER: RN109248385; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code, §341.035(a), by failing to submit plans and specifications to the executive director for review and approval prior to the construction of a new public water supply; 30 TAC §290.39(l)(5), by failing to meet the conditions for an issued exception; and 30 TAC §290.39(l)(5) and §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: $276; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: Rock Dicke Incorporated dba RDI Fabricators; DOCKET NUMBER: 2019-1402-IHW-E; IDENTIFIER: RN103788162; LOCATION: Mason, Mason County; TYPE OF FACILITY: oil and gas industry equipment fabrication shop; RULES VIOLATED: 30 TAC §335.4, by failing to not cause, suffer, allow, or permit the unauthorized disposal of industrial solid waste; and 30 TAC §§335.62, 335.503(a), and 335.504 and 40 Code of Federal Regulations §262.11, by failing to conduct hazardous waste determinations and waste classifications; PENALTY: $37,332; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(12) COMPANY: Samuel O. Klaerner dba Chaparral Water System; DOCKET NUMBER: 2020-0749-PWS-E; IDENTIFIER: RN101227270; LOCATION: Fredericksburg, Gillespie County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain sanitary control easements

that cover the land within 150 feet of Well Numbers 1 and 2; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data, as defined in 30 TAC §290.41(c)(3)(A), for as long as the well remains in service for Well Numbers 1 and 2; 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 10959 for calendar years 2018 and 2019; PENALTY: $300; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-202004852
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: November 18, 2020

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Enforcement Orders

An agreed order was adopted regarding BZSTAR'S 2, INC. dba EZ Trip 2, Docket No. 2018-0897-PST-E on November 17, 2020, assessing $4,125 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kevin R. Bartz, 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 Gonzales County Water Supply Corporation, Docket No. 2019-1320-PWS-E on November 17, 2020, assessing $1,811 in administrative penalties with $362 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, 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 VICTORIA UTILITIES, INC., Docket No. 2019-1445-PWS-E on November 17, 2020, assessing $890 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Benjamin Warms, 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 Fred Havlak and Tommy Wright, Jr. dba WYN-LOR, Docket No. 2019-1455-PST-E on November 17, 2020, assessing $3,083 in administrative penalties with $616 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, 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 Shah B. Bari dba Peek Road Mobile Home Park and Suzana Saladin dba Peek Road Mobile Home Park, Docket No. 2019-1530-PWS-E on November 17, 2020, assessing $350 in administrative penalties with $70 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, 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 Thorntree Golf, LLC, Docket No. 2019-1690-WR-E on November 17, 2020, assessing $1,500 in administrative penalties with $300 deferred. Information concerning any aspect of this order may be obtained by contacting Had Darling, 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 Barehide Ranch, Inc., Docket No. 2020-0091-PWS-E on November 17, 2020, assessing $105 in administrative penalties with $21 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, 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 PENSKE TRUCK LEASING CO., L.P., Docket No. 2020-0474-PST-E on November 17, 2020, assessing $1,463 in administrative penalties with $292 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, 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 Lee Mehta Dealerships, Inc. dba Reliance Chevrolet Buick GMC, Docket No. 2020-0505-AIR-E on November 17, 2020, assessing $2,063 in administrative penalties with $412 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, 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 JAPPA Corporation dba Tiger Corner, Docket No. 2020-0525-PST-E on November 17, 2020, assessing $2,561 in administrative penalties with $512 deferred. Information concerning any aspect of this order may be obtained by contacting Epi Villarreal, 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 Holcim (US) Inc., Docket No. 2020-0613-AIR-E on November 17, 2020, assessing $7,426 in administrative penalties with $1,485 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, 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 Sam's Truck Stop Business, Inc. dba PLATEAU TRUCK STOP, Docket No. 2020-0826-PWS-E on November 17, 2020, assessing $238 in administrative penalties with $47 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Miles Construction Company Inc., Docket No. 2020-1018-WQ-E on November 17, 2020, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding KW Homes LLC, Docket No. 2020-1037-WQ-E on November 17, 2020, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Alyssa Loveday, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Kenmark Homes LP, Docket No. 2020-1039-WQ-E on November 17, 2020, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202004854
Kyle Lucas
Acting Chief Clerk
Texas Commission on Environmental Quality
Filed: November 18, 2020

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Enforcement Orders

An agreed order was adopted regarding Salzgitter Mannesmann Stainless Tubes USA, Inc., Docket No. 2019-0052-AIR-E on November 18, 2020, assessing $16,800 in administrative penalties with $3,360 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.

An agreed order was adopted regarding Ronald Hines dba Sixth Street Mini Storage, Docket No. 2019-0582-MSW-E on November 18, 2020, assessing $17,982 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, 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 Performance Materials NA, Inc., Docket No. 2019-0878-AIR-E on November 18, 2020, assessing $14,250 in administrative penalties with $2,850 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, 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 MURPHY OIL USA, INC. dba Murphy USA 6824, Docket No. 2019-1019-PST-E on November 18, 2020, assessing $31,364 in administrative penalties with $6,272 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, 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 the City of Penelope, Docket No. 2019-1025-MWD-E on November 18, 2020, assessing $6,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, 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 DIAMOND SHAMROCK REFINING COMPANY, L.P. dba Valero McKee Refinery, Docket No. 2019-1100-WDW-E on November 18, 2020, assessing $17,100 in administrative penalties with $3,420 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, 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 the City of Rio Hondo, Docket No. 2019-1259-PWS-E on November 18, 2020, assessing $1,235 in administrative penalties. 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 the City of Graham, Docket No. 2019-1323-MWD-E on November 18, 2020, assessing $30,825 in administrative penalties with $6,165 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, 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 OMRI 80 INC dba Edgewood Mart, Docket No. 2019-1381-PST-E on November 18, 2020, assessing $9,527 in administrative penalties with $1,905 deferred. Information concerning any aspect of this order may be obtained by contacting Christopher Moreno, 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 R. D. Wallace Oil Co., Inc. dba M & M Grocery, Docket No. 2019-1415-PST-E on November 18, 2020, assessing $9,281 in administrative penalties with $1,856 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, 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 Corrigan OSB L.L.C., Docket No. 2019-1600-AIR-E on November 18, 2020, assessing $81,000 in administrative penalties with $16,200 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, 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 COOK THE PAINTER, LLC, Docket No. 2019-1604-MSW-E on November 18, 2020, assessing $16,946 in administrative penalties with $3,389 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, 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 LMMM Houston #67, Ltd. dba La Michoacana Meat Market, Docket No. 2019-1701-PST-E on November 18, 2020, assessing $13,541 in administrative penalties with $2,708 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, 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 OXY USA Inc., Docket No. 2020-0205-AIR-E on November 18, 2020, assessing $7,800 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, 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 Scott W. Gray dba Iwanda Mobile Home Park, Docket No. 2020-0228-PWS-E on November 18, 2020, assessing $443 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, 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 Angus Water Supply Corporation, Docket No. 2020-0455-PWS-E on November 18, 2020, assessing $862 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, 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 WESTBOUND WATER SUPPLY CORPORATION, Docket No. 2020-0456-PWS-E on November 18, 2020, assessing $1,670 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, 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 Enterprise Products Operating LLC, Docket No. 2020-0461-AIR-E on November 18, 2020, assessing $13,125 in administrative penalties with $2,625 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, 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 the City of Bryson, Docket No. 2020-0526-PWS-E on November 18, 2020, assessing $990 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, 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 Targa Midstream Services LLC, Docket No. 2020-0612-AIR-E on November 18, 2020, assessing $13,125 in administrative penalties with $2,625 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202004865
Kyle Lucas
Acting Chief Clerk
Texas Commission on Environmental Quality
Filed: November 18, 2020

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Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility: Registration Application No. 40318

Application. Piney Woods Sanitation, INC has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40318, to construct and operate a Type V municipal solid waste Transfer Station. The proposed facility, Piney Woods Sanitation, will be located at 405 E Pease Avenue, Crockett, Texas 75835-1515, in Houston County. The Applicant is requesting authorization to transfer municipal solid waste that includes Municipal Solid Waste from 2,500 homes and 300 businesses inside the City of Crockett, and unpacked roll-off demolition-construction clean-up wastes. The registration application is available for viewing and copying at the Crockett Texas City Hall, 200 N 5th Street, Crockett, Texas 75835-1515 and may be viewed online at https://pineywoodssanitation.com/tceq-facility-information/. 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: https://arcg.is/10qG00. For exact location, refer to application.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. Written public comments or written requests for a public meeting must be submitted to the Office of the Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. 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 is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the registration number for this application, which is provided at the top of this notice.

Mailing List. If you submit public comments, you will be added to the mailing list for this 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. 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.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this registration application or the registration process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their webpage, www.tceq.texas.gov/goto/pep. General information regarding the TCEQ can be found on our website at www.tceq.texas.gov/. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Piney Woods Sanitation, INC at the address stated above or by calling Mr. Denny Wheeler at (936) 876-5640.

TRD-202004849
Kyle Lucas
Acting Chief Clerk
Texas Commission on Environmental Quality
Filed: November 17, 2020

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Notice of Hearing Regal, LLC: SOAH Docket No. 582-21-0576; TCEQ Docket No. 2020-0973-MWD; Permit No. WQ0015817001

APPLICATION.

Regal, LLC, 1067 Farm-to-Market Road 306, Suite 106, New Braunfels, Texas 78130, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015817001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. TCEQ received this application on August 27, 2019.

The facility will be located approximately 1.2 miles east of the intersection of Farm-to-Market Road 1978 and State Highway 123, in Guadalupe County, Texas 78666. The treated effluent will be discharged to an unnamed tributary of Cottonwood Creek, thence to Cottonwood Creek, thence to York Creek, thence to Lower San Marcos River in Segment No. 1808 of the Guadalupe River Basin. The unclassified receiving water uses are minimal aquatic life use for the unnamed tributary of Cottonwood Creek and Cottonwood Creek. The designated uses for Segment No. 1808 are primary contact recreation, public water supply, and high aquatic life use. In accordance with Texas Administrative Code (TAC) §307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-97.9202%2C29.805757&level=12>. For the exact location, refer to the application.

The TCEQ Executive Director has prepared a draft permit which, 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 Seguin Public Library, 313 West Nolte Street, Seguin, Texas.

CONTESTED CASE HEARING.

Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - January 11, 2021

To join the Zoom meeting via computer:

https://soah-texas.zoomgov.com/j/1609720648?pwd=bFR2cnZvbWZMYWR0RVUwcGNUR3FBZz09

Meeting ID: 160 972 0648

Password: TCEQ0576

or

To join the Zoom meeting via telephone:

(346) 248-7799

Meeting ID: 160 972 0648

Password: 13413475

Visit the SOAH website for registration at: http://www.soah.texas.gov/ or call SOAH at 512-475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on October 12, 2020. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (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 Regal, LLC at the address stated above or by calling Mr. Daniel Ryan, P.E., LJA Engineering, at (512) 439-4700.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: November 17, 2020

TRD-202004853
Kyle Lucas
Acting Chief Clerk
Texas Commission on Environmental Quality
Filed: November 18, 2020

♦ ♦ ♦

Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit: Proposed Permit No. 2406

Application. PC-II, LLC, 300 Concourse Blvd., Suite 101, Ridgeland, Madison County, Mississippi 39157, a Mississippi limited lia-

bility company, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit to authorize a new Municipal Solid Waste Type I Landfill. The facility is proposed to be located approximately seven miles northwest of the intersection of US 59 and SH 105, in San Jacinto County, Texas. The TCEQ received Parts I and II of this application on August 28, 2019 and Parts III and IV of the complete application on September 16, 2020; as such, this is a continuation of that application and not a new application. The permit application is available for viewing and copying at the Shepherd Public Library, 30 North Liberty Street, Shepherd, Texas 77371, and may be viewed online at https://peachcreekep.com/resources/. 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: https://arcg.is/08jO4L. For exact location, refer to the application.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

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, and the Executive Director's decision on the application, 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 reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in 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 permit number; the location and distance of your property/activities relative to the 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 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 that are relevant and material to the Commission's decision on the application submitted during the comment period.

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 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. 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.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at *www.tceq.texas.gov/goto/cid.* Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at *www14.tceq.texas.gov/epic/eComment/* or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at *www.tceq.texas.gov/goto/pep.* Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from PC-II, LLC at the address stated above or by calling Mr. Jeffery Hobby, Project Manager, at (601) 362-3333.

TRD-202004850
Kyle Lucas
Acting Chief Clerk
Texas Commission on Environmental Quality
Filed: November 17, 2020

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Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: Monthly Report due May 5, 2020

Judi Howell, Piney Woods Republican Women's Club, 715 County Rd. 2914 Hughes Springs, Texas 75656

Deadline: Monthly Report due June 5, 2020

Judi Howell, Piney Woods Republican Women's Club, 715 County Rd. 2914 Hughes Springs, Texas 75656

Prisylla Ann Jasso, Strategic International Development PAC, 612 W. Nolana, Suite 250, McAllen, Texas 78504

Deadline: Monthly Report due July 6, 2020

Judi Howell, Piney Woods Republican Women's Club, 715 County Rd. 2914 Hughes Springs, Texas 75656

Prisylla Ann Jasso, Strategic International Development PAC, 612 W. Nolana, Suite 250, McAllen, Texas 78504

Deadline: Monthly Report due August 5, 2020

Judi Howell, Piney Woods Republican Women's Club, 715 County Rd. 2914 Hughes Springs, Texas 75656

Prisylla Ann Jasso, Strategic International Development PAC, 612 W. Nolana, Suite 250, McAllen, Texas 78504

TRD-202004804
Anne Temple Peters
Executive Director
Texas Ethics Commission
Filed: November 12, 2020

♦ ♦ ♦

General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of November 9, 2020, to November 13, 2020. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, November 20, 2020. The public comment period for this project will close at 5:00 p.m. on Sunday, December 20, 2020.

FEDERAL AGENCY ACTIONS:

Applicant: Texas Department of Transportation (TxDOT)-Houston District

Location: The project site is located in waters of the US, including Buffalo Camp Bayou, and adjacent wetlands, along State Highway (SH) 332 from Farm-to-Market (FM) 521 to SH 288, approximately 5.3 miles in length, in Lake Jackson and to the west of the city limits, in Brazoria County, Texas.

Latitude & Longitude (NAD 83): Begin: 29.05984, - 95.55393; Ending 29.04715, -95.45507

Project Description: The applicant proposes to discharge a 4.379 acres of fill material into wetlands, and 314 linear feet of fill material into waters of the U.S. during the roadway improvements associated with the reconstruction and widening of SH 332. Specifically, the following impacts are proposed:

SH 332 would be reconstructed and widened from two to four lanes (two lanes in each direction) from FM 521 to FM 2004. The proposed project would also reconstruct and widen SH 332 from four to six lanes (three lanes in each direction) from FM 2004 to SH 288. Roadway improvements would include the replacement of bridges over Buffalo Camp Bayou and a diversion channel just east of Buffalo Camp Bayou. The project would include sidewalks on both sides of the roadway for the entire length of the project. In addition to roadway improvements, improved drainage ditches would be constructed along the north and south sides of the project. Additionally, a new drainage channel is proposed on new location from SH 332, approximately 800 feet west of Division Street (County Road (CR) 680A), south to the Brazos River, a distance of approximately 1.1 miles.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2020-00073. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 21-1089-F1

Applicant: The Port of Houston Authority

Location: The project site is located in Galveston Bay, adjacent to the Bayport Ship Channel, approximately 30 miles southwest of downtown Houston, in the City of Pasadena and the City of Seabrook, Harris County, Texas.

Latitude & Longitude (NAD 83): 29.609198, -95.013723°

Project Description: The Port of Houston Authority proposes to modify the previously authorized permit and requests an extension of time to complete previously authorized work. Specifically, the following is proposed: To perform maintenance dredging previously authorized depths for a period of 10 years.

New proposed work: New Dredge area proposed, depicted on revised drawings, Sheet 7 and Sheet 9 of 30. Below are the details of the dredge area: To mechanically and/or hydraulically dredge a 1.3-acre extension to the west of the dock 7 berth to a depth of -49-feet (MLT) (-50.5-feet (MLLW)); To remove 20,000 cubic yards of dredged material from the 1.3 acres; to remove 5,000 cubic yards per annum of maintenance dredged material; and to place dredged material within DMPAs.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-1998-01818. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

CMP Project No: 21-1090-F1

Applicant: University of Texas at Austin

Location: The project site is located on the Corpus Christi Ship Channel on the south jetty approximately 340 feet to the southeast of the University of Texas Marine Science Institute (UTMSI) in Port Aransas, Nueces County, Texas.

Latitude & Longitude (NAD 83): 27.837911, -97.050547°

Project Description: The applicant proposes to amend (previous permit number 19588) a previously authorized structure (UTMSI) pier by shifting the footprint approximately 44-feet to the west of the original footprint due to geotechnical limitations. The proposed research pier improvements will consist of precast concrete elements (piles, pile caps double "tee" beams, timber handrails, octagon pier head, octagon shaped instrument building, etc.) using the same dimensions as the previous research pier, over the jetty system and out into the ship channel. The purpose of the pier is to collect meteorological, and marine scientific data and specimens at the Marine Science institute's campus. The Research Pier is approximately 312-feet by 8-feet wide located on the south side of Corpus Christi Ship Channel and extends 184 feet north from the U.S. Army Corps of Engineer's Jetty, also known as the Port Aransas Jetty. A timber walkway connected the research pier to

the institute's Teaching Laboratory on land. Both the Research Pier and Teaching Laboratory will be constructed with a floor elevation at +15 feet mean low tide (MLT) for protection from storm tides with ADA accessibility to both. Two pre-cast concrete piles or cast-in-place piles will be installed within the jetty system foundation rocks in close proximity to the jetty walkway as in the previous research pier. The applicant will use precast forms for the pilings with the placement of concrete (fill material) within the forms and remove the forms once the concrete has hardened. On the upland side, the elevated timber walkway will have a new dog-leg configuration that will terminate at the existing elevated Teaching lab building. The previous portion of the Research Pier over the water was constructed of a concrete double "tee" beam walkway and an octagon shaped pier head supported by square concrete piles and a concrete pile cap. The previous octagon shaped pier head spanned 36-foot and the walkway spanned 12-foot wide in both the concrete portion over the water and timber portion on land. The UTMSI did receive an authorization on 12 February 2018 under Nationwide Permit 3 to repair the damages caused during Hurricane Harvey.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-1991-01026. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

CMP Project No: 21-1093-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202004862
Mark A. Havens
Chief Clerk and Deputy Land Commissioner
General Land Office
Filed: November 18, 2020

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Texas Health and Human Services Commission

Notice of Public Hearing on the Proposed Long-Term Care Plan for Individuals with Intellectual Disabilities and Related Conditions for Fiscal Years 2022 and 2023

Hearing. The Health and Human Services Commission (HHSC) will conduct an online public hearing on Tuesday, December 1, 2020, at 11:00 a.m. Central Standard Time to receive public testimony regarding the proposed Long-Term Care Plan for Individuals with Intellectual Disabilities and Related Conditions for Fiscal Years 2022-2023 (the proposed LTC Plan).

This hearing will be conducted online only. To join the meeting, go to *https://attendee.gotowebinar.com/register/8294335699565713167.*

Topic. HHSC is required by Texas Health and Safety Code §533A.062 to develop a proposed plan on long-term care for persons with an intellectual disability biennially. Section 533A.062(a) and (b) sets out the scope of the plan.

Participation. HHSC welcomes public comments pertaining to the proposed LTC Plan during the public hearing. If you would like to register to provide oral comments at the hearing, please go to: *https://attendee.gotowebinar.com/register/8294335699565713167.* After registering, you will receive a confirmation email containing information about joining the webinar. Registration will be open until the start of the online public hearing.

Public comments may also be submitted in writing by e-mail to *Ltc-Search@hhsc.state.tx.us* up to, but no later than, 5:00 p.m. Central Standard Time on December 1, 2020. Written comments may be read aloud during the meeting by HHSC staff, and copies will be provided to HHSC staff for review.

Anyone may request a free copy of the proposed LTC Plan by contacting the HHSC Quality Reporting Unit by email at *Ltc-Search@hhsc.state.tx.us.*

In 2021, a copy of the final LTC Plan will be posted on the HHSC website at: *https://hhs.texas.gov/laws-regulations/reports-presentations.*

Contact: Questions regarding agenda items, content, or hearing arrangements should be directed to Erin Cibrone, Quality Reporting Unit Manager at (512) 992-8198 or Erin.Cibrone@hhs.texas.gov.

This hearing is open to the public. There is no cost to attend this meeting.

Persons with disabilities who wish to attend the hearing and require assistive aids or services should contact Cibrone at (512) 992-8198 or Erin.Cibrone@hhs.texas.gov at least 72 hours before the hearing to appropriate arrangements can be made.

TRD-202004847
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: November 17, 2020

♦ ♦ ♦

Public Notice - 1115 Fast Track Extension

The Health and Human Services Commission (HHSC) announces its intent to submit the following to the Centers for Medicare & Medicaid Services (CMS):

The Health and Human Services Commission (HHSC) plans to submit a "Fast Track" extension application to the Centers for Medicare & Medicaid Services (CMS) for the Texas Healthcare Transformation Quality Improvement Program (THTQIP) waiver under section 1115 of the Social Security Act. The extension request is for 5 years, which will allow the 1115 waiver authority to run through 2027.

The requested extension will allow Texas continued flexibility to pursue the goals of the existing 1115 waiver: expand risk-based managed care to new populations and services; support the development and maintenance of a coordinated care delivery system; improve outcomes while containing cost growth; and transition to quality-based payment systems across managed care and providers. The extension will also create financial stability for Texas Medicaid providers, as HHSC works to transition the valuable work identified through Delivery System Reform Incentive Payment (DSRIP) innovations. The extension years better align the DSRIP transition timeline with the overall goals to create a sustainable program. There are no significant policy changes requested under this extension application.

Since 2011 when the waiver was initially approved, the managed care model in Texas has been expanded statewide and includes more services under capitation. Today, Texas serves over four million Texans through Medicaid and CHIP programs, and 95% are covered under the Medicaid managed care model. This request to extend preserves the innovations, collaboration, and improved value of care through a continuous five-year extension of our current demonstration period.

Budget Neutrality

This extension request continues current budget neutrality policies through the end of the extended demonstration period. No deviations from current financial performance are expected as no methodology changes have been requested.

Evaluation Design

The current evaluation design includes 5 evaluation questions and 13 hypotheses. The THTQIP demonstration waiver extension does not alter the overall goals and objectives of the evaluation; therefore, HHSC is not proposing modifications to the approved evaluation questions. HHSC is also not proposing changes to hypotheses, data sources, statistical methods, and/or outcome measures for the evaluation of the UC Pool or components related to the overall impact of the THTQIP demonstration. HHSC is proposing changes to the DSRIP and Medicaid Managed Care (MMC) expansion components. DSRIP funds are scheduled to phase out during the final year of the current THTQIP demonstration on October 1, 2021. HHSC may continue to examine DSRIP using a revised hypothesis and measure set focused on the DSRIP transition process occurring under the THTQIP extension.

Hypotheses under the MMC component of the THTQIP extension evaluation will remain the same, but HHSC will update the study populations associated with each hypothesis to focus on recent or forthcoming changes in services or benefits provided to populations served under the THTQIP. HHSC will review and modify current MMC measures to examine access to care, care coordination, quality, outcomes, and satisfaction, as applicable to the new populations and/or benefits. HHSC will submit a revision to the CMS-approved evaluation design incorporating these edits following approval of the THTQIP extension.

Benefits

The extension will not change the array of benefits provided under the current 1115 waiver authority.

Eligibility

The extension does not make any changes to eligibility requirements. Extending the waiver will not have a significant impact on enrollment.

Cost Sharing

Under the extension there will continue to be no beneficiary cost sharing.

Public Health Emergency

Responding to the public health emergency has put pressure on the state's health care system. Therefore, this application also requests that the Secretary exercise his authority under 42 CFR §431.416(g) to waive certain notice procedures in order to expedite a decision. Approval of this "Fast Track" extension will sustain the achievements of the demonstration and support the needs of beneficiaries and Texans.

Full Public Notice

The full public notice regarding this extension request is at https://hhs.texas.gov/laws-regulations/policies-rules/waivers/waiver-renewal.

Location and times of Public Hearings

1115 Waiver - Public Hearing

Join us for a webinar on December 07, 2020, at 2:00 p.m. CST.

Texas Health and Human Services Commission is conducting a public hearing to solicit feedback on the 1115 Waiver application. Members of the public throughout the State are provided this medium to have an opportunity to provide comments.

https://register.gotowebinar.com/register/2065205404914309392

HHSC Executive Council Meeting for Public Comment

December 8, 2020, at 2:00 p.m. CST

Use the below link for public comment registration:

https://texashhsmeetings.org/HHSCEC_PCReg_Dec2020

To attend the meeting go to the link below:

https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings

Additional Opportunity for Comment

From the date of public notice in the *Texas Register* until December 27, 2020, an individual may obtain a free copy of the proposed waiver extension application, ask questions, obtain additional information, or submit comments regarding this proposed extension application by contacting Amanda Sablan by U.S. mail, telephone, fax, or email at:

U.S. Mail

Texas Health and Human Services Commission

Attention: Amanda Sablan, Waiver Coordinator, Policy Development Support

P.O. Box 13247

Mail Code H-600

Austin, Texas 78711-3247

Telephone

(512) 487-3446

Fax

Attention: Amanda Sablan, Waiver Coordinator, at (512) 487-3446

Email

TX_Medicaid_Waivers@hhsc.state.tx.us

On Line

https://hhs.texas.gov/laws-regulations/policies-rules/waivers/waiver-renewal

TRD-202004868
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: November 18, 2020

♦ ♦ ♦

Public Notice - HB-1576 - NEMT

The Health and Human Services Commission (HHSC) announces its intent to submit the following to the Centers for Medicare & Medicaid Services (CMS):

Amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act

Amendment to the Texas Healthcare Transformation Quality Improvement Program (THTQIP) demonstration waiver under section 1115 of the Social Security Act.

Termination of the TX-24 MTO Nonemergency Transportation waiver under section 1915(b) of the Social Security Act

Termination of the TX-26 Fee-For-Service Selective Contracting Program under section 1915(b)(4) of the Social Security Act

Initial application for a new Fee-For-Service Selective Contracting Program under section 1915(b)(4) of the Social Security Act

The proposed effective date for these amendments and initial waiver is June 1, 2021. The proposed effective date for the two terminations is May 31, 2021.

The purpose of these amendments, terminations and initial application is to implement changes required by House Bill (HB) 1576, 86th Texas Legislature, Regular Session, 2019. HB 1576 requires Medicaid managed care organizations (MCOs) to provide all nonemergency medical transportation (NEMT) services for Medicaid managed care members. HB 1576 also requires MCOs to provide NEMT demand response transportation services for certain trips requested with less than 48-hours' notice and increases opportunities for transportation network companies (TNCs) to provide demand response transportation services. Finally, HB 1576 maintains the Medical Transportation Program (MTP) to serve the remaining fee-for-service (FFS) Medicaid population. Services for the FFS population will mirror those offered through managed care, including the changes described in this paragraph.

Current Models

Currently, most NEMT is provided by managed transportation organizations (MTOs) under a state plan transportation broker model on a regional basis. In MTO Region 2, NEMT is provided under TX-24, a section 1915(b)(1)/(b)(4) combination waiver that permits the MTO to provide direct delivery of demand response transportation services using their own fleets of vehicles. In MTO Region 4, NEMT is provided under TX-26, a section 1915(b)(4) Fee-For-Service Selective Contracting Program that allows the state to selectively contract with a limited number of providers to deliver demand response transportation services on a FFS basis.

Proposed Changes

THTQIP 1115 Waiver

NEMT currently provided to managed care members through FFS will now be provided through managed care. The THTQIP 1115 waiver will be amended to add NEMT as a managed care covered service and a demonstration expenditure under Special Terms and Conditions (STC) 41. This amendment aligns with current goals of the THTQIP 1115 waiver because it will expand risk-based managed care by moving NEMT from other authorities to the 1115 authority. The amendment supports a coordinated delivery system by making the same MCOs responsible for arranging health care services also responsible for arranging the NEMT some members require to access healthcare services.

Financial Analysis

NEMT currently is excluded from the THTQIP 1115 waiver. As the result of this amendment, NEMT for Medicaid managed care members will fall under the authority of the THTQIP 1115 waiver and expenditures will be included in the budget neutrality calculations. Impact on budget neutrality is not significant because the expenditures are a new cost to the THTQIP 1115 waiver and will be included under both "with waiver" and "without waiver" expenditures.

The amendment introduces a new provider type for TNCs and assumes additional costs associated with a resulting increase in the number of demand response trips due to the TNC providers. An assumption is also included for shift of existing trips to new TNC providers and increased administrative costs for MCOs to provide NEMT. However, costs associated with increased utilization and additional administrative expense are offset largely by an assumed decrease in cost per trip of 17% for trips provided by new TNC providers.

Evaluation Design

The CMS-approved THTQIP 1115 waiver evaluation design does not include any evaluation questions, hypotheses, or measures directly related to transportation services. However, it is possible that adding NEMT may indirectly influence measures under seven hypotheses. Measures not impacted by the amendment either focus on study populations not receiving these benefits, and/or use study periods which end prior to the addition of NEMT.

Contingent on data availability, HHSC will provide the external evaluator of the THTQIP 1115 waiver with MCO encounter data related to NEMT to identify influences and adjust analytic methods for impacted measures, if necessary.

HHSC is not adding an evaluation question or hypothesis related to NEMT to the current THTQIP 1115 waiver evaluation due to implementation timelines, data lags, and the time required to pull, analyze, and produce the report.

Enrollment, Cost Sharing, and Service Delivery

There will be no cost sharing and no impact on member enrollment. The only change impacting the delivery of existing services is a new requirement that MCOs provide NEMT with less than 48 hours' notice for pharmacy visits and hospital discharge pickups, and to access treatment of an urgent condition.

TX-24 MTO Nonemergency Transportation Waiver

The state will no longer provide NEMT through MTOs operating under the authority of a state plan transportation broker model. TX-24 will not be necessary and will be terminated. To accommodate this change, the State will submit a transition plan and request termination of TX-24 effective May 31, 2021. The termination of TX-24 will not impact individuals receiving services because they will continue to receive the same NEMT services under a different authority and through Medicaid MCOs.

TX-26 Fee-For-Service Selective Contracting Program

TX-26 will be terminated, and HHSC will apply for a new 1915(b)(4) fee-for-service selective contracting program that expands the authority for HHSC to selectively contract with a limited number of providers to deliver demand response transportation services to the Medicaid FFS population on a statewide basis. To accommodate this change, the State will submit a transition plan and request termination of TX-26 effective May 31, 2021. The termination of TX-26 will not impact individuals receiving services because they will continue to receive the same NEMT services under a different authority.

Texas Medicaid State Plan

HHSC will amend the Texas State Plan for Medical Assistance to reflect the proposed changes to the current models for NEMT.

An individual may obtain a free copy of the proposed state plan and waiver amendments, terminations and initial waiver application, ask questions, obtain additional information, or submit comments by December 27, 2020, regarding these proposed changes by contacting Amanda Sablan by U.S. mail, telephone, or email. The addresses are as follows:

U.S. Mail

Texas Health and Human Services Commission

Attention: Amanda Sablan, Waiver Coordinator, Policy Development Support

P.O. Box 13247

Mail Code H-600

Austin, Texas 78711-3247

Telephone

(512) 487-3446

Email

TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-202004851
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: November 17, 2020

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Texas Department of Housing and Community Affairs

Notice of Public Hearing on the 5-Year and 2021 Annual Public Housing Agency PHA Plan for the Housing Choice Voucher Program

Notice of Public Hearing on the 5-Year and 2021 Annual Public Housing Agency PHA Plan for the Housing Choice Voucher Program. Section 511 of Title V of the Quality Housing and Work Responsibility Act of 1998 (P. L. 205-276) requires the Texas Department of Housing and Community Affairs (the Department) to prepare a 2019 Streamlined Annual Public Housing Agency PHA Plan for the Housing Choice Voucher Program. Title 24, §903.17 of the Code of Federal Regulations requires that the Department conduct a public hearing regarding that plan. The Department will hold a public hearing to receive oral and written comments for the development of the Department's 5-Year and 2021 Annual Public Housing Agency PHA Plan for the Housing Choice Voucher Program. The hearing will take place at the following time and location:

Monday, January 11, 2021

Texas Department of Housing and Community Affairs

221 East 11th Street, Room 116

Austin, Texas 78701

1:00 p.m. - 4:00 p.m.

TDHCA will provide updates via listserv and on our website for any potential additions to the hearing schedule, including the use of a Virtual Public Hearing via webinar due to the ongoing public health concern related to COVID-19.

The proposed 5-Year and 2021 Annual Public Housing Agency PHA Plan for the Housing Choice Voucher Program and all supporting documentation are available to the public for viewing at TDHCA Public Comment Center at: http://www.tdhca.state.tx.us/public-comment.htm to access the Plan.

The proposed plan will also be available for viewing on the Department's website at: www.tdhca.state.tx.us/section-8/announcements.htm.

Written comments from any interested persons unable to attend the hearing may be submitted by e-mail to Andre Adams, Section 8 Program Manager, at andre.adams@tdhca.state.tx.us or by mail at P.O. Box 13941, Austin, Texas 78711-3941. Comments must be received by 5:00 p.m. Monday, January 11, 2021. Questions or requests for additional information may be directed to Andre Adams by calling (512) 475-3884 or the e-mail listed above.

Individuals who require a language interpreter for the hearing should contact Andre Adams at (512) 475-3884 or Relay Texas at (800) 735-2989 at least two days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids or services for this hearing should contact Andre Adams at (512) 475-3884 or Relay Texas at (800) 735-2989 at least 2 days before the scheduled hearing so that appropriate arrangements can be made.

TRD-202004869
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 18, 2020

♦ ♦ ♦

Texas Department of Insurance

Correction of Error

In the November 6, 2020, issue of the *Texas Register* (45 TexReg 7970), the Texas Department of Insurance proposed to amend 28 TAC §1.414, concerning the assessment of maintenance taxes and fees imposed by the Insurance code. On page 7977, there should be a new semicolon to replace the existing comma at the end of §1.414(c)(1)(A). Also, at §1.414(c)(1)(C), the published version has the entire sentence as new. Only (C) should show as new language. The subparagraphs should read as follows:

(A) single service health maintenance organizations; [,] [~~$.84 per enrollee for~~]

(B) multiservice health maintenance organizations; [,] and [~~$.28 per enrollee for~~]

(C) limited service health maintenance organizations; and

TRD-202004813
James Person
General Counsel
Texas Department of Insurance
Filed: November 13, 2020

♦ ♦ ♦

Legislative Budget Board

Tax Relief Amendment Implementation - Limit on Growth of Certain State Appropriations

Legal References

The Texas Constitution, Article VIII, Section 22(a), restriction on rate of growth of appropriations, commonly referred to as the spending limit, was established by the passage of a constitutional amendment in 1978. It states that:

In no biennium shall the rate of growth of appropriations from state tax revenues not dedicated by this constitution exceed the estimated rate of growth of the state's economy. The legislature shall provide by general law procedures to implement this subsection.

This provision does not alter, amend, or repeal the Texas Constitution, Article III, Section 49a, known as the pay-as-you-go provision.

To implement this provision of the Texas Constitution, the Sixty-sixth Legislature, 1979, passed Article 9, Chapter 302, Laws 1979 (the Texas Government Code, Chapter 316), which placed with the Legislative Budget Board the responsibility for approval of a limitation on the growth of certain state appropriations. A part of the procedure for ap-

proving the limitation is set forth in Sections 316.003 and 316.004 as follows:

Section. 316.003. Before the Legislative Budget Board approves the items of information required by Section 316.002, the board shall publish in the *Texas Register* the proposed items of information and a description of the methodology and sources used in the calculations.

Section. 316.004. Not later than December 1 of each even-numbered year, the Legislative Budget Board shall hold a public hearing to solicit testimony regarding the proposed items of information and the methodology used in making the calculations required by Section 316.002.

These items of information are identified as follows in the Texas Government Code, Section 316.002:

(1) the estimated rate of growth of the state's economy from the current biennium to the next biennium;

(2) the level of appropriations for the current biennium from state tax revenues not dedicated by the constitution; and

(3) the amount of state tax revenues not dedicated by the constitution that could be appropriated for the next biennium within the limit established by the estimated rate of growth of the state's economy.

In this memorandum, each item of information is discussed in this same order.

Estimated Rate of Growth of the State's Economy

A definition of the "estimated rate of growth of the state's economy" is set in the Texas Government Code, Section 316.002(b), in the following words:

(b) Except as provided by Subsection (c), the board shall determine the estimated rate of growth of the state's economy by dividing the estimated Texas total personal income for the next biennium by the estimated Texas total personal income for the current biennium. Using standard statistical methods, the board shall make the estimate by projecting through the biennium the estimated Texas total personal income reported by the United States Department of Commerce or its successor in function.

(c) If a more comprehensive definition of the rate of growth of the state's economy is developed and is approved by the committee established by Section 316.005, the board may use that definition in calculating the limit on appropriations.

The U.S. Commerce Department's Bureau of Economic Analysis defines state personal income as follows:

...the income received by persons from all sources, that is, from participation in production, from both government and business transfer payments, and from government interest. Personal income is the sum of wage and salary disbursements, supplements to wages and salaries, proprietors' income, rental income of persons, personal dividend income, personal interest income, and transfer payments, less contributions for social insurance.

Table 1 shows the U.S. Commerce Department's personal income account for Texas for calendar year 2019. The largest component of Texas personal income is wage and salary disbursements, estimated at $786.7 billion during calendar year 2019. Salary and wage disbursements are added with supplements to wages and salaries, primarily employer contributions to private pensions and welfare funds, and proprietors' income to arrive at total earnings by place of work. Texas total earnings by place of work reached an estimated $1,152.0 billion in calendar year 2019.

In deriving Texas total personal income, adjustments are made to total earnings by place of work. Personal and employee contributions for social insurance, principally Social Security payroll taxes paid by employees and self-employed individuals, are deducted. A place-of-residence adjustment also is made to reflect the earnings of workers who cross state borders to live or work. Dividends, interest, and rent income are then added, along with transfer payments. The major types of transfer payments include Social Security, various retirement and unemployment insurance benefits, welfare, and disability and health insurance payments. Texas total personal income is estimated to be $1,531.3 billion for calendar year 2019.

The U.S. Department of Commerce reports personal income estimates by calendar quarter and year. Because the state's fiscal year begins on September 1 and ends August 31, an adjustment is required to present these data on a biennial basis. The Legislative Budget Board uses the data for the first three calendar quarters of a year plus the fourth quarter of the preceding year to represent the state's fiscal year. A biennium is the sum of two fiscal years. Table 2 shows the historical record of the rate of growth in Texas personal income for the past 19 completed biennia, using the data published by the U.S. Department of Commerce.

Forecasting Texas Personal Income

In reviewing standard statistical techniques for forecasting or projecting Texas personal income, the Legislative Budget Board has obtained the latest economic forecasts from the following sources, listed alphabetically: (1) IHS Markit, (2) Moody's Analytics, (3) Perryman Group, (4) Texas A&M University - Department of Economics, and (5) Texas Comptroller of Public Accounts. These forecasts are based on econometric models developed and maintained by the forecasting services listed.

Although each forecasting service approaches the development of economic projections differently, several characteristics are common to the econometric models from which the Texas total personal income estimates are derived. First, each model assumes that the U.S. economy is the driving force behind Texas economic activity. As a result, forecasts of U.S. economic variables are needed to drive each model. Secondly, each of the econometric models is structural in nature, representing certain assumptions about the structure of the Texas economy, consistent with economic theory. Structural models typically entail detailed modeling of key sectors of the state's economy, followed by statistical testing to establish relationships with other sectors of the economy. Previous memoranda published on the constitutional limit include additional discussion of the forecasting methods used and can be found in the following issues of the *Texas Register:* 5 TexReg 4272, 7 TexReg 3727, 9 TexReg 5219, 11 TexReg 4590, 13 TexReg 4599, 15 TexReg 6876, 17 TexReg 7702, 19 TexReg 9053, 21 TexReg 10919, 23 TexReg 11472, 25 TexReg 11735, 27 TexReg 10977, 29 TexReg 10612, 31 TexReg 9641, 33 TexReg 9109, 35 TexReg 10081, 37 TexReg 9031, 39 TexReg 9391, 41 TexReg 9360, and 43 TexReg 7571.

Table 3 shows details of the Texas personal income growth rates of the various forecasting services for the 2022-23 biennium over the 2020-21 biennium. These forecasts range from 5.27 percent to 12.64 percent.

The personal income growth rates shown in Table 3, or any more recent forecasts if available, will be presented to the Legislative Budget Board for its consideration in adopting this item of information. The Board is not limited to one, or any combination of the growth rates, when adopting a Texas personal income growth rate for the 2022-23 biennium.

Table 4 shows the sources and dates for the Texas personal income growth rates presented in Table 3.

Appropriations from State Tax Revenue Not Dedicated by the Constitution 2020-21 Biennium

The amount of appropriations from state tax revenue that are not dedicated by the constitution in the 2020-21 biennium, the base biennium, is the second item of information to be determined by the Legislative Budget Board. As of November 18, 2020, the Legislative Budget Board (LBB) staff estimates this amount to be $98,782,196,730. This item multiplied by the estimated rate of growth of Texas personal income from the 2020-21 biennium to the 2022-23 biennium produces the limitation on appropriations for the 2022-23 biennium pursuant to the Texas Constitution, Article VIII, Section 22.

Calculating the 2022-23 Limitation

The limitation on appropriations of state tax revenue that is not dedicated by the state constitution in the 2022-23 biennium, the third item of information, may be illustrated by selecting a growth rate and applying it to the 2020-21 biennial appropriations base. A change to the 2020-21 biennial appropriations base would result in a corresponding change to the 2022-23 biennial limit.

Method of Calculating 2020-21 Appropriations from State Tax Revenue Not Dedicated by the Constitution

As previously stated, LBB staff estimates the amount of appropriations from state tax revenue that are not dedicated by the constitution in the 2020-21 biennium to be $98,782,196,730. This section details the sources of information used in this calculation.

Total appropriations for the 2020-21 biennium include those made by the Eighty-sixth Legislature, Regular Session, 2019, in House Bill 1, Senate Bill 500, and other legislation affecting appropriations. Any subsequent appropriations made by the Eighty-seventh Legislature, 2021, for the 2020-21 biennium also would be included in total appropriations.

Table 5, Section B, shows General Revenue Funds appropriations, which is the method of finance for general-purpose spending. General Revenue Funds appropriations are financed with revenues in the following General Revenue Funds: General Revenue Fund (Fund No. 0001), Available School Fund (Fund No. 0002), Technology and Instructional Materials Fund (Fund No. 0003), Foundation School Fund (Fund No. 0193), and Tobacco Settlement Fund (Fund No. 5040). Section B shows the total amount of General Revenue Funds appropriations, the amount of appropriations financed from constitutionally dedicated tax revenue, the amount financed from nontax revenue and the remainder--the amount financed from tax revenue that is not dedicated by the constitution--which is the amount subject to the limitation.

I. General Revenue-Related Funds

A. Appropriations are classified in this table as the following: (1) "estimated to be" line item appropriations, and (2) sum-certain line item appropriations.

1. "Estimated to Be" Line Item Appropriations:

Each of these items under the subheading "estimated to be" may change under certain circumstances. For purposes of this calculation, most fiscal year 2020 amounts are based on actual 2020 expenditures. Most amounts for fiscal year 2021 are taken from House Bill 1, Eighty-sixth Legislature, Regular Session, 2019.

2. Sum-certain Line Item Appropriations:

As calculated in Table 6, the amount shown for "Total Sum Certain Line Item Appropriations" is the difference between total appropriations and the items listed separately as "estimated to be appropriations." General Revenue Funds appropriations in Table 6 include those made by the Eighty-sixth Legislature, Regular Session, 2019, in House Bill 1, Senate Bill 500, and other legislation affecting appropriations.

B. Source of Funding - General Revenue-Related: Table 5, Part B, shows that of the $113,576,591,346 of General Revenue Fund appropriations, $92,157,076,277 is subject to the limitation because it is financed from state tax revenue that is not dedicated by the Constitution.

Constitutionally dedicated state tax revenues deposited into General Revenue Funds are estimated to total $5,001,691,977 during the 2020-21 biennium. Appropriations from General Revenue Funds financed from nontax revenue are estimated at $16,417,823,093 for the 2020-21 biennium. Revenue analysis in this calculation applies actual fiscal year 2020 revenue collections and the most recent revenue estimates by the Comptroller of Public Accounts for fiscal year 2021.

II. Appropriations from Funds Outside of General Revenue

Certain tax revenues are deposited into funds and accounts outside of the General Revenue Funds. Appropriations from these funds and accounts financed with state tax revenue that are not dedicated by the constitution are included in this calculation.

The state imposes a sales and use tax on boats and boat motors, of which 95.0 percent is deposited into the General Revenue Funds and the remaining 5.0 percent is deposited into General Revenue-Dedicated Account No. 0009, Game, Fish, and Water Safety. The state imposes an insurance companies maintenance tax, which is deposited into General Revenue-Dedicated Account No. 0036, Texas Department of Insurance.

A portion of the motor vehicles sales tax, franchise tax, and cigarette tax is deposited into the Property Tax Relief Fund (Fund No. 0304). Similarly, sales tax revenue collected by marketplace providers on the sales of taxable items made through the marketplace is deposited to the Tax Reduction and Excellence in Education Fund (Fund No. 0305). The state transfers revenue in the General Revenue Funds to the Economic Stabilization Fund (Fund No. 0599) based on the amount of severance tax collections during the previous year. Most of the transferred revenue is tax revenue.

General Revenue-Dedicated Account No. 5066, Rural Volunteer Fire Department Insurance, includes deposits of taxes on the sales of fireworks. Part of the sales tax and the motor vehicles sales tax is deposited into General Revenue-Dedicated Account No. 5071, Emissions Reduction Plan. In addition, General Revenue-Dedicated Account No. 5144, Physician Education Loan Repayment, includes deposits of tobacco tax revenue.

Grand Total

A grand total of $120,834,324,966 in 2020-21 biennial appropriations is included in this analysis. Of this amount, $5,001,691,977 is financed out of taxes dedicated by the state constitution. Another $17,050,436,260 is financed out of nontax revenue. The remaining $98,782,196,730 is financed out of state tax revenue that is not dedicated by the state constitution. This amount serves as the base for calculating the limitation on 2022-23 biennial appropriations from state tax revenue that is not dedicated by the constitution, as required by the Texas Constitution Article VIII, Section 22.

Figure 1 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

TABLE 1
U.S. DEPARTMENT OF COMMERCE PERSONAL
INCOME ACCOUNT FOR TEXAS, CALENDAR YEAR 2019
In Millions of Current Dollars

Earnings by Place of Work	**Amount**	**Percent of Total**
Wage and Salary Disbursements	$ 786,698	68.3%
Supplements to Wages and Salaries	165,246	14.3%
Proprietors' Income	200,038	17.4%
Total Earnings by Place of Work	$1,151,983	100.0%
Derivation of Total Personal Income		
Earnings by Place of Work (from above)	$1,151,983	
Less: Personal Contributions for Social Insurance	*(60,709)*	
Less: Employee Contributions for Social Insurance	*(51,676)*	
Less: Adjustment for Residence	*(2,439)*	
Equals: Net Earnings by Place of Residence	$1,037,159	67.7%
Plus: Dividends, Interest and Rent	269,602	17.6%
Plus: Personal Current Transfer Receipts	224,585	14.7%
Total Personal Income	$1,531,346	100.0%

Note: Totals may not add due to rounding.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, September 2020.

Figure 2 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

TABLE 2
BIENNIUM-TO-BIENNIUM GROWTH RATES IN TEXAS PERSONAL INCOME
1982-83 TO 2018-19 BIENNIA

Base Biennium	Target Biennium	Growth Rate	Percent Increase
1980-81	1982-83	1.257	25.7
1982-83	1984-85	1.172	17.2
1984-85	1986-87	1.087	8.7
1986-87	1988-89	1.094	9.4
1988-89	1990–91	1.141	14.1
1990-91	1992–93	1.137	13.7
1992-93	1994–95	1.125	12.5
1994-95	1996–97	1.156	15.6
1996-97	1998–99	1.170	17.0
1998-99	2000–01	1.154	15.4
2000-01	2002–03	1.068	6.8
2002-03	2004–05	1.099	9.9
2004-05	2006–07	1.184	18.4
2006-07	2008–09	1.119	11.9
2008-09	2010–11	1.065	6.5
2010–11	2012–13	1.143	14.3
2012–13	2014-15	1.105	10.5
2014-15	2016-17	1.045	4.5
2016-17	2018-19	1.131	13.1

Figure 3 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

TABLE 3
ESTIMATED GROWTH RATES FOR TEXAS PERSONAL INCOME
USING FIVE ECONOMETRIC MODELS
2020-21 BIENNIUM TO 2022-23 BIENNIUM

Source of Forecast	2022-23 Texas Personal Income Growth Rate
1. IHS Markit	5.27%
2. Moody's Analytics	8.33%
3, Perryman Group	8.14%
4. Texas A&M University, Department of Economics	12.64%
5. Texas Comptroller of Public Accounts	5.30%

Figure 4 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

TABLE 4
SUMMARY OF SOURCES AND METHODS FOR
TEXAS PERSONAL INCOME GROWTH RATES FOR THE
2022-23 BIENNIUM

Source of Forecast	Type of Forecast	Date of Forecast
1. IHS Markit	Econometric	October 2020
2. Moody's Analytics	Econometric	November 2020
3. Perryman Group	Econometric	October 2020
4. Texas A&M University, Department of Economics	Econometric	November 2020
5. Texas Comptroller of Public Accounts	Econometric	October 2020

Source: Compiled by the Legislative Budget Board, November 2020.

Figure 5 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

TABLE 5
2020-21 BIENNIAL ADJUSTED APPROPRIATIONS
INCLUDED IN THE CALCULATION OF
THE LIMITATION BASE

I. General Revenue Related Funds A. Appropriations			2020 Expenditures/ 2021 Appropriations
1. "Estimated To Be" Line Item Appropriations in General Appropriations Act, 86th Legislature			
	(a)	Fiscal Programs - Comptroller of Public Accounts A.1.1. Strategy: Miscellaneous Claims	24,395,021
	(b)	Fiscal Programs - Comptroller of Public Accounts A.1.2. Reimbursement - Beverage Tax	452,039,212
	(c)	Fiscal Programs - Comptroller of Public Accounts A.1.4. County Taxes - University Lands	17,487,026
	(d)	Fiscal Programs - Comptroller of Public Accounts A.1.6. Unclaimed Property	584,583,731
	(e)	Fiscal Programs - Comptroller of Public Accounts A.1.10 Gross Weight/Axle Fee Distribution	26,212,470
	(f)	Funds Appropriated to the Comptroller for Social Security and BRP A.1.1. Strategy: State Match - Employer (GR Portion) & A.1.2 Benefit Replacement Pay (GR Portion)	1,315,484,308
	(g)	Employees Retirement System A. Goal: Administer Retirement Program (GR Portion) & B. Goal: Provide Health Program (GR Portion)	3,827,584,287
	(h)	Secretary of State B.1.5. Strategy: Financing Voter Registration	2,820,121
	(i)	Department of State Health Services C.1.4. Strategy: TEXAS.GOV	1,232,539
	(j)	Health and Human Services Commission Medicaid Program Income No. 705	58,816,733
	(k)	Health and Human Services Commission Vendor Drug Rebates—Medicaid No. 706	1,530,573,232
	(l)	Health and Human Services Commission Premium Co-Payments, Low Income Children No. 3643	9,700,449
	(m)	Health and Human Services Commission Vendor Drug Rebates–Public Health No. 8046	20,589,050
	(n)	Health and Human Services Commission Experience Rebates-CHIP No. 8054	811,939
	(o)	Health and Human Services Commission Vendor Drug Rebates-CHIP No. 8070	9,582,233

Figure 5 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

(p)	Health and Human Services Commission	663,235
	Cost Sharing - Medicaid Clients No. 8075	
(q)	Health and Human Services Commission	125,861,390
	Vendor Drug Rebates-Supplemental Rebates No. 8081 (Rev Code 3565)	
(r)	Health and Human Services Commission	231,950
	H.4.1. Strategy: TEXAS.GOV	
(s)	Texas Education Agency	29,234,104
	B.3.6. Strategy: Certification Exam Administration	
(t)	Teacher Retirement System	3,747,127,583
	A.1.1. Strategy: TRS - Public Education Retirement (GR Portion)	
(u)	Teacher Retirement System	310,736,697
	A.1.2. Strategy: TRS - Higher Education Retirement (GR Portion)	
(v)	Teacher Retirement System	817,158,423
	A.2.1. Strategy: Retiree Health - Statutory Funds	
(w)	Optional Retirement Program	211,698,164
	A.1.1. Strategy: Optional Retirement Program (GR Portion)	
(x)	Department Of Housing And Community Affairs	21,725
	E.1.4. Strategy: TEXAS.GOV	
(y)	Behavioral Health Executive Council	135,249
	A.1.2. Strategy: TEXAS.GOV	
(z)	Board Of Chiropractic Examiners	43,960
	A.1.2. Strategy: TEXAS.GOV	
(aa)	Texas State Board Of Dental Examiners	431,299
	A.2.2. Strategy: TEXAS.GOV	
(ab)	Funeral Service Commission	60,998
	A.1.2. Strategy: TEXAS.GOV	
(ac)	Board Of Professional Geoscientists	33,490
	A.1.2. Strategy: TEXAS.GOV	
(ad)	Department Of Insurance (GR Portion)	10,540
	A.3.2. Strategy: TEXAS.GOV	
(ae)	Board Of Professional Land Surveying	18,435
	A.1.3. Strategy: TEXAS.GOV	
(af)	Department Of Licensing And Regulation	1,301,454
	A.1.5. Strategy: TEXAS.GOV	
(ag)	Texas Board of Nursing	1,146,792
	A.1.2. Strategy: TEXAS.GOV	
(ah)	Optometry Board	43,400
	A.1.2. Strategy: TEXAS.GOV	
(ai)	Optometry Board	18,184

Figure 5 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

	A.1.3. Strategy: National Practitioner Data Bank		
(aj)	Board Of Pharmacy	454,956	
	A.1.2. Strategy: TEXAS.GOV		
(ak)	Executive Council Of Physical Therapy & Occupational Therapy Examiners	370,029	
	A.1.2. Strategy: TEXAS.GOV		
(al)	Board Of Plumbing Examiners	297,168	
	A.1.2. Strategy: TEXAS.GOV		
(am)	Board Of Examiners Of Psychologists	46,828	
	A.1.2. Strategy: TEXAS.GOV		
(an)	Board Of Veterinary Medical Examiners	68,284	
	A.1.2. Strategy: TEXAS.GOV		
(ao)	Multiple Agencies: Earned Federal Funds	176,421,512	
	Sec. 13.11. Definition, Appropriation, Reporting and Audit of Earned Federal Funds		
(ap)	Adjustment for Texas Education Agency, Property Tax Relief Fund Revenue	(248,139,873)	
(aq)	Adjustment for Texas Education Agency, Tax Reduction and Excellence in Education Fund Revenue	(958,000,000)	
(ar)	Adjustment for Texas Education Agency, Attendance Credit Revenue	(728,210,321)	
(as)	Adjustment for Texas Education Agency, Increased Property Values	(1,737,643,976)	
(at)	Adjustment for Texas Education Agency, CARES Act Offset	(1,100,000,000)	
(au)	Adjustment for Teacher Retirement System, Settle-up for TRS-Care	321,838,584	
	Subtotal, "Estimated to Be" Line Items (Expended/ Appropriated)		$8,855,392,613
2.	Total Sum-certain Line Item Appropriations (Appropriated)		$104,721,198,733
	TOTAL General Revenue Related Fund Appropriations, *adjusted for 2020 estimated amounts*		$113,576,591,346

Figure 5 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

B. Source of Funding - General Revenue Related	Total Appropriations	Constitutionally Dedicated State Tax Revenues	Non Tax Revenues	State Tax Revenue Not Dedicated by the Constitution
1. Occupation Taxes	$3,244,907,957	$3,244,907,957	$0	$0
2. Motor Fuel Taxes	1,797,449,882	1,756,784,019	-	40,665,863
3. Education Revenues	6,715,840,022	-	6,715,840,022	-
4. Insurance Maintenance Tax	288,131,113	-	-	288,131,113
5. Hotel Tax	110,246,223	-	-	110,246,223
6. Sporting Good Sales Tax	350,697,267	-	-	350,697,267
7. Appropriations from Other Revenue	101,069,318,882	-	9,701,983,071	91,367,335,810
SUBTOTAL(General Revenue Related)	$113,576,591,346	$5,001,691,977	$16,417,823,093	$92,157,076,277
II. Appropriations from Funds Outside of GR				
1. Account 0009 – Game, Fish, and Water Safety	$218,536,307	$0	$211,044,387	$7,491,920
2. Account 0036 – Texas Department of Insurance Operating	133,863,742	-	129,856,752	4,006,990
3. Fund 0304 – Property Tax Relief Fund	4,049,944,244	-	2,119,827	4,047,824,417
4. Fund 0305 – Tax Reduction and Excellence in Education Fund	1,508,000,000	-	-	1,508,000,000
5. Fund 0599 – Economic Stabilization Fund	1,163,000,000	-	187,751,554	975,248,446
6. Account 5066 – Rural Volunteer Fire Department Insurance	3,405,000	-	-	3,405,000
7. Account 5071 – Emissions Reduction Plan	155,634,327	-	101,840,647	53,793,680
8. Account 5144 - Physician Education Loan Repayment Program	25,350,000	-	-	25,350,000
GRAND TOTAL	$120,834,324,966	$5,001,691,977	$17,050,436,260	$98,782,196,730

Figure 6-502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

TABLE 6
CALCULATION OF "SUM CERTAIN LINE ITEMS APPROPRIATIONS"
FOR THE 2020-21 BIENNIUM

	2020	2021	2020-21
General Revenue Funds "Recap" Amount	$59,926,599,198	$58,386,886,496	$118,313,485,694
Less "Estimated to Be" Items:			
Fiscal Programs - Comptroller of Public Accounts A.1.1. Strategy: Miscellaneous Claims (HB1, Article I-22)	13,000,000	13,000,000	26,000,000
Fiscal Programs - Comptroller of Public Accounts A.1.2. Reimbursement - Beverage Tax (HB1, Article I-23)	239,591,000	253,264,000	492,855,000
Fiscal Programs - Comptroller of Public Accounts A.1.4. County Taxes - University Lands (HB1, Article I-23)	7,283,504	8,464,204	15,747,708
Fiscal Programs - Comptroller of Public Accounts A.1.6. Unclaimed Property (HB1, Article I-23)	275,000,000	275,000,000	550,000,000
Fiscal Programs - Comptroller of Public Accounts A.1.10 Gross Weight/Axle Fee Distribution (HB1, Article I-24)	17,000,000	17,000,000	34,000,000
Funds Appropriated to the Comptroller for Social Security and BRP A.1.1. Strategy: State Match - Employer (GR Portion) & A.1.2 Benefit Replacement Pay (GR Portion) (HB1, Article I-29)	657,665,818	662,829,982	1,320,495,800
Employees Retirement System A. Goal: Administer Retirement Program (GR Portion) & B. Goal: Provide Health Program (GR Portion) (HB1, Article I-35)	1,942,298,833	1,966,627,928	3,908,926,761
Secretary of State			

Figure 6-502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

B.1.5. Strategy: Financing Voter Registration (HB1, Article I-90)	4,777,500	1,000,000	5,777,500
Department of State Health Services C.1.4. Strategy: TEXAS.GOV (HB1, Article II-22)	701,301	701,299	1,402,600
Health and Human Services Commission Medicaid Program Income No. 705 (HB1, Article II-35)	50,000,000	50,000,000	100,000,000
Health and Human Services Commission Vendor Drug Rebates—Medicaid No. 706 (HB1, Article II-35)	814,054,747	825,318,416	1,639,373,163
Health and Human Services Commission Premium Co-Payments, Low Income Children No. 3643 (HB1, Article II-35)	5,636,431	6,055,993	11,692,424
Health and Human Services Commission Vendor Drug Rebates–Public Health No. 8046 (HB1, Article II-35)	12,026,551	12,026,551	24,053,102
Health and Human Services Commission Experience Rebates-CHIP No. 8054 (HB1, Article II-35)	224,228	578,011	802,239
Health and Human Services Commission Vendor Drug Rebates-CHIP No. 8070 (HB1, Article II-35)	2,781,678	5,228,022	8,009,700
Health and Human Services Commission Cost Sharing - Medicaid Clients No. 8075 (HB1, Article II-35)	200,000	200,000	400,000
Health and Human Services Commission Vendor Drug Rebates-Supplemental Rebates No. 8081 (Rev Code 3565) (HB1, Article II-35)	65,019,260	66,380,100	131,399,360
Health and Human Services Commission H.4.1. Strategy: TEXAS.GOV (HB1, Article II-38)	123,140	123,140	246,280
Texas Education Agency B.3.6. Strategy: Certification Exam Administration (HB1, Article III-2)	18,761,222	18,761,223	37,522,445

Figure 6-502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

Teacher Retirement System A.1.1. Strategy: TRS - Public Education Retirement (GR Portion) (HB1, Article III-36)	1,838,552,963	1,908,574,620	3,747,127,583
Teacher Retirement System A.1.2. Strategy: TRS - Higher Education Retirement (GR Portion) (HB1, Article III-36)	151,093,244	159,554,466	310,647,710
Teacher Retirement System A.2.1. Strategy: Retiree Health - Statutory Funds (HB1, Article III-36)	430,408,362	448,951,215	879,359,577
Optional Retirement Program A.1.1. Strategy: Optional Retirement Program (GR Portion) (HB1, Article III-41)	122,024,371	121,204,367	243,228,738
Department Of Housing And Community Affairs E.1.4. Strategy: TEXAS.GOV (HB1, Article VII-2)	19,120	19,120	38,240
Behavioral Health Executive Council A.1.2. Strategy: TEXAS.GOV (HB1, Article VIII-4)	0	135,244	135,244
Board Of Chiropractic Examiners A.1.2. Strategy: TEXAS.GOV (HB1, Article VIII-6)	29,850	29,850	59,700
Texas State Board Of Dental Examiners A.2.2. Strategy: TEXAS.GOV (HB1, Article VIII-8)	250,000	250,000	500,000
Funeral Service Commission A.1.2. Strategy: TEXAS.GOV (HB1, Article VIII-10)	46,500	46,500	93,000
Board Of Professional Geoscientists A.1.2. Strategy: TEXAS.GOV (HB1, Article VIII-11)	25,000	25,000	50,000
Department Of Insurance (GR Portion) A.3.2. Strategy: TEXAS.GOV (HB1, Article VIII-17)	6,520	6,520	13,040

Figure 6-502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

Board Of Professional Land Surveying			
A.1.3. Strategy: TEXAS.GOV (HB1, Article VIII-26)	17,150	0	17,150
Department Of Licensing And Regulation			
A.1.5. Strategy: TEXAS.GOV (HB1, Article VIII-28)	650,000	650,000	1,300,000
Texas Board of Nursing			
A.1.2. Strategy: TEXAS.GOV (HB1, Article VIII-37)	594,902	594,903	1,189,805
Optometry Board			
A.1.2. Strategy: TEXAS.GOV (HB1, Article VIII-40)	21,230	19,770	41,000
Optometry Board			
A.1.3. Strategy: National Practitioner Data Bank (HB1, Article VIII-40)	9,092	9,092	18,184
Board Of Pharmacy			
A.1.2. Strategy: TEXAS.GOV (HB1, Article VIII-42)	251,106	251,106	502,212
Executive Council Of Physical Therapy & Occupational Therapy Examiners			
A.1.2. Strategy: TEXAS.GOV (HB1, Article VIII-44)	206,500	206,500	413,000
Board Of Plumbing Examiners			
A.1.2. Strategy: TEXAS.GOV (HB1, Article VIII-46)	155,000	155,000	310,000
Board Of Examiners Of Psychologists			
A.1.2. Strategy: TEXAS.GOV (HB1, Article VIII-48)	37,000	0	37,000
Board Of Veterinary Medical Examiners			
A.1.2. Strategy: TEXAS.GOV (HB1, Article VIII-61)	40,000	40,000	80,000
Multiple Agencies: Earned Federal Funds			
Sec. 13.11. Definition, Appropriation, Reporting and Audit of Earned Federal Funds (HB1, Article IX-66)	49,186,638	49,235,058	98,421,696
Subtotal, Estimated Appropriations	$6,719,769,761	$6,872,517,200	$13,592,286,961
Total Sum-certain Line Item Appropriations	$53,206,829,437	$51,514,369,296	$104,721,198,733

TRD-202004864
Jerry McGinty
Director
Legislative Budget Board
Filed: November 18, 2020

♦ ♦ ♦

Texas Lottery Commission

Scratch Ticket Game Number 2277 "10X® THE CASH"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2277 is "10X® THE CASH". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2277 shall be $1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2277.

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, 05, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 10X SYMBOL, $1.00, $2.00, $5.00, $10.00, $20.00, $50.00, $100 and $5,000.

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. 2277 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX

27	TWSV
28	TWET
29	TWNI
30	TRTY
10X SYMBOL	WINX10
$1.00	ONE$
$2.00	TWO$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$5,000	FVTH

E. Serial Number - A unique thirteen (13) 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 twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2277), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 2277-0000001-001.

H. Pack - A Pack of "10X® THE CASH" Scratch Ticket Game contains 150 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Ticket 001 to 005 will be on the top page; Tickets 006 to 010 on the next page etc.; and Tickets 146 to 150 will be on the last page. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning 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 - A Texas Lottery "10X® THE CASH" Scratch Ticket Game No. 2277.

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, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "10X® THE CASH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose eleven (11) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to the WINNING NUMBER Play Symbol, the player wins the prize for that number. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the 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 eleven (11) 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 and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the 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 and Game-Pack-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 eleven (11) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-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 eleven (11) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the eleven (11) 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 Game-Pack-Ticket Number must be printed in the Game-Pack-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. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to five (5) times.

D. On winning and Non-Winning Tickets, the top cash prize of $5,000 will appear at least once, except on Tickets winning five (5) times and with respect to other parameters, play action or prize structure.

E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

F. All YOUR NUMBERS Play Symbols, excluding the "10X" (WINX10) Play Symbol, will never equal the corresponding Prize Symbol (i.e., $1 and 01, $2 and 02, $5 and 05 and $20 and 20).

G. On all Tickets, a Prize Symbol will not appear more than one (1) time, except as required by the prize structure to create multiple wins.

H. On Non-Winning Tickets, the WINNING NUMBER Play Symbol will never match a YOUR NUMBERS Play Symbol.

I. The "10X" (WINX10) Play Symbol will never appear more than once on a Ticket.

J. The "10X" (WINX10) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the prize structure.

K. The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

L. The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBER Play Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "10X® THE CASH" Scratch Ticket Game prize of $1.00, $2.00, $5.00, $10.00, $20.00, $50.00 or $100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may 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 $50.00 or $100 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 "10X® THE CASH" Scratch Ticket Game prize of $5,000, the claimant must sign the winning Scratch Ticket and may 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 "10X® THE CASH" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value

is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all 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 the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. 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;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount 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.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 14 days of notification or the prize will be awarded to an Alternate.

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 "10X® THE CASH" 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 "10X® THE CASH" 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 Game 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.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "10X® THE CASH" Scratch Ticket may be entered into one (1) of five (5) promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

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 29,160,000 Scratch Tickets in the Scratch Ticket Game No. 2277. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2277 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1.00	2,689,200	10.84
$2.00	2,235,600	13.04
$5.00	486,000	60.00
$10.00	388,800	75.00
$20.00	97,200	300.00
$50.00	22,032	1,323.53
$100	2,430	12,000.00
$5,000	30	972,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.92. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of 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. 2277 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 Game closing procedures and the Scratch Ticket 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. 2277, 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-202004826
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 16, 2020

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Scratch Ticket Game Number 2279 "30X THE CASH CROSSWORD"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2279 is "30X THE CASH CROSSWORD". The play style is "crossword".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2279 shall be $3.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2279.

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: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, BLACKENED SQUARE SYMBOL, 5X SYMBOL, 10X SYMBOL and 30X SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol Captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2279 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	

Z	
BLACKENED SQUARE SYMBOL	
5X SYMBOL	WINX5
10X SYMBOL	WINX10
30X SYMBOL	WINX30

E. Serial Number - A unique thirteen (13) 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 twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2279), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2279-0000001-001.

H. Pack - A Pack of "30X THE CASH CROSSWORD" Scratch Ticket Game contains 125 Scratch 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 125 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 125 will be shown on the back of the Pack.

I. Non-Winning 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 - A Texas Lottery "30X THE CASH CROSSWORD" Scratch Ticket Game No. 2279.

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, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "30X THE CASH CROSSWORD" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose one hundred forty-three (143) Play Symbols. A prize winner in the "30X THE CASH CROSSWORD" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose all of the YOUR 20 LETTERS Play Symbols. The player then scratches all the letters found in the 30X THE CASH CROSSWORD puzzle that exactly match the YOUR 20 LETTERS Play Symbols. If the player has scratched at least 3 complete WORDS, the player wins the prize found in the corresponding PRIZE LEGEND. Only one prize paid per Ticket. Only letters within the 30X THE CASH CROSSWORD puzzle that are matched with the YOUR 20 LETTERS Play Symbols can be used to form a complete WORD. Every lettered square within an unbroken horizontal (left to right) or vertical (top to bottom) sequence must be matched with the YOUR 20 LETTERS Play Symbols to be considered a complete WORD. Words revealed in a diagonal sequence are not considered valid WORDS. Words within WORDS are not eligible for a prize. Words that are spelled from right to left or bottom to top are not eligible for a prize. A complete WORD must contain at least three letters. MULTIPLIER: The player scratches the MULTIPLIER SYMBOLS play area. If the player reveals 2 matching MULTIPLIER SYMBOLS Play Symbols, the player multiplies the prize won by that multiplier and wins that amount. For example, if the player reveals 2 "30X" MULTIPLIER SYMBOLS Play Symbols the player will multiply the prize won by 30 times. 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 one hundred forty-three (143) 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. Crossword and Bingo style games do not typically have Play Symbol Captions;

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 and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the 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 and Game-Pack-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 one hundred forty-three (143) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-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 one hundred forty-three (143) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the one hundred forty-three (143) 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 Game-Pack-Ticket Number must be printed in the Game-Pack-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. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of Play Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win only one (1) time.

D. GENERAL: There will be no correlation between any exposed data on a Ticket and its status as a winning or Non-Winning Ticket.

E. GENERAL: Each Ticket consists of a 30X THE CASH CROSSWORD puzzle grid, a YOUR 20 LETTERS play area and a "MULTIPLIER" play area.

F. GENERAL: The "5X" (WINX5), "10X" (WINX10) and "30X" (WINX30) Play Symbols will only appear in the "MULTIPLIER" play area and will never appear in the 30X THE CASH CROSSWORD or YOUR 20 LETTERS play areas.

G. MAIN PLAY AREA: All 30X THE CASH CROSSWORD puzzle grid configurations will be formatted within a grid that contains eleven (11) spaces (height) by eleven (11) spaces (width).

H. MAIN PLAY AREA: There will be a random distribution of all Play Symbols on the Ticket, unless restricted by other parameters, play action, or prize structure.

I. MAIN PLAY AREA: No matching words on a Ticket.

J. MAIN PLAY AREA: No matching Play Symbols in the YOUR 20 LETTERS play area.

K. MAIN PLAY AREA: There will be a minimum of three (3) vowels in the YOUR 20 LETTERS play area. Vowels are A, E, I, O and U.

L. MAIN PLAY AREA: All words will contain a minimum of three (3) letters.

M. MAIN PLAY AREA: Words will contain a maximum of nine (9) letters.

N. MAIN PLAY AREA: All words used will be from Texas_Bonus_v3_Jan2019.doc.

O. MAIN PLAY AREA: Words from Texas_Prohibited_v5_30November2017.doc will not appear horizontally in the YOUR 20 LETTERS play area when read left to right or right to left.

P. MAIN PLAY AREA: A player will never find a word horizontally (in either direction), vertically (in either direction) or diagonally (in either direction) in the YOUR 20 LETTERS play area that matches a word in the grid.

Q. MAIN PLAY AREA: No consonant will appear more than nine (9) times in the grid.

R. MAIN PLAY AREA: There will be no more than twelve (12) complete words in the grid.

S. MAIN PLAY AREA: On Non-Winning Tickets, there will be two (2) completed words in the grid.

T. MAIN PLAY AREA: At least fifteen (15) of the YOUR 20 LETTERS Play Symbols will open at least one (1) letter in the grid.

U. MAIN PLAY AREA: The presence or absence of any letter in the YOUR 20 LETTERS play area will not be indicative of winning or Non-Winning Ticket.

V. MULTIPLIER: Two (2) matching "5X" (WINX5) Play Symbols will win 5 TIMES the prize won according to the PRIZE LEGEND and will win as per the prize structure.

W. MULTIPLIER: Two (2) matching "10X" (WINX10) Play Symbols will win 10 TIMES the prize won according to the PRIZE LEGEND and will win as per the prize structure.

X. MULTIPLIER: Two (2) matching "30X" (WINX30) Play Symbols will win 30 TIMES the prize won according to the PRIZE LEGEND and will win as per the prize structure.

Y. MULTIPLIER: Tickets that do not win in the "MULTIPLIER" play area will display two (2) different MULTIPLIER SYMBOLS Play Symbols.

Z. MULTIPLIER: Two (2) matching MULTIPLIER SYMBOLS Play Symbols of "5X" (WINX5), "10X" (WINX10) or "30X" (WINX30) will only appear on winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "30X THE CASH CROSSWORD" Scratch Ticket Game prize of $3.00, $5.00, $10.00, $15.00, $30.00, $45.00, $90.00 or $300, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may 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 $30.00, $45.00, $90.00 or $300 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 "30X THE CASH CROSSWORD" Scratch Ticket Game prize of $2,000 or $60,000, the claimant must sign the winning Scratch Ticket and may 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 "30X THE CASH CROSSWORD" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all 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 the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. 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;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount 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.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 14 days of notification or the prize will be awarded to an Alternate.

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 "30X THE CASH CROSSWORD" 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 "30X THE CASH CROSSWORD" 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 Game 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.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "30X THE CASH CROSSWORD" Scratch Ticket may be entered into one (1) of five (5) promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

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 18,240,000 Scratch Tickets in the Scratch Ticket Game No. 2279. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2279 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$3.00	1,751,040	10.42
$5.00	1,021,440	17.86
$10.00	875,520	20.83
$15.00	437,760	41.67
$30.00	79,800	228.57
$45.00	59,280	307.69
$90.00	34,960	521.74
$300	1,520	12,000.00
$2,000	100	182,400.00
$60,000	9	2,026,666.67

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.28. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of 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. 2279 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 Game closing procedures and the Scratch Ticket 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. 2279, 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-202004827

Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 16, 2020

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Scratch Ticket Game Number 2280 "50X THE CASH"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2280 is "50X THE CASH". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2280 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2280.

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, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 5X SYMBOL, 10X SYMBOL, 50X SYMBOL, $2.00, $3.00, $5.00, $10.00, $20.00, $50.00, $100, $200, $500, $5,000 and $200,000.

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. 2280 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV

28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
5X SYMBOL	WINX5
10X SYMBOL	WINX10
50X SYMBOL	WINX50
$2.00	TWO$
$3.00	THR$

$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$200	TOHN
$500	FVHN
$5,000	FVTH
$200,000	200TH

E. Serial Number - A unique thirteen (13) 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 twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2280), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2280-0000001-001.

H. Pack - A Pack of "50X THE CASH" Scratch Ticket Game contains 075 Scratch 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 075 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 075 will be shown on the back of the Pack.

I. Non-Winning 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 - A Texas Lottery "50X THE CASH" Scratch Ticket Game No. 2280.

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, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "50X THE CASH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose fifty-five (55) 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 the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. If the player reveals a "50X" Play Symbol, the player wins 50 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the 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 fifty-five (55) 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 and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the 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 and Game-Pack-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 fifty-five (55) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-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 fifty-five (55) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the fifty-five (55) 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 Game-Pack-Ticket Number must be printed in the Game-Pack-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. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to twenty-five (25) times.

D. On winning and Non-Winning Tickets, the top cash prizes of $5,000 and $200,000 will each appear at least once, except on Tickets winning twenty-five (25) times and with respect to other parameters, play action or prize structure.

E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

F. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols to create matches, unless restricted by other parameters, play action or prize structure.

G. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

H. All YOUR NUMBERS Play Symbols, excluding the "5X" (WINX5), "10X" (WINX10) and "50X" (WINX50) Play Symbols, will never equal the corresponding Prize Symbol (i.e., $2 and 02, $3 and 03 and $20 and 20).

I. On all Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

J. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

K. The $2 Prize Symbol will only appear on winning Tickets in which the $2 prize is part of a winning pattern.

L. The $3 Prize Symbol will only appear on winning Tickets in which the $3 prize is part of a winning pattern.

M. The "5X" (WINX5) Play Symbol will never appear more than once on a Ticket.

N. The "5X" (WINX5) Play Symbol will win 5 TIMES the prize for that Play Symbol and will win as per the prize structure.

O. The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

P. The "5X" (WINX5) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

Q. The "10X" (WINX10) Play Symbol will never appear more than once on a Ticket.

R. The "10X" (WINX10) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the prize structure.

S. The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

T. The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

U. The "50X" (WINX50) Play Symbol will never appear more than once on a Ticket.

V. The "50X" (WINX50) Play Symbol will win 50 TIMES the prize for that Play Symbol and will win as per the prize structure.

W. The "50X" (WINX50) Play Symbol will never appear on a Non-Winning Ticket.

X. The "50X" (WINX50) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

Y. The "5X" (WINX5) Play Symbol will never appear on the same Ticket as the "50X" (WINX50) Play Symbol.

Z. The "10X" (WINX10) Play Symbol will never appear on the same Ticket as the "50X" (WINX50) Play Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "50X THE CASH" Scratch Ticket Game prize of $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may 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, $200 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 "50X THE CASH" Scratch Ticket Game prize of $5,000 or $200,000, the claimant must sign the winning Scratch Ticket and may 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 "50X THE CASH" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all 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 the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. 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;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount 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.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 14 days of notification or the prize will be awarded to an Alternate.

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 "50X THE CASH" 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 "50X THE CASH" 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 Game 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.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "50X THE CASH" Scratch Ticket may be entered into one (1) of five (5) promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

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 22,320,000 Scratch Tickets in the Scratch Ticket Game No. 2280. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2280 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5.00	2,380,800	9.38
$10.00	1,736,000	12.86
$15.00	297,600	75.00
$20.00	297,600	75.00
$25.00	446,400	50.00
$50.00	252,960	88.24
$100	59,520	375.00
$200	10,540	2,117.65
$500	1,860	12,000.00
$5,000	15	1,488,000.00
$200,000	9	2,480,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.07. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of 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. 2280 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 Game closing procedures and the Scratch Ticket 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. 2280, 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-202004828
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 16, 2020

♦ ♦ ♦

Scratch Ticket Game Number 2281 "100X THE CASH"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2281 is "100X THE CASH". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2281 shall be $10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2281.

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, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24,

25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 5X SYMBOL, 10X SYMBOL, 20X SYMBOL, 100X SYMBOL, $2.00, $5.00, $10.00, $20.00, $50.00, $100, $200, $500, $5,000 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. 2281 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET

29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV

5X SYMBOL	WINX5
10X SYMBOL	WINX10
20X SYMBOL	WINX20
100X SYMBOL	WINX100
$2.00	TWO$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$200	TOHN
$500	FVHN
$5,000	FVTH
$500,000	500TH

E. Serial Number - A unique thirteen (13) 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 twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2281), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2281-0000001-001.

H. Pack - A Pack of "100X THE CASH" Scratch Ticket Game contains 050 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The back of Ticket 001 will be shown on the front of the Pack; the back of Ticket 050 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.

I. Non-Winning 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 - A Texas Lottery "100X THE CASH" Scratch Ticket Game No. 2281.

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, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "100X THE CASH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty-six (66) 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 the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 TIMES the prize for that symbol. If the player reveals a "100X" Play Symbol, the player wins 100 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the 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 sixty-six (66) 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 and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the 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 and Game-Pack-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 sixty-six (66) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-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 sixty-six (66) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the sixty-six (66) 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 Game-Pack-Ticket Number must be printed in the Game-Pack-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. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to thirty (30) times.

D. On winning and Non-Winning Tickets, the top cash prizes of $5,000 and $500,000 will each appear at least once, except on Tickets winning thirty (30) times and with respect to other parameters, play action or prize structure.

E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

F. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols to create matches, unless restricted by other parameters, play action or prize structure.

G. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

H. All YOUR NUMBERS Play Symbols, excluding the "5X" (WINX5), "10X" (WINX10), "20X" (WINX20) and "100X" (WINX100) Play Symbols, will never equal the corresponding Prize Symbol (i.e., $2 and 02 and $50 and 50).

I. On all Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

J. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

K. The $2 Prize Symbol will only appear on winning Tickets in which the $2 prize is part of a winning pattern.

L. The $5 Prize Symbol will only appear on winning Tickets in which the $5 prize is part of a winning pattern.

M. The "5X" (WINX5) Play Symbol will never appear more than once on a Ticket.

N. The "5X" (WINX5) Play Symbol will win 5 TIMES the prize for that Play Symbol and will win as per the prize structure.

O. The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

P. The "5X" (WINX5) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

Q. The "10X" (WINX10) Play Symbol will never appear more than once on a Ticket.

R. The "10X" (WINX10) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the prize structure.

S. The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

T. The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

U. The "20X" (WINX20) Play Symbol will never appear more than once on a Ticket.

V. The "20X" (WINX20) Play Symbol will win 20 TIMES the prize for that Play Symbol and will win as per the prize structure.

W. The "20X" (WINX20) Play Symbol will never appear on a Non-Winning Ticket.

X. The "20X" (WINX20) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

Y. The "100X" (WINX100) Play Symbol will never appear more than once on a Ticket.

Z. The "100X" (WINX100) Play Symbol will win 100 TIMES the prize for that Play Symbol and will win as per the prize structure.

AA. The "100X" (WINX100) Play Symbol will never appear on a Non-Winning Ticket.

BB. The "100X" (WINX100) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

CC. The "5X" (WINX5), "10X" (WINX10), "20X" (WINX20) and "100X" (WINX100) Play Symbols will never appear on the same Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "100X THE CASH" Scratch Ticket Game prize of $10.00, $20.00, $30.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may 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 $30.00, $50.00, $100, $200 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 "100X THE CASH" Scratch Ticket Game prize of $5,000, $50,000 or $500,000, the claimant must sign the winning Scratch Ticket and may 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 "100X THE CASH" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all 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 the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. 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;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount 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.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 14 days of notification or the prize will be awarded to an Alternate.

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 "100X THE CASH" 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 "100X THE CASH" 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 Game 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.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "100X THE CASH" Scratch Ticket may be entered into one (1) of five (5) promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

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 16,800,000 Scratch Tickets in the Scratch Ticket Game No. 2281. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2281 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$10.00	1,792,000	9.38
$20.00	1,176,000	14.29
$30.00	728,000	23.08
$50.00	448,000	37.50
$100	168,000	100.00
$200	27,300	615.38
$500	5,320	3,157.89
$5,000	185	90,810.81
$50,000	6	2,800,000.00
$500,000	7	2,400,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.87. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of 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. 2281 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 Game closing procedures and the Scratch Ticket 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. 2281, 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-202004829

Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 16, 2020

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Scratch Ticket Game Number 2282 "200X THE CASH"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2282 is "200X THE CASH". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2282 shall be $20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2282.

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, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 5X SYMBOL, 10X SYMBOL, 20X SYMBOL, 200X SYMBOL, $10.00, $20.00, $30.00, $50.00, $100, $200, $500, $10,000, $100,000 and $1,000,000.

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. 2282 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET

29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV

5X SYMBOL	WINX5
10X SYMBOL	WINX10
20X SYMBOL	WINX20
200X SYMBOL	WINX200
$10.00	TEN$
$20.00	TWY$
$30.00	TRTY$
$50.00	FFTY$
$100	ONHN
$200	TOHN
$500	FVHN
$10,000	10TH
$100,000	100TH
$1,000,000	TPPZ

E. Serial Number - A unique thirteen (13) 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 twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2282), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2282-0000001-001.

H. Pack - A Pack of "200X THE CASH" Scratch Ticket Game contains 025 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The front of 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 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 - A Texas Lottery "200X THE CASH" Scratch Ticket Game No. 2282.

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, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "200X THE CASH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty-six (66) 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 the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 TIMES the prize for that symbol. If the player reveals a "200X" Play Symbol, the player wins 200 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the 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 sixty-six (66) 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 and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the 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 and Game-Pack-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 sixty-six (66) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-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 sixty-six (66) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the sixty-six (66) 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 Game-Pack-Ticket Number must be printed in the Game-Pack-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. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to thirty (30) times.

D. On winning and Non-Winning Tickets, the top cash prizes of $10,000, $100,000 and $1,000,000 will each appear at least once, except on Tickets winning thirty (30) times and with respect to other parameters, play action or prize structure.

E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

F. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols to create matches, unless restricted by other parameters, play action or prize structure.

G. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

H. All YOUR NUMBERS Play Symbols, excluding the "5X" (WINX5), "10X" (WINX10), "20X" (WINX20) and "200X" (WINX200) Play Symbols, will never equal the corresponding Prize Symbol (i.e., $30 and 30 and $50 and 50).

I. On all Tickets, a Prize Symbol will not appear more than four (4) times, except as required by the prize structure to create multiple wins.

J. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

K. The $10 Prize Symbol will only appear on winning Tickets in which the $10 prize is part of a winning pattern.

L. The "5X" (WINX5) Play Symbol will never appear more than once on a Ticket.

M. The "5X" (WINX5) Play Symbol will win 5 TIMES the prize for that Play Symbol and will win as per the prize structure.

N. The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

O. The "5X" (WINX5) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

P. The "10X" (WINX10) Play Symbol will never appear more than once on a Ticket.

Q. The "10X" (WINX10) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the prize structure.

R. The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

S. The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

T. The "20X" (WINX20) Play Symbol will never appear more than once on a Ticket.

U. The "20X" (WINX20) Play Symbol will win 20 TIMES the prize for that Play Symbol and will win as per the prize structure.

V. The "20X" (WINX20) Play Symbol will never appear on a Non-Winning Ticket.

W. The "20X" (WINX20) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

X. The "200X" (WINX200) Play Symbol will never appear more than once on a Ticket.

Y. The "200X" (WINX200) Play Symbol will win 200 TIMES the prize for that Play Symbol and will win as per the prize structure.

Z. The "200X" (WINX200) Play Symbol will never appear on a Non-Winning Ticket.

AA. The "200X" (WINX200) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

BB. The "5X" (WINX5), "10X" (WINX10), "20X" (WINX20) and "200X" (WINX200) Play Symbols will never appear on the same Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "200X THE CASH" Scratch Ticket Game prize of $20.00, $30.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may 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 $30.00, $50.00, $100, $200 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 "200X THE CASH" Scratch Ticket Game prize of $2,000, $10,000, $100,000 or $1,000,000, the claimant must sign the winning Scratch Ticket and may 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 "200X THE CASH" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all 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 the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. 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;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount 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.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 14 days of notification or the prize will be awarded to an Alternate.

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 "200X THE CASH" 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 "200X THE CASH" 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 Game 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.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "200X THE CASH" Scratch Ticket may be entered into one (1) of five (5) promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

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 9,000,000 Scratch Tickets in the Scratch Ticket Game No. 2282. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2282 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$20.00	936,000	9.62
$30.00	576,000	15.63
$50.00	576,000	15.63
$100	367,500	24.49
$200	79,425	113.31
$500	9,000	1,000.00
$2,000	500	18,000.00
$10,000	100	90,000.00
$100,000	5	1,800,000.00
$1,000,000	4	2,250,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.54. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of 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. 2282 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 Game closing procedures and the Scratch Ticket 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. 2282, 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-202004830

Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 16, 2020

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Scratch Ticket Game Number 2337 "$5 MILLION FORTUNE"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2337 is "$5 MILLION FORTUNE". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2337 shall be $50.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2337.

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, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 2X SYMBOL, 5X SYMBOL, 10X SYMBOL, 20X SYMBOL, $50.00, $75.00, $100, $200, $500, $1,000, $10,000, $50,000 and $5,000,000.

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. 2337 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET

29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV

56	FFSX
57	FFSV
58	FFET
59	FFNI
60	SXTY
2X SYMBOL	DBL
5X SYMBOL	WINX5
10X SYMBOL	WINX10
20X SYMBOL	WINX20
$50.00	FFTY$
$75.00	SVFV$
$100	ONHN
$200	TOHN
$500	FVHN
$1,000	ONTH
$10,000	10TH
$50,000	50TH
$5,000,000	TPPZ

E. Serial Number - A unique thirteen (13) 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 twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2337), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 020 within each Pack. The format will be: 2337-0000001-001.

H. Pack - A Pack of the "$5 MILLION FORTUNE" Scratch Ticket Game contains 020 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 020 will both be exposed.

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 "$5 MILLION FORTUNE" Scratch Ticket Game No. 2337.

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, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "$5 MILLION FORTUNE" Scratch Ticket Game is determined once the latex on the Scratch Ticket

is scratched off to expose eighty (80) 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 the player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the 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 eighty (80) 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 and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the 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 and Game-Pack-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 eighty (80) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-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 eighty (80) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the eighty (80) 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 Game-Pack-Ticket Number must be printed in the Game-Pack-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. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

D. KEY NUMBER MATCH: No matching WINNING NUMBERS Play Symbols on a Ticket.

E. KEY NUMBER MATCH: A Ticket may have up to six (6) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

F. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

G. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., $50 and 50).

H. KEY NUMBER MATCH: The "2X" (DBL) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

I. KEY NUMBER MATCH: The "5X" (WINX5) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

J. KEY NUMBER MATCH: The "10X" (WINX10) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

K. KEY NUMBER MATCH: The "20X" (WINX20) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "$5 MILLION FORTUNE" Scratch Ticket Game prize of $50.00, $75.00, $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and

may 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 $50.00, $75.00, $100, $200 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 "$5 MILLION FORTUNE" Scratch Ticket Game prize of $1,000, $10,000 or $50,000, the claimant must sign the winning Scratch Ticket and may 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. To claim a "$5 MILLION FORTUNE" Scratch Ticket Game top level prize of $5,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers in Austin, Dallas, Fort Worth, Houston or San Antonio, Texas. 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 and proof of Social Security number of Tax Payer Identification (for U.S. Citizens or Resident Aliens). 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.

D. As an alternative method of claiming a "$5 MILLION FORTUNE" Scratch Ticket Game prize, including the top level prize of $5,000,000, the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If claiming a top prize of $5,000,000, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all 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.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. 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;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

F. 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 "$5 MILLION FORTUNE" 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 "$5 MILLION FORTUNE" 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 Prizes. There will be approximately 6,000,000 Scratch Tickets in Scratch Ticket Game No. 2337. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2337 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$50.00	750,000	8.00
$75.00	150,000	40.00
$100	375,000	16.00
$200	300,000	20.00
$500	120,000	50.00
$1,000	3,450	1,739.13
$10,000	300	20,000.00
$50,000	30	200,000.00
$5,000,000	4	1,500,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.53. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of 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. 2337 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 Scratch Ticket 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. 2337, 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-202004845
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 17, 2020

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Public Utility Commission of Texas

Notice of Application for Approval of the Provision of Non-Emergency 311 Service

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) for approval to provide non-emergency 311 services.

Docket Style and Number: Application of Southwestern Bell Telephone Company dba AT&T Texas for Administrative Approval to Provide Non-Emergency 311 Service for the City of Corpus Christi, Docket Number 51494.

The Application: On November 6, 2020, Southwestern Bell Telephone Company dba AT&T Texas filed an application with the commission under 16 Texas Administrative Code §26.127, for approval to provide non-emergency 311 service for the City of Corpus Christi.

Non-emergency 311 service is available to local governmental entities to provide to their residents an easy-to-remember number to call for access to non-emergency services. By implementing 311 service, communities can improve 911 response times for those callers with true emergencies. Each local government entity that elects to implement 311 service will determine the types of non-emergency calls their 311-call center will handle.

Persons wishing to intervene or comment on 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. The deadline for intervention in this proceeding is December 28, 2020. 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 51494.

TRD-202004758
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 2020

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Texas Workforce Commission

Correction of Error

The Texas Workforce Commission (TWC) proposed amendments to 40 TAC Chapter 809, relating to Child Care Services, in the October 23, 2020, issue of the *Texas Register* (45 TexReg 7551). Due to a publication error, language regarding the submittal of comments was omitted from the preamble. Because of the publication error, TWC will continue to receive comments on the proposed amendments to 40 TAC Chapter 809 until December 11, 2020.

On page 7557, under Part IV. Coordination Activities, the second paragraph was omitted. The language should read as follows:

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.state.tx.us. Comments must be received no later than 30 days from the date this proposal is published in the *Texas Register.*

TRD-202004844

♦ ♦ ♦


TEXAS

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 43 (2018) is cited as follows: 43 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 "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 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
26. Health and Human 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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