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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.56

The Texas Ethics Commission (the commission) proposes new Texas Ethics Commission Rules §20.56, regarding the disclosure of expenditures involving political consultants and political consulting services.

Section 254.031 of the Election Code requires a candidate, officeholder, political committee, or other filer who files a campaign finance report to include certain information regarding political expenditures and expenditures made from political contributions. When an expenditure is required to be itemized in a report, the report must include certain information regarding the expenditure, including the amount, date, and purpose of the expenditure and the name and address of the person to whom the expenditure is made. The rule addresses the proper disclosure of an expenditure made by a consultant on behalf of a filer and an expenditure made to a consultant by a filer for consulting services.

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

Ms. Ashley has also determined that for each year of the first five years the proposed new rule is in effect the public benefit will be clarity in the commission's rules regarding the disclosure of expenditures involving political consultants and requiring disclosure of such expenditures in campaign finance reports made available to the public. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new rule.

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

The new rule §20.56 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed new rule, §20.56, affects Chapter 254 of the Election Code as it relates to the requirement to report an expenditure, including §254.031.

§20.56. Expenditures Involving Consultants.

(a) Beginning on January 1, 2017, an expenditure made by a consultant on behalf of a candidate, officeholder, political committee, or other filer which falls within the categories required by Texas Election Code §254.031 must be reported as if the filer made the expenditure.

(b) The payee of an expenditure to which subsection (a) of this section applies is the particular person who receives payment from the consultant. The expenditure must be disclosed as if the filer made the expenditure directly to the particular person.

(c) The payee of an expenditure for consulting services made by a filer to a consultant is the consultant if:

(1) the expenditure is compensation for consulting services; or

(2) the expenditure is a payment to the consultant as a retainer, advance, or reimbursement for one or more expenditures made or to be made by the consultant on behalf of, but not at the direction of, the filer.

(d) "Consultant" means a person who performs consulting services in a professional capacity. "Consulting services" means services provided outside the traditional relationship of employer and employee to assist in a campaign for elective office or on a measure or to assist in performing a duty or engaging in an activity in connection with an elective office, including fundraising activities, voter outreach, creation and distribution of political advertising, and providing advice and strategy in conducting a campaign, but not including legal services.

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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Natalia Luna Ashley
Executive Director
Texas Ethics Commission
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For further information, please call: (512) 463-5800

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1 TAC §20.60

The Texas Ethics Commission (the commission) proposes new Texas Ethics Commission Rules §20.60, regarding the disclosure of multiple expenditures to a single payee for fees to process political contributions.

Section 254.031(a)(3) of the Election Code requires a campaign finance report to include the amount of political expenditures that in the aggregate exceed $100 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. Expenditures made from personal funds must also be itemized if reimbursement from political contributions is sought. Some filers are required to itemize their expenditures to banks and other merchants to process political contributions, which can include numerous small expenditures to the same payee. The proposed new rule would simplify the filing requirements without any substantive loss in disclosure by permitting a filer to disclose multiple expenditures for such processing fees made to the same payee within a reporting period as a single expenditure. The total amount of the expenditures would have to be disclosed along with the payee information and purpose, including the dates of the first and last expenditures.

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

Ms. Ashley has also determined that for each year of the first five years the proposed new rule is in effect the public benefit will be clarity in how to itemize fees for processing political contributions and a simplification in reporting requirements while maintaining meaningful disclosure. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new rule.

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

The new rule §20.60 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed new rule, §20.60, affects Election Code §254.031.

§20.60. Reporting Political Expenditures for Processing Fees.

(a) Multiple political expenditures made to a single payee during a reporting period for fees to process political contributions may be itemized as a single expenditure, in an amount equal to the combined total amount of the expenditures, if all the expenditures are made to a single payee for the same purpose.

(b) The purpose of an expenditure reported under subsection (a) of this section must include the dates of the first and last of the multiple expenditures made to a single payee during the reporting period.

(c) For reporting purposes, the date of an expenditure reported under subsection (a) of this section is the date of the first expenditure made to the payee during the reporting period, as provided by §20.57 (Time of Making Expenditure) of this title.

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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1 TAC §20.61

The Texas Ethics Commission (the commission) proposes an amendment to Texas Ethics Commission Rules §20.61, regarding the disclosure of expenditures involving political consultants and political consulting services.

Section 254.031 of the Election Code requires a candidate, officeholder, political committee, or other filer who files a campaign finance report to include certain information regarding political expenditures and expenditures made from political contributions. Current Ethics Commission Rules §20.61 requires the purpose of an expenditure to be disclosed with a description of the category of goods, services, or other thing of value for which the expenditure is made and a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. The proposed amendment adds two additional categories for the description of an expenditure: "consulting services compensation" and "consulting services- no expenditure directed." The amendment also specifies how expenditures made to a consultant must be disclosed with either of the two new categories. The amendment also provides two examples of reporting expenditures to a consultant.

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

Ms. Ashley has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarity in the commission's rules regarding the disclosure of expenditures involving political consultants and requiring such expenditures to be disclosed in campaign finance reports with meaningful descriptions. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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

proposed amendment. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the Texas Ethics Commission's website at www.ethics.state.tx.us.

The amendment to §20.61 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment to §20.61 affects Chapter 254 of the Election Code as it relates to the requirement to report an expenditure, including §254.031.

§20.61. Purpose of Expenditure.

(a) For reporting required under §254.031 of the Election Code, the purpose of an expenditure means:

(1) A description of the category of goods, services, or other thing of value for which an expenditure is made. Examples of acceptable categories include:

(A) advertising expense;

(B) accounting/banking;

(C) consulting services compensation (as provided by subsection (e) of this section) [~~expense~~];

(D) consulting services- no expenditure directed (as provided by subsection (e) of this section);

(E) [~~(D)~~] contributions/donations made by candidate/officeholder/political committee;

(F) [~~(E)~~] event expense;

(G) [~~(F)~~] fees;

(H) [~~(G)~~] food/beverage expense;

(I) [~~(H)~~] gifts/awards/memorials expense;

(J) [~~(I)~~] legal services;

(K) [~~(J)~~] loan repayment/reimbursement;

(L) [~~(K)~~] office overhead/rental expense;

(M) [~~(L)~~] polling expense;

(N) [~~(M)~~] printing expense;

(O) [~~(N)~~] salaries/wages/contract labor;

(P) [~~(O)~~] solicitation/fundraising expense;

(Q) [~~(P)~~] transportation equipment and related expense;

(R) [~~(Q)~~] travel in district;

(S) [~~(R)~~] travel out of district;

(T) [~~(S)~~] other political expenditures; and

(2) A brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure and an additional indication if the expenditure is an officeholder expenditure for living in Austin, Texas. The brief statement or description must include the item or service purchased and must be sufficiently specific, when considered within the context of the description of the category, to make the reason for the expenditure clear. Merely disclosing the category of goods, services, or other thing of value for which the expenditure is made does not adequately describe the purpose of an expenditure.

(b) The description of a political expenditure for travel outside of the state of Texas must provide the following:

(1) The name of the person or persons traveling on whose behalf the expenditure was made;

(2) The means of transportation;

(3) The name of the departure city or the name of each departure location;

(4) The name of the destination city or the name of each destination location;

(5) The dates on which the travel occurred; and

(6) The campaign or officeholder purpose of the travel, including the name of a conference, seminar, or other event.

(c) Except as provided by subsections [~~subsection~~] (d) and (e) of this section, this rule applies to expenditures made on or after July 1, 2010.

(d) The requirement to include an additional indication if an expenditure is an officeholder expenditure for living in Austin, Texas, applies to an expenditure made on or after July 1, 2014.

(e) Any expenditure made to a consultant under §20.56(c) on or after January 1, 2017, must be disclosed, as applicable:

(1) with the category "consulting services compensation" and a description of "campaign consulting services," or other appropriate description, if the expenditure is made solely as compensation for consulting services; or

(2) with the category "consulting services- no expenditure directed" and a more specific description, if the expenditure is made for any other purpose.

(f) [~~(e)~~] Comments: The purpose of an expenditure must include both a description of the category of goods or services received in exchange for the expenditure and a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. A description of an expenditure that merely states the item or service purchased is not adequate because doing so does not allow a person reading the report to know the allowable activity for which an expenditure was made. The following is a list of examples that describe how the purpose of an expenditure may be reported under §20.61. This list is for illustrative purposes only. It is intended to provide helpful information and to assist filers in reporting the purpose of an expenditure under this rule. However, it is not, and is not intended to be, an exhaustive or an exclusive list of how a filer may permissibly report the purpose of an expenditure under this rule. The rule does not require the candidate or officeholder to identify by name or affiliation an individual or group with whom the candidate or officeholder meets.

(1) Example: Candidate X is seeking the office of State Representative, District 2000. She purchases an airline ticket from ABC Airlines to attend a campaign rally within District 2000. The acceptable category for this expenditure is "travel in district." The candidate activity that is accomplished by making the expenditure is to attend a campaign rally. An acceptable brief statement is "airline ticket to attend campaign event."

(2) Example: Candidate X purchases an airline ticket to attend a campaign event outside of District 2000 but within Texas, the acceptable category is "travel out of district." The candidate activity that is accomplished by making the expenditure is to attend a campaign event. An acceptable brief statement is "airline ticket to attend campaign or officeholder event."

(3) Example: Candidate X purchases an airline ticket to attend an officeholder related seminar outside of Texas. The acceptable method for the purpose of this expenditure is by selecting the "travel out of district" category and completing the "Schedule T" (used to report travel outside of Texas).

(4) Example: Candidate X contracts with an individual to do various campaign related tasks such as work on a campaign phone bank, sign distribution, and staffing the office. The acceptable category is "salaries/wages/contract labor." The candidate activity that is accomplished by making the expenditure is to compensate an individual working on the campaign. An acceptable brief statement is "contract labor for campaign services."

(5) Example: Officeholder X is seeking re-election and makes an expenditure to purchase a vehicle to use for campaign purposes and permissible officeholder purposes. The acceptable category is "transportation equipment and related expenses" and an acceptable brief description is "purchase of campaign/officeholder vehicle."

(6) Example: Candidate X makes an expenditure to repair a flat tire on a campaign vehicle purchased with political funds. The acceptable category is "transportation equipment and related expenses" and an acceptable brief description is "campaign vehicle repairs."

(7) Example: Officeholder X purchases flowers for a constituent. The acceptable category is "gifts/awards/memorials expense" and an acceptable brief description is "flowers for constituent."

(8) Example: Political Committee XYZ makes a political contribution to Candidate X. The acceptable category is "contributions/donations made by candidate/officeholder/political committee" and an acceptable brief description is "campaign contribution."

(9) Example: Candidate X makes an expenditure for a filing fee to get his name on the ballot. The acceptable category is "fees" and an acceptable brief description is "candidate filing fee."

(10) Example: Officeholder X makes an expenditure to attend a seminar related to performing a duty or engaging in an activity in connection with the office. The acceptable category is "fees" and an acceptable brief description is "attend officeholder seminar."

(11) Example: Candidate X makes an expenditure for political advertising to be broadcast by radio. The acceptable category is "advertising expense" and an acceptable brief description is "political advertising." Similarly, Candidate X makes an expenditure for political advertising to appear in a newspaper. The acceptable category is "advertising expense" and an acceptable brief description is "political advertising."

(12) Example: Officeholder X makes expenditures for printing and postage to mail a letter to all of her constituents, thanking them for their participation during the legislative session. Acceptable categories are "advertising expense" OR "printing expense" and an acceptable brief description is "letter to constituents."

(13) Example: Officeholder X makes an expenditure to pay the campaign office electric bill. The acceptable category is "office overhead/rental expense" and an acceptable brief description is "campaign office electric bill."

(14) Example: Officeholder X makes an expenditure to purchase paper, postage, and other supplies for the campaign office. The acceptable category is "office overhead/rental expense" and an acceptable brief description is "campaign office supplies."

(15) Example: Officeholder X makes an expenditure to pay the campaign office monthly rent. The acceptable category is "office overhead/rental expense" and an acceptable brief description is "campaign office rent."

(16) Example: Candidate X hires a consultant for campaign consulting [~~fundraising~~] services, such as advice on matters of campaign strategy. The acceptable category is "consulting services compensation" [~~"expense"~~] and an acceptable brief description is "campaign strategy services."

(17) Example: Candidate X hires an independent consultant to provide consulting services by helping to produce and purchase political advertising to be broadcast on television. The candidate gives the consultant $100,000.

(A) Of that amount, the candidate pays $5,000 as compensation for consulting services to produce the advertising. The candidate must disclose a $5,000 expenditure to the consultant as the payee, the acceptable category is "consulting services compensation," and an acceptable brief description is "political advertising."

(B) The remaining $95,000 is used to purchase broadcast airtime on the three major broadcasting stations. The acceptable category of each expenditure is "advertising expenses" and an acceptable brief description is "political advertising."

(18) [~~(17)~~] Example: Candidate/Officeholder X pays his attorney for legal fees related to either campaign matters or officeholder matters. The acceptable category is "legal services" and an acceptable brief description is "legal fees for campaign" or "for officeholder matters."

(19) [~~(18)~~] Example: Candidate/Officeholder X makes food and beverage expenditures for a meeting with her constituents. The acceptable category is "food/beverage expense" and an acceptable brief statement is "meeting with constituents."

(20) [~~(19)~~] Example: Candidate X makes food and beverage expenditures for a meeting to discuss candidate issues. The acceptable category is "food/beverage expense" and an acceptable brief statement is "meeting to discuss campaign issues."

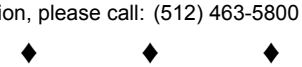
(21) [~~(20)~~] Example: Officeholder X makes food and beverage expenditures for a meeting to discuss officeholder issues. The acceptable category is "food/beverage expense" and an acceptable brief statement is "meeting to discuss officeholder issues."

(22) [~~(21)~~] Example: Candidate/Officeholder X makes food and beverage expenditures for a meeting to discuss campaign and officeholder issues. The acceptable category is "food/beverage expense" and an acceptable brief statement is "meeting to discuss campaign/officeholder issues."

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 August 18, 2016.

TRD-201604236
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: October 2, 2016
For further information, please call: (512) 463-5800



CHAPTER 26. POLITICAL AND LEGISLATIVE ADVERTISING

1 TAC §26.1

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

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

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

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

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

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

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

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

The proposed amendment to §26.1 affects Election Code §255.001.

§26.1. Disclosure Statement.

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

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

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

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

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

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

(3) the candidate authorizing the political advertising.

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

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

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Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: October 2, 2016
For further information, please call: (512) 463-5800

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TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 25. PREPAID FUNERAL CONTRACTS

SUBCHAPTER A. CONTRACT FORMS

7 TAC §§25.1 - 25.6

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes amendments to §§25.1 - 25.6 concerning prepaid funeral contracts. The amended rules are proposed to clarify acceptable methods of use and delivery of electronic prepaid funeral benefits contracts.

Current §§25.1 - 25.6 provide the requirements for a licensed seller of prepaid funeral benefits to use and deliver a contract when engaging with a purchaser of benefits, whether via a model or non-model contract. These sections prescribe the substance, form, and approval process for the use of a contract that differs

from the model contract issued by the department. Additionally, §25.6 sets out how and when an executed copy of a contract must be delivered to a purchaser. Because §§25.1 - 25.6 were drafted before the prevalence of electronic documents, it is not currently clear that a licensed seller of prepaid funeral benefits may use an electronic contract or how to have an electronic contract approved by the department. Because of this uncertainty, sellers have approached the department individually for a determination whether the seller's electronic process is acceptable. The proposed amendments will provide guidance to the sellers and understanding to the public.

Pre-proposal consultation with shareholders.

On April 29, 2016, a draft of the proposed amendments was sent to stakeholders for pre-comment. One commenter stated that the allowance of delivery of electronic records by email alone was too narrow and that other electronic methods of delivery should be an allowed. After considering this comment, the proposed amendment to §25.6 expands the allowed delivery methods to any electronic means upon verification that the purchaser can access the record.

One commenter asked if electronic contracts would be considered "printed" under Finance Code, §154.151. We stated that they would.

The same commenter also asked whether it could transmit electronically the brochure required by Finance Code, §154.131. We responded that this was acceptable. The commenter asked whether it would be possible to conduct all arrangements online with no in-person meeting. We responded that it would be acceptable as far as the department is concerned, but that sellers must abide by laws and regulations of other involved agencies such as the Federal Trade Commission and the Texas Funeral Services Commission (TFSC). For example, currently the TFSC requires that the brochure "Facts About Funerals" be given in paper before the transaction is entered into.

On June 14, 2016, a revised draft of the proposed amendments was again sent to stakeholders for pre-comment. We received one comment, which suggested revising certain language for clarity. We amended §25.2 and §25.3(n) to clarify.

Description of proposed amendments.

The proposed amendment to §25.1 states that a contract or a waiver in electronic form is a non-model contract. Being non-model requires an electronic contract to comply with the substance and form requirements within §25.3, the plain language requirements within §25.4, and the approval process within §25.5. As proposed, §§25.3, 25.4, and 25.5 have been amended to clarify their application to contracts in electronic form. However, proposed §25.2 includes an exception to this general rule by providing that a PDF version of an approved non-model contract or model contract need not be approved by the department because these PDFs will accurately replicate the contract as previously approved in paper form.

The proposed amendment adding §25.2(f) expressly allows the use of contracts in electronic form for the sale of prepaid funeral benefits if the purchaser has been provided the disclosures required by the federal E-SIGN Act and has consented to the use of electronic documents. Because the disclosures required under E-SIGN primarily address the issues of retention and accessibility of an electronic record, the proposed amendments treat the transaction as not having been conducted electronically when the purchaser is contemporaneously given a completed paper copy of the contract.

The proposed amendments to §25.3 explain the placement of contract provisions in electronic format. The proposed amendment to §25.3(b)(8) requires the statement of guaranteed funeral goods and services selected to be on a single screen or consecutive screens, near the beginning or top of the contract, immediately following required consumer disclosures. The proposed amendment to §25.3(c)(1)(G) requires the statement of non-guaranteed cash advance items in an electronic contract to appear on a single screen immediately following the statement of guaranteed funeral goods and services selected. The proposed amendment to §25.3(c)(2) requires, when the seller has deleted the statement of no-guaranteed cash advance items, that the seller include Figure 7 TAC §25.3(c)(2)(B) immediately following the statement of guaranteed funeral goods and services selected. The proposed amendment to §25.3(j) requires the placement of required signatures and notices near the bottom of an electronic contract. The proposed amendment to §25.3(k)(2) requires the consumer complaints and inquiries notice to appear immediately preceding the area where a purchaser signs an electronic contract. The proposed amendment to §25.3(l)(1) eliminates the need for page numbers in an electronic contract that does not contain pages. The proposed addition of §25.3(n) requires the consumer disclosures mandated by E-SIGN to be before any other provision and allows them to be on a separate screen.

The proposed amendment to §25.4(a) clarifies that an electronic contract must be displayed in an easily readable font and type size. The proposed amendment to §25.4(b) confirms that electronic documents should substantially comply with plain language writing principles. The proposed amendment to §25.4(f)(2) clarifies that page size requirements do not apply to electronic documents.

The proposed amendment to §25.5(b)(1)(A) requires inclusion of screen shots in an application to approve a non-model electronic contract. The proposed amendment to §25.5(b)(1)(D)(ii) requires that the certification for electronic contracts verifies that it complies with Business and Commerce Code, Chapter 322 (the Texas Uniform Electronic Transactions Act) and E-SIGN. The proposed amendment to §25.5(f) deletes transition language that applied when the rules were amended in 2010 and is no longer applicable.

The proposed amendment to §25.6 adds two new subsections that specify that a paper copy must be given unless an electronic contract was used or if the purchaser requests a paper copy of an electronic copy. It also states that electronic contracts may be sent to the purchaser electronically if the purchaser has consented to that.

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

Ms. Newberg also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is that sellers and purchasers of prepaid funeral benefits will be better able to understand their rights and responsibilities regarding electronic contracting.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rules as proposed.

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

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on October 3, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amended rules are proposed under Finance Code, §154.051, which provides that the commission may adopt rules necessary and reasonable to matters relating to the enforcement and administration of this chapter, and §154.151, which prescribes requirements for the department and the commission relating to the form of contracts.

Finance Code, §§154.001, 154.131, 154.151 - 154.1511, 154.156, 154.2021, 154.401, 154.406 - 154.410, and 154.415 are affected by the proposed amended sections.

§25.1. Definitions.

(a) (No change.)

(b) The following words and terms have the following meanings when used in this subchapter, unless the context in which a word or term is used clearly indicates a different meaning that is consistent with the purpose of Finance Code, Chapter 154:

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

(9) "Non-model contract" means a prepaid funeral benefits contract form that differs from the model contract with respect to the requirements and standards of §25.3 of this title and §25.4 of this title (relating to What Are the Plain Language Requirements for a Non-Model Contract or Waiver). A model contract does not become a non-model contract because you add your name, trademark, or other information about you, or information about the provider. A contract in electronic form is a non-model contract.

(10) "Non-model waiver" means a form of waiver that has the same purpose as but differs from the model waiver with respect to the requirements and standards of §25.2(c) of this title (relating to Am I Required to Use the Model Contract and Model Waiver) and §25.4 of this title. For example, a model waiver does not become a non-model waiver because you add your name, trademark, or other information about you, or information about the provider. A waiver in electronic form is a non-model waiver.

(11) - (17) (No change.)

§25.2. Am I Required to Use the Model Contract and Model Waiver?

(a) Use of model contract and waiver. You may use the appropriate model contract or the model waiver described in this subsection except as provided in paragraph (2) of this subsection, but you are not required to do so if you obtain approval to use a non-model contract or waiver. PDF forms of model contracts or waivers and PDF forms of approved non-model contracts or waivers do not need to be approved by the department as provided in §25.5.

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

(b) - (e) (No change.)

(f) Sale of Prepaid Funeral Benefits Electronically.

(1) You may sell prepaid funeral benefits and deliver contracts and waivers by electronic means if the purchaser has consented to transacting electronically.

(2) A purchaser must consent to the use of electronic documents before you present the document to the purchaser, consistent with Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001.

(3) A contract or waiver is not considered as entered into or delivered electronically if a completed paper copy in the approved form is given to the purchaser at the time of sale.

§25.3. What Requirements Apply to a Non-Model Contract or Waiver?

(a) (No change.)

(b) Statement of guaranteed funeral goods and services selected. The first section of a proposed prepaid funeral benefits contract must inform the purchaser of the guaranteed funeral goods and services that you will provide under the contract, as required by Finance Code, §154.151(e). This section must appear entirely on page one of the contract exactly as set out in the model contract and in the following figure, including substantially the same formatting and spacing, except:
Figure: 7 TAC §25.3(b) (No change.)

(1) - (7) (No change.)

(8) If your contract is in electronic form, the statement of guaranteed funeral goods and services selected must appear on a single screen or consecutive screens, near the beginning or top of the contract, immediately following consumer disclosures and consent required by 7 TAC §25.2(f).

(c) Statement of non-guaranteed cash advance items selected.

(1) The second section of a proposed prepaid funeral benefits contract must inform the purchaser of the non-guaranteed cash advance items that you will provide under the contract, as required by Finance Code, §154.1511(b). The section must appear entirely on either page one or two of the contract exactly as set out in the model contract and in the following figure, including substantially the same formatting and spacing, except;
Figure: 7 TAC §25.3(c)(1) (No change.)

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

(E) you may change the description of specific goods or services if the alteration does not change the intent of the description in the standard disclosure; [~~and~~]

(F) you may add other specific funeral goods and services to the list of non-guaranteed funeral goods and services to be provided only through a non-model filing; and[~~.~~]

(G) if your contract is in electronic form, this section must appear on a single screen immediately following the statement of guaranteed funeral goods and services selected.

(2) If you delete the statement of non-guaranteed cash advance items:[~~,~~]
[~~Figure: 7 TAC §25.3(c)(2)~~]

(A) for a paper contract, you must include [~~the following~~] figure 7 TAC §25.3(c)(2)(B) on the bottom of page one of the contract, including substantially the same formatting and spacing; and[~~:~~]

(B) for a contract in electronic form, you must include the following figure immediately following the statement of guaranteed funeral goods and services selected:
Figure: 7 TAC §25.3(c)(2)(B)

(d) - (i) (No change.)

(j) Required signatures and notices. Your proposed prepaid funeral benefits contract must contain a section for required signatures and related notices that appears in its entirety on the last page of the contract, or near the bottom of the contract if in electronic form. This section must include:

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

(k) Inquiries and complaints notice. Your proposed prepaid funeral benefits contract must disclose how a purchaser, potential purchaser or consumer can make consumer inquiries and complaints to the department as required by Finance Code, §11.307(a), and §25.41 of this title (relating to How Do I Provide Information to Consumers on How to File a Complaint and What Action Must I Take When I Receive a Complaint?), and to other specified state regulatory agencies with appropriate jurisdiction.

(1) (No change.)

(2) If the disclosure does not appear at the bottom of the last page of the contract following the signatures of the parties, it must be placed at the top or bottom of a preceding page and be separated from other contract text by at least 1/2 inches of white space. If the contract is in electronic form, the disclosure must appear immediately preceding the area a purchaser can sign the contract. The disclosure may not be placed on a page by itself.

(l) Additional requirements. A proposed prepaid funeral benefits contract must also contain:

(1) page numbers, unless in an electronic form that does not contain pages;

(2) - (5) (No change.)

(m) (No change.)

(n) Electronic contract requirements. A proposed non-model contract in electronic form must contain all consumer disclosures required under Electronic Signatures in Global and National Commerce Act, 15 U.S.C., §7001, before any other provision and may be on a separate screen.

§25.4. What Are the Plain Language Requirements for a Non-Model Contract or Waiver?

(a) Overview. If you elect to not use a model contract or waiver, you must prepare a non-model prepaid funeral benefits contract or a waiver of cancellation rights, whether in English or Spanish, in plain language designed to be easily understood by the average consumer. Your proposed non-model document must also be printed or displayed in an easily readable font and type size. The department is charged with enforcing these requirements by Finance Code, §154.151(d).

(b) Plain language principles for English documents. The department will consider the extent to which you have incorporated plain language principles into the organization, language, and design of a non-model document that you submit for approval. At a minimum, your proposed non-model document, including an electronic non-model document, should substantially comply with each of the plain language writing principles identified in this subsection.

(1) - (5) (No change.)

(c) - (e) (No change.)

(f) Formatting and design. The department will consider the extent to which your non-model document uses the plain language formatting and design concepts described in this subsection.

(1) (No change.)

(2) The minimum recommended page size of a proposed non-model contract is 8-1/2 inches by 11 or 14 inches and 8-1/2 inches by 11 inches for a proposed non-model waiver. However, the page size should ordinarily not be larger than 8-1/2 inches by 17 inches. This paragraph does not apply to a contract in electronic form.

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

(g) (No change.)

§25.5. How Do I Obtain Approval of a Non-Model Contract or Waiver?

(a) (No change.)

(b) Application for approval. Your application for approval of your proposed non-model document must be in writing and include all additional information, documents, and fees required by this subsection. You should file your application as far in advance of the date you intend to use your proposed document as possible.

(1) The additional information, documents, and fees that you must file as part of your application include:

(A) both a printed copy of your proposed non-model document and an electronic version of the document, prepared using Microsoft Word or Corel WordPerfect software, including computer screenshots of any portion to be used in electronic form;

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

(D) a certification on a form supplied by the department, signed and acknowledged by you or your authorized agent, that you have reviewed the proposed non-model document that you filed for approval and to the best of your knowledge:

(i) your proposed non-model document complies with all applicable state and federal law, including Finance Code, Chapter 154, and this chapter; [~~and~~]

(ii) if in electronic form, your proposed non-model document also complies with Business and Commerce Code, Chapter 322, and Electronic Signatures in Global and National Commerce Act, 15 U.S.C., §7001 et seq; and

(iii) [~~(ii)~~] if your application is for approval of amendments to a previously approved non-model document, the proposed non-model document is identical to the previously approved document except for text specifically marked as additions and deletions;

(E) - (F) (No change.)

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

(c) - (e) (No change.)

(f) Withdrawn approval. [~~This subsection describes circumstances under which you may not use a previously approved document.~~]

[~~(1)~~] The department may withdraw its approval of a model or previously approved non-model document for future use if governing law is changed or clarified by statute, rule, or judicial opinion. The department will notify you in writing if you are affected by a withdrawn approval.

[~~(2) You may not use a prepaid funeral benefits contract form that was approved by the department before the effective date of this rule (an obsolete contract), except that you may continue using an obsolete contract if the model supplement developed by the department, and, if applicable, new Figure 7 TAC §25.3(i)(4)(E), are included as part of the contracting transaction until the later of:~~]

[~~(A) February 1, 2010;~~]

[~~(B) June 1, 2010, if you filed a proposed non-model contract with the department for approval before February 1, 2010; or~~]

[~~(C) a later date if, before February 1, 2010, you request an extension of time to permit completion of a pending approval proceeding under this section and the commissioner approves your request in writing.~~]

[~~(3) Notwithstanding the provisions of paragraph (2) of this subsection, you may not continue using an obsolete contract after the 30th day following the date the department approves your non-model contract.~~]

§25.6. How and When are Contract Copies Distributed Between the Parties?

(a) - (c) (No change.)

(d) To give a purchaser a copy of the contract, you must give the purchaser a paper copy unless an electronic contract was used.

(e) If an electronic contract was used, you may deliver an electronic record of the contract and all related agreements by email or other electronic means to the purchaser if the purchaser has consented to receiving an electronic record as specified in §25.2(f)(1) - (2). If the purchaser requests a paper copy or is unable to retrieve the electronic record, you must give the purchaser a paper copy. You may not charge a fee for providing a paper copy.

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 August 19, 2016.

TRD-201604262
Catherine Reyer
General Counsel
Texas Department of Banking
Earliest possible date of adoption: October 2, 2016
For further information, please call: (512) 475-1301

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PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 79. RESIDENTIAL MORTGAGE LOAN SERVICERS

SUBCHAPTER C. HEARINGS AND APPEALS

7 TAC §79.30

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the Department), proposes to amend 7 Texas Administrative Code §79.30.

In general, the purpose of the proposal regarding this rule is to add clarifying language to the hearing and appeal process under Chapter 79.

Section 79.30 addresses hearings and appeals. The proposed amendments seek to clarify that the Department should be permitted to recover costs of any hearing, when the Department is the prevailing party. Further, the section title is modified to appear uniform with the hearings and appeals language in 7 Texas Administrative Code §80.302 applicable to residential mortgage loan companies and §81.302 applicable to residential mortgage loan originators.

Caroline C. Jones, the Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering these rules.

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate and reflective of legislative intent. There will be no effect on individuals required to comply with the amendments as proposed, unless they are the losing party at a contested administrative hearing. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

Comments on the proposed amendments may be submitted in writing to Ernest C. Garcia, General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register*.

The amendments are proposed under Texas Finance Code §158.003, which provide that the Finance Commission may adopt rules relating to Residential Mortgage Loan Servicers.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 158.

§79.30. [~~Appeals and~~] Hearings and Appeals.

(a) The Hearings Officer for the Finance Commission is designated as the hearings officer for hearings under this chapter. All such hearings are to be conducted in accordance with Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), including, but not limited to motions for rehearing, notices of appeal, and applications for review. All such hearings, unless specifically authorized by the Commissioner, shall be conducted in Austin, Travis County, Texas. Such rules, as set forth in Chapter 9 of this title, are incorporated herein by reference for all purposes.

(b) Notwithstanding any other provision of any administrative or agency rules applicable to the Department, the Department shall be entitled to recover the costs of any hearing arising from an appeal of an order issued by the Commissioner where the costs associated with same were primarily attributable to the party filing the appeal or the Department substantially prevails in the matter, whether that hearing is before a contracted administrative law judge or before the State Office of Administrative Hearings (SOAH). Costs as used herein, shall include filing fees, court reporter fees and the costs associated with time expended by the judge, but shall not include attorney's fees or investigative costs. Costs shall also include the costs of preparing any record of the hearing in the event of an appeal to the district court.

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 August 19, 2016.

TRD-201604263

Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: October 2, 2016
For further information, please call: (512) 475-1297

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CHAPTER 80. TEXAS RESIDENTIAL MORTGAGE LOAN COMPANIES
SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

7 TAC §80.302

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend 7 TAC §80.302.

In general, the purpose of the proposal regarding this rule is to add clarifying language to the hearing and appeal process under Chapter 80.

Section 80.302 addresses hearings and appeals. The proposed amendments seek to clarify that the Department should be permitted to recover costs of any hearing, when the Department is the prevailing party.

Caroline C. Jones, the Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering these rules.

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate and reflective of legislative intent. There will be no effect on individuals required to comply with the amendments as proposed, unless they are the losing party at a contested administrative proceeding. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

Comments on the proposed amendments may be submitted in writing to Ernest C. Garcia, General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705 or by email to *smlinfo@sml.texas.gov* within 30 days of publication in the *Texas Register.*

The amendments are proposed under Texas Finance Code §11.306, which provides that the Finance Commission may adopt residential mortgage loan origination rules as provided by Chapter 156 and by Texas Finance Code §156.102, which provides that the Finance Commission may adopt rules relating to Residential Mortgage Loan Companies.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 156.

§80.302. Hearings and Appeals.

(a) - (c) (No change.)

(d) Notwithstanding any other provision of any administrative or agency rules applicable to the Department, the Department shall be entitled to recover the costs of any hearing arising from an appeal of an order issued by the Commissioner where the costs associated with same were primarily attributable to the party filing the appeal or the Department substantially prevails in the matter, whether that hearing is before a contracted administrative law judge or before the State Office of Administrative Hearings (SOAH). Costs as used herein, shall include filing fees, court reporter fees and the costs associated with time expended by the judge, but shall not include attorney's fees or investigative costs. Costs shall also include the costs of preparing any record of the hearing in the event of an appeal to the district court.

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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Ernest C. Garcia
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Department of Savings and Mortgage Lending
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CHAPTER 81. MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS
SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

7 TAC §81.302

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend 7 TAC §81.302.

In general, the purpose of the proposal regarding this rule is to add clarifying language to the hearing and appeal process under Chapter 81.

Section 81.302 addresses hearings and appeals. The proposed amendments seek to clarify that the Department should be permitted to recover costs of any hearing, when the Department is the prevailing party.

Caroline C. Jones, the Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering these rules.

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate and reflective of legislative intent. There will be no effect on individuals required to comply with the amendments as proposed, unless they are the losing party at a contested administrative proceeding. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

Comments on the proposed amendments may be submitted in writing to Ernest C. Garcia, General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705 or by email to *smlinfo@sml.texas.gov* within 30 days of publication in the *Texas Register.*

The amendments are proposed under Texas Finance Code §157.023, which provide that the Finance Commission may adopt rules relating to Mortgage Bankers and Residential Mortgage Loan Originators.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 157.

§81.302. Hearings and Appeals.

(a) - (c) (No change.)

(d) Notwithstanding any other provision of any administrative or agency rules applicable to the Department, the Department shall be entitled to recover the costs of any hearing arising from an appeal of an order issued by the Commissioner where the costs associated with same were primarily attributable to the party filing the appeal or the Department substantially prevails in the matter, whether that hearing is before a contracted administrative law judge or before the State Office of Administrative Hearings (SOAH). Costs as used herein, shall include filing fees, court reporter fees and the costs associated with time expended by the judge, but shall not include attorney's fees or investigative costs. Costs shall also include the costs of preparing any record of the hearing in the event of an appeal to the district court.

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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Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1297

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 85. PAWNSHOPS AND CRAFTED PRECIOUS METAL DEALERS

SUBCHAPTER A. RULES OF OPERATION FOR PAWNSHOPS

The Finance Commission of Texas (commission) proposes amendments to §§85.102, 85.104, 85.202, 85.206, 85.208, 85.209, 85.211, 85.305, 85.306, 85.402, 85.405, 85.413, 85.420, 85.423, and 85.702; proposes new §85.205 and §85.601; and proposes the repeal of §§85.205, 85.601, and 85.602 in 7 TAC, Chapter 85, Subchapter A, concerning Rules of Operation for Pawnshops.

In general, the purpose of the rule changes in 7 TAC, Chapter 85, Subchapter A is to update rules regarding the licensing of pawnshops and to make technical corrections. The proposed rule changes relate to the following issues: contact information, license transfers, criminal history review, disclosures, and recordkeeping. Additionally, certain sections are being proposed for repeal in order to replace them with new, reorganized rules.

The agency circulated an early draft of proposed changes to interested stakeholders. The agency then held a stakeholders meeting where attendees provided oral precomments. In addition, the agency received three informal written precomments. Certain concepts recommended by stakeholders have been incorporated into this proposal, and the agency appreciates the thoughtful input provided by stakeholders.

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

In §85.102, the proposal would add a definition of "parent entity," specifying that this term refers to a direct owner of a licensee or applicant. This definition is intended to clarify the provisions on mergers and license transfers in §85.205 and §85.208, discussed later in this proposal, and is consistent with other OCCC licensing rules. A proposed amendment to current §85.102(11) (proposed §85.102(12)) amends the definition of "principal party" for sole proprietorships. The amendment removes the statement that proprietors include spouses with a community property interest. This amendment conforms to an amendment to the application requirements for sole proprietorships in §85.202(a)(1)(B)(i), discussed later in this proposal.

Proposed amendments to §85.104(b) and (c) clarify the agency's procedure for providing delinquency notices to licensees that have failed to pay an annual assessment fee. The amendments specify that notice of delinquency is considered to be given when the OCCC sends the notice by e-mail to the address on file with the OCCC (if the pawnshop has provided an e-mail address), or by mail to the address on file with the OCCC as a master file address (if the pawnshop has not provided an e-mail address).

An amendment to §85.202(a)(1)(B)(i) removes the requirement to disclose community property interests and documentation regarding separate property status, and replaces it with a requirement to disclose the names of the spouses of principal parties if requested. The agency currently spends considerable time requesting information from license applicants to determine the status of spouses' property interests, and explaining these concepts to applicants. These amendments will help streamline the licensing process and reduce regulatory burden. The amendments will also make the application process simpler and more straightforward for applicants. In specific cases where the spouse is a principal party, the OCCC would be able to request additional information about the spouse under current §85.202(a)(1)(E)-(F).

Section 85.205 is proposed for repeal and replacement with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. Currently, §85.205 describes what constitutes a transfer of ownership requiring the filing of a transfer application. The proposed new rule largely maintains the requirements under the current rule, including the requirements for filing a license transfer application. In addition to the license transfer application allowed under the current rule, the new rule allows an alternative method for a transfer of ownership: a new license application on transfer of ownership. The new rule describes what the application must include, the timing requirements, and which parties are responsible at different points in the transfer process. Subsection (a) describes the purpose of the new section. Subsection (b) defines terms used throughout the section. In particular, subsection (b)(3) defines the phrase "transfer of ownership," listing different types of changes in acquisition or control of the licensed entity.

Subsection (c) specifies that a license may not be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §371.070. Subsection (d) provides a timing requirement, stating that a complete license

transfer application or new license application on transfer of ownership must be filed no later than 30 days after the transfer of ownership. Subsection (e) outlines the requirements for the license transfer application or new license application on transfer of ownership. These requirements include complete documentation of the transfer of ownership, as well as a complete license application for transferees that do not hold an existing pawnshop license. Subsection (e)(5) explains that the application may include a request for permission to operate.

Subsection (f) provides that the OCCC may issue a permission to operate to the transferee. A permission to operate is a temporary authorization from the OCCC allowing a transferee to operate while final approval is pending for an application. Subsection (g) specifies the transferee's authority to engage in business if the transferee has filed a complete application including a request for permission to operate. It also requires the transferee to immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. Subsection (h) describes the situations where the transferor is responsible for business activity at the licensed location, situations where the transferee is responsible, and situations where both parties are responsible.

In §85.206, concerning Processing of Application, conforming changes are proposed to cite the amended title of §85.205.

In §85.208, concerning Change in Form or Proportionate Ownership, conforming changes are proposed corresponding to proposed new §85.205. Throughout subsections (b) and (c), references have been added to the new license application on transfer of ownership. In addition, amendments are proposed in subsection (b) to clarify situations where a merger is a transfer of ownership. The amendments specify that if a licensee is a party to a merger that results in a new or different surviving entity other than the licensee, then the merger is a transfer of ownership, and the licensee must file a license transfer application or new license application. The amendments to subsection (b) are intended to clarify the current rule text and are consistent with the OCCC's current policy.

Proposed amendments to §85.209 clarify the circumstances in which a pawnshop applicant or licensee must notify the OCCC of changes to information in the original license application. The amendments specify that the requirement to provide updated information within 10 days applies before a license application is approved. Proposed new §85.209(c) provides that a licensee must notify the OCCC within 30 days if the information relates to the names of principal parties, criminal history, regulatory actions, or court judgments. Proposed new §85.209(d) specifies that each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, and that it is a best practice for licensees to regularly review contact information. Corresponding changes are proposed in §85.305 for pawnshop employee licensees.

A proposed amendment to §85.211(d) provides that a pawnshop license applicant must pay a fee to a party designated by the Texas Department of Public Safety (DPS) for processing fingerprints. This amendment conforms the rule to the method by which applicants currently provide fingerprint information through DPS's Fingerprint Applicant Services of Texas (FAST) program. A corresponding change is proposed in §85.306 for pawnshop employee licensees. A proposed amendment to current §85.211(g) (proposed §85.211(h)) adds a tagline for clarity.

A proposed amendment to §85.402(g) relates to the requirement for sequential numbering of electronic pawn tickets. The amendment removes the requirement that the OCCC approve methods of numbering the pawn ticket other than sequential numbering by the form supplier. Instead, the amendment provides that the pawnshop may sequentially number each pawn ticket in accordance with written policies that ensure appropriate management and controls. The amendment is intended to provide pawnshops with flexibility in numbering pawn tickets, while also ensuring that pawnshops properly account for all transactions. Another proposed amendment to §85.402(g) specifies that each of the three parts of the pawn ticket must be numbered with the same sequential number.

Proposed new §85.402(h) requires pawnshops to maintain documentation and disclosures required under the Department of Defense's Military Lending Act (MLA) Rule, 32 C.F.R. pt. 232. The Department of Defense's recently adopted amendments to the MLA Rule have a required compliance date of October 3, 2016. Under the amended MLA Rule, creditors will generally be required to provide model disclosures to covered military borrowers. 32 C.F.R. §232.6. The amended MLA Rule also specifies documentation that creditors can obtain in order to determine whether a consumer is a covered military borrower. 32 C.F.R. §232.5. Proposed new §85.402(h) specifies that licensees are required to maintain these documents and disclosures. These records must be maintained for two years from the date of the final entry, like the pawn ticket under current §85.402(b). The two-year requirement is based on Texas Finance Code, §371.152, which requires pawnshops to keep records of pawn transactions for two years from the date of the last recorded event. However, licensees may keep the documents for a longer period of time if they choose.

At the stakeholders meeting, one stakeholder asked whether proposed §85.402(h) would require a particular form for records about whether a consumer is a covered military borrower. The Department of Defense has created a database that lenders can consult to determine whether a consumer is a covered military borrower. Although the MLA Rule provides a safe harbor for lenders who use the database, it provides that a lender may apply its own method to determine whether a consumer is a covered military borrower. 32 C.F.R. §232.5(a). To clarify, proposed §85.402(h) would not require a particular form for records about whether a consumer is a covered military borrower, but it would require licensees to retain any records that they obtain to make that determination.

Several stakeholders raised other questions about how to comply with the MLA Rule. For example, stakeholders asked questions about how to calculate the military annual percentage rate for purposes of the MLA Rule's 36% maximum for loans made to covered military borrowers. Stakeholders also asked questions about obtaining a potential borrower's Social Security number in order to determine whether the borrower is a covered military borrower. These questions are generally outside the scope of the proposed rule amendments. However, the agency intends to publish an advisory bulletin with guidance on complying with the MLA Rule.

A proposed amendment to §85.405(a)(2) allows licensees to modify the current rule's model pawn ticket, to add the mandatory disclosure to a covered borrower under the MLA Rule, 32 C.F.R. §232.6. One precommenter suggested adding language to the proposed amendment to §85.405(a)(2), to specify that the required disclosure is not required to be on the pawn ticket. In re-

sponse to this precomment, the proposed amendment explains that a licensee may provide the disclosure on a separate form, as an alternative to including the disclosure on the pawn ticket.

Another precommenter suggested an additional permissible pawn ticket change related to the MLA Rule. The precommenter suggested adding the following sentence to proposed §85.405(a)(2)(B): "A licensee also may modify the pawn ticket to add an inquiry as to whether or not the borrower is a covered borrower." The agency believes that this modification could create confusion. The inquiry might be misunderstood by borrowers and licensees, who could believe that the borrower's statement creates a safe harbor from penalties under the MLA Rule. However, if a licensee creates a specific modification of the pawn ticket, it may submit the non-standard ticket to the OCCC under current §85.405(a)(2)(B) (proposed §85.405(a)(2)(C)), and the OCCC will review the inquiry in the context of the amended pawn ticket.

A proposed amendment to §85.405(a)(6)(A) explains that a handgun license is an acceptable form of identification, as provided by Texas Business and Commerce Code, §506.001(a). Under Section 506.001(a), a person may not deny the holder of a handgun license issued by the Texas Department of Public Safety access to goods, services, or facilities, because the holder presents a handgun license rather than a driver's license or other acceptable form of personal identification. The Texas Legislature enacted this provision in H.B. 2739 (2015). In the same legislative session, the Legislature enacted an open-carry law, H.B. 910 (2015), which replaced statutory references to the phrase "concealed handgun license" with the phrase "handgun license." The amendment to §85.405(a)(6)(A) is intended to clarify that a Texas handgun license is permissible for a borrower in a pawn transaction, in addition to other forms of photographic identification listed in Texas Finance Code, §371.174(b). The amendment conforms to the OCCC's advisory bulletin no. B15-3 for pawnshops, "Handgun License as a Valid Form of ID." At the stakeholders meeting, one stakeholder asked whether this amendment refers only to Texas handgun licenses, or includes handgun licenses from other states. In response to this question, the proposed text states that a "Texas handgun license issued under Texas Government Code, Chapter 411" is an acceptable form of identification, in order to clarify that this provision refers only to Texas handgun licenses issued by the Texas Department of Public Safety.

Proposed amendments to §85.413 relate to disclosures for consumer complaints about lost or damaged goods. A new figure is proposed to replace current figure 7 TAC §85.413(e)(6), which is a disclosure about the complaint process for lost or damaged goods. The new figure removes the current figure's statement that the pawnshop must provide a copy of the OCCC complaint form to the consumer, and replaces it with a statement explaining that the consumer may file a complaint through the OCCC's website. The new figure also includes updated contact information for the OCCC. Corresponding changes are proposed to §85.413(h). Currently, subsection (h) provides that the pawnshop must provide a copy of the OCCC complaint form upon request by a person attempting to redeem pledged goods, and figure 7 TAC §85.413(h) contains a copy of the OCCC's complaint form. The amendments to subsection (h) replace these provisions with a statement that a person attempting to redeem lost or damaged goods may file a written complaint with the OCCC, and a statement that the complaint form is available on the OCCC's website. These amendments are intended to ensure that consumers receive disclosures with up-to-date OCCC contact information, and that consumers are encouraged to file any complaints through the OCCC's website.

A proposed amendment to §85.420(b)(2) clarifies hold-period requirements for purchase transactions by pawnshops. Generally, pawnshops are required to hold purchased items for at least 20 days, under current §85.420(b)(1)(A). However, there is an exception to this general requirement in current §85.420(b)(2), which provides that a pawnshop and a law enforcement agency may agree to a hold period of seven days or less if the following conditions are met: (1) information is exchanged electronically, (2) the agreement does not conflict with any local ordinance, and (3) the agreement is submitted to the OCCC in writing. The proposed amendment to §85.420(b)(2) replaces "seven days or less" with "less than 20 days," to clarify that the agreement with the law enforcement agency can be for a period between 7 and 20 days (e.g., a 10-day hold period).

Proposed amendments to §85.423 relate to a notice to consumers about filing complaints with the OCCC. Under current §85.423, pawnshops are generally required to include this notice on the privacy notices that they provide to consumers, unless the pawnshop provides the privacy notice at the same time as the pawn ticket, and the pawn ticket includes a shorter OCCC notice with the agency's phone number. A proposed amendment to §85.423(b) amends the longer OCCC notice to include the OCCC's updated website and e-mail address. In accordance with instructions from the Texas Department of Information Resources, the OCCC has updated its website and e-mail address with the "texas.gov" extension: occc.texas.gov and consumer.complaints@occc.texas.gov. Other revisions have been made to the text of the OCCC notice to provide more clarity to consumers regarding the role of the OCCC in resolving complaints. Previously, this notice has been referenced in the rules as the "Complaints and inquiries notice." To continue the use of the agency's acronym and provide consistency with other rules, this consumer notice has been relabeled as the "OCCC Notice."

Proposed new §85.601 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of a pawnshop or pawnshop employee license. This section would replace current §85.601 and §85.602, which are proposed for repeal. Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose. Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the licensed occupation of a pawnbroker or pawnshop employee. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a licensee, including the reasons the crimes relate to the occupation, as provided by Texas Occupations Code, §53.025(a). Subsection (c)(2) contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a licensee, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or licensee unfit, as provided by Texas Occupations Code, §53.023. Subsection (d) describes the OCCC's authority to deny a license application if it does not find that the applicant is of good moral character, or if the applicant does not have the responsibility, character, and fitness to command the confidence of the public, as

provided by Texas Finance Code, §371.052(a) and §371.102(b). Subsection (e) explains that the OCCC will revoke a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b). Subsection (f) identifies other grounds for denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

At the stakeholders meeting, two stakeholders expressed concern about new §85.601's provisions regarding denial of a license application when the applicant provides incomplete or inaccurate information on the application. One stakeholder asked whether providing incomplete or inaccurate information would constitute the criminal offense of "filing a false government report" for purposes of proposed §85.601(c)(1)(F). To clarify, the list of directly related offenses in proposed §85.601(c)(1) refers to criminal offenses for which the applicant has been convicted. Providing incomplete or inaccurate information to the OCCC would not constitute an offense under §85.601(c)(1) unless the applicant is actually convicted of an offense in connection with the application. However, providing incomplete or inaccurate information might be a separate basis for denying the application, as specified in §85.601(f)(4). Another stakeholder asked whether the OCCC would continue its policy of providing applicants an opportunity to respond when the OCCC finds that the license application contains incomplete information regarding criminal history. After an applicant files an application, if the OCCC finds criminal history that relates to the occupation or the applicant's moral character, the agency's policy is to send a letter to the applicant providing an opportunity to explain the criminal history. The OCCC intends to continue this policy. However, applicants still have a responsibility to ensure that applications are complete and accurate at the time of submission, so that the OCCC can review applications in a timely and efficient manner. Submitting an incomplete or inaccurate license application reflects negatively on the applicant's responsibility, character, and fitness to hold a license.

Proposed amendments to §85.702(b) include technical corrections relating to the administrative penalty for violating the acceptance of goods provisions in §85.418(a). One amendment replaces "items" with "item," to clarify that a licensee commits a violation by accepting an item in violation of the acceptance of goods provisions. Another proposed amendment replaces "and" with "or," to clarify that a licensee is subject to a penalty if the licensee violates §85.418(a)(1) or (3).

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

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

Additional economic costs may be incurred in order for licensees to comply with this proposal. The agency anticipates that any costs resulting from the proposal would be minimal, and would involve providing the amended disclosure for lost or damaged goods under §85.413, and providing the amended complaint notice under §85.423.

The OCCC believes that the proposed amendments to §85.413 and §85.423 are necessary so that consumers and pawnshops will have the most current contact information for the OCCC, as well as readily available information for consumers explaining how they can file a complaint with the OCCC.

For pawnshops that are required to provide the amended disclosure for lost or damaged goods under §85.413, the anticipated costs would include the cost of producing new forms. The agency anticipates that this cost will be minimal for most licensees. The amended disclosure is required only in transactions where a good is lost or stolen and the consumer attempts or offers to redeem, extend, or renew the transaction, as provided by §85.413(e)(6). For most pawnshops, this will be a small number of transactions. In addition, the cost of providing the updated form will be partially offset by the proposed amendment to §85.413(h), which removes the requirement that the pawnshop provide a copy of the OCCC complaint form.

There may also be some costs for pawnshops that are required to provide the amended OCCC complaint notice under §85.423. Overall, the agency anticipates that any costs involved to comply with proposed amendments to §85.423 will be minimal for most licensees. There are several methods by which licensees can comply with amended §85.423. If a licensee provides a privacy notice that includes the current OCCC notice, then it may replace the current OCCC notice with the amended notice. Under this method, the anticipated costs would include the costs associated with producing new forms, and costs attributable to the loss of obsolete forms inventory. The OCCC anticipates that these costs will not exceed $0.10 per form. Alternatively, if a licensee provides the privacy notice at the same time as the pawn ticket, and the pawn ticket includes the shorter OCCC notice with the agency's phone number, then the licensee may omit the longer OCCC notice from the privacy notice, as provided by §85.423(b)(4). Under this method, there should not be any costs of complying with amended §85.423, because the licensee is not required to use the amended notice.

In order to obtain more complete information, the agency would like to invite comments from licensees on any costs involved to comply with the proposed amendments to §85.413 and §85.423, as well as any alternatives to lessen those costs while achieving the purposes of the proposed amendments. The agency is considering a delayed implementation date for use of the revised forms, which will help minimize potential costs and allow use of current forms inventory. In particular, the agency is considering a possible implementation date of March 1, 2017, for the proposed amendments to §85.413 and §85.423, and invites comments on this issue.

Other than the proposed amendments to new §85.413 and §85.423, there is no anticipated cost to persons who are required to comply with the rule changes as proposed. The Department of Defense's MLA Rule requires pawnshops to provide the disclosures described in the proposed amendments to §85.402(h) and §85.405(a)(2). In addition, Texas Finance Code, §371.152 requires pawnshops to maintain transaction records for two years from the date of the last recorded event. Any costs of complying with the proposed amendments to §85.402(h) and §85.405(a)(2) are imposed by state and federal law, and are not imposed by the proposed amendments.

The agency is not aware of any adverse economic effect on small businesses as compared to the effect on large businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the agency invites comments from interested stakeholders and the public on any economic impact on small businesses, as well as any alternative methods of achieving the purpose of this proposal if the economic effect is adverse to small businesses. Aside from the previously outlined costs to provide the amended disclosure for lost or damaged goods under §85.413, and the costs of providing the amended complaint notice under §85.423, there will be no other effect on individuals required to comply with the rule changes as proposed.

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

DIVISION 1. GENERAL PROVISIONS

7 TAC §85.102, §85.104

The rule changes are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act. The proposed amendment to §85.420 is proposed under Texas Finance Code, §371.181(b), which provides that the commission shall adopt rules allowing a pawnshop to assist law enforcement agencies in locating and recovering stolen property. The proposed amendments to §85.423 are proposed under Texas Finance Code, §11.307(b), which provides that the commission shall adopt rules requiring regulated entities to include complaint notices on legally required privacy notices.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 11 and 371.

§85.102. Definitions.

Words and terms used in this subchapter that are defined in Texas Finance Code, Chapter 371, have the same meanings as defined in that chapter unless the context clearly indicates otherwise. The following words and terms, when used in this subchapter, will have the following meanings unless the context clearly indicates otherwise.

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

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

(10) [~~(9)~~] Pawnbroker--A person who has an ownership interest in a pawnshop as shown in an application for a pawnshop license filed with the OCCC. When general duties and prohibitions are described, pawnbroker also includes a pawnshop employee unless the context indicates otherwise.

(11) [~~(10)~~] Pledged goods--Tangible personal property held by a pawnbroker as collateral for a pawn loan and that has not become the property of the pawnbroker by a taking into inventory due to non-payment of the loan.

(12) [~~(11)~~] Principal party--An adult individual with a substantial relationship to the proposed business of the applicant. The following individuals are principal parties:

(A) a proprietor [~~proprietors, including spouses with community property interest~~];

(B) general partners;

(C) officers of privately held corporations, including the chief executive officer or president, the chief operating officer or vice president of operations, the chief financial officer or treasurer, and those with substantial responsibility for lending operations or compliance with the Texas Pawnshop Act;

(D) directors of privately held corporations;

(E) individuals associated with publicly held corporations designated by the applicant as follows:

(i) officers as provided by subparagraph (C) of this paragraph (as if the corporation was privately held); or

(ii) three officers or similar employees with significant involvement in the corporation's activities governed by the Texas Pawnshop Act. One of the persons designated must be responsible for assembling and providing the information required on behalf of the applicant and must sign the application for the applicant;

(F) voting members of a limited liability corporation;

(G) shareholders owning 5% or more of the outstanding voting stock;

(H) trustees and executors; and

(I) individuals designated as a principal party where necessary to fairly assess the applicant's financial responsibility, experience, character, general fitness, and sufficiency to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly as required by the commissioner.

§85.104. Renewal Dates of Licenses.

(a) (No change.)

(b) Notice of delinquency. If a pawnshop or pawnshop employee does not pay the annual fees by June 1, a written notice of delinquency will be sent by June 15. [~~The notice of delinquency will be delivered as follows:~~]

(1) If a pawnshop has provided a master file e-mail address to the OCCC, then the OCCC will:

(A) send any notice of delinquency for the pawnshop to the master file e-mail address on file for the pawnshop; and

(B) send any notice of delinquency for an employee of the pawnshop to the employee through the master file e-mail address on file for the pawnshop.

(2) If a pawnshop has not provided a master file e-mail address to the OCCC, then the OCCC will:

(A) send any notice of delinquency for the pawnshop by mail to the master file address on file for the pawnshop; and

(B) send any notice of delinquency for an employee of the pawnshop to the employee by mail through the master file address on file for the pawnshop.

[~~(1) for pawnshops, the notice will be sent to the address of the corporate office on file for the pawnshop;~~]

[~~(2) for pawnshop employees, the notice will be sent to the employee license holder through the corporate office on file for the licensed entity who employs the pawnshop employee.~~]

(c) Expiration of license. A pawnshop license and a pawnshop employee license will expire on the later of June 30 of each year or the 16th day after the written notice of delinquency is given unless the annual fees for the following term have been paid. To be considered timely paid, the fees must be postmarked or submitted by June 30. June 30 is the end of the license term for each year. For purposes of this subsection and §85.210(d) of this title (relating to License Status), notice of delinquency is given when the OCCC sends the delinquency notice by the method described in subsection (b) of this section.

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DIVISION 2. PAWNSHOP LICENSE

7 TAC §§85.202, 85.205, 85.206, 85.208, 85.209, 85.211

The rule changes are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 11 and 371.

§85.202. Filing of New Application.

(a) An application for issuance of a new pawnshop license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

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

(A) (No change.)

(B) Disclosure of Owners and Principal Parties.

(i) Proprietorships. The applicant must disclose the name of any individual holding an ownership interest in the business and the name of any individual [~~who owns and who is~~] responsible for operating the business. If requested, the applicant must also disclose the names of the spouses of these individuals. [~~All community property interest must also be disclosed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming separate property status must be provided.~~]

(ii) - *(vii)* (No change.)

(C) - (J) (No change.)

(2) (No change.)

(b) - (c) (No change.)

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

(a) Purpose. This section describes the license application requirements when a licensed entity transfers its license or ownership of the entity. If a transfer of ownership occurs, the transferee must submit either a license transfer application or a new license application on transfer of ownership under this section.

(b) Definitions. The following words and terms, when used in this section, will have the following meanings:

(1) License transfer--A sale, assignment, or transfer of a pawnshop license.

(2) Permission to operate--A temporary authorization from the OCCC, allowing a transferee to operate under a transferor's license while final approval is pending for a license transfer application or a new license application on transfer of ownership.

(3) Transfer of ownership--Any purchase or acquisition of control of a licensed entity (including acquisition by gift, devise, or descent), or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs. The term does not include a change in proportionate ownership as defined in §85.208 of this title (relating to Change in Form or Proportionate Ownership) or a relocation of pawn transactions from one licensed location to another licensed location, as described by §85.203(g) of this title (relating to Relocation). Transfer of ownership includes the following:

(A) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

(B) any purchase or acquisition of control of a licensed general partnership, in which a partner relinquishes that owner's entire interest or a new general partner obtains an ownership interest;

(C) any change in ownership of a licensed limited partnership interest in which:

(i) a limited partner owning 5% or more relinquishes that owner's entire interest;

(ii) a new limited partner obtains an ownership interest of 5% or more;

(iii) a general partner relinquishes that owner's entire interest; or

(iv) a new general partner obtains an ownership interest (transfer of ownership occurs regardless of the percentage of ownership exchanged of the general partner);

(D) any change in ownership of a licensed corporation in which:

(i) a new stockholder obtains 5% or more of the outstanding voting stock in a privately held corporation;

(ii) an existing stockholder owning 5% or more relinquishes that owner's entire interest in a privately held corporation;

(iii) any purchase or acquisition of control of 51% or more of a company that is the parent or controlling stockholder of a licensed privately held corporation occurs; or

(iv) any stock ownership changes that result in a change of control (i.e., 51% or more) for a licensed publicly held corporation occur;

(E) any change in the membership interest of a licensed limited liability company:

(i) in which a new member obtains an ownership interest of 5% or more;

(ii) in which an existing member owning 5% or more relinquishes that member's entire interest; or

(iii) in which a purchase or acquisition of control of 51% or more of any company that is the parent or controlling member of a licensed limited liability company occurs;

(F) any transfer of a substantial portion of the assets of a licensed entity under which a new entity controls business at a licensed location; and

(G) any other purchase or acquisition of control of a licensed entity, or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs.

(4) Transferee--The entity that controls business at a licensed location after a transfer of ownership.

(5) Transferor--The licensed entity that controls business at a licensed location before a transfer of ownership.

(c) License transfer approval. No pawnshop license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §371.070. A license transfer is approved when the OCCC issues its final written approval of a license transfer application.

(d) Timing. No later than 30 days after the event of a transfer of ownership, the transferee must file a complete license transfer application or new license application on transfer of ownership in accordance with subsection (e). A transferee may file an application before this date.

(e) Application requirements.

(1) Generally. This subsection describes the application requirements for a license transfer application or a new license application on transfer of ownership. A transferee must submit the application in a format prescribed by the OCCC. The OCCC may accept prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. The transferee must pay appropriate fees in connection with the application.

(2) Documentation of transfer of ownership. The application must include documentation evidencing the transfer of ownership. The documentation should include one or more of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the purchase agreement or other evidence relating to the acquisition of the equity interest of a licensee that has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(3) Application information for new licensee. If the transferee does not hold a pawnshop license at the time of the application, then the application must include the information required for new license applications under §85.202 of this title (relating to Filing of New Application). The instructions in §85.202 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a pawnshop license at the time of the application, then the application must include amendments to the transferee's original license application describing the information that is unique to the transfer event, including the Application for Pawnshop License, Application Questionnaire, Disclosure of Owners and Principal Parties, a new Financial Statement, and a lease agreement or proof of ownership, as provided in §85.202 of this title. The instructions in §85.202 of this title apply to these filings. Other information required by §85.202 of this title need not be filed if the information on file with the OCCC is current and valid.

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

(A) a statement by the transferor granting authority to the transferee to operate under the transferor's license while final approval of the application is pending;

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

(C) if the application is a new license application on transfer of ownership, an acknowledgement that the transferor will immediately surrender or inactivate its license if the OCCC approves the application.

(f) Permission to operate. If the application described by subsection (e) includes a request for permission to operate and all required information, and the transferee has paid all fees required for the application, then the OCCC may issue a permission to operate to the transferee. A request for permission to operate may be denied even if the application contains all of the required information. The denial of a request for permission to operate does not create a right to a hearing. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license. Two companies may not simultaneously operate under a single license. A permission to operate terminates if the OCCC denies an application described by subsection (e).

(g) Transferee's authority to engage in business. If a transferee has filed a complete application including a request for permission to operate as described by subsection (e), by the deadline described by subsection (d), then the transferee may engage in business as a pawnshop. However, the transferee must immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. If the OCCC denies the application, then the transferee has a right to a hearing on the denial, as provided by §85.206(g) of this title (relating to Processing of Application).

(h) Responsibility.

(1) Responsibility of transferor. Before the transferee begins performing pawnshop activity under a license, the transferor is responsible to any consumer and to the OCCC for all pawnshop activity performed under the license.

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

and to the OCCC for activity performed under the license during this period.

(3) Responsibility of transferee. After the OCCC's final approval of an application described by subsection (e), the transferee is responsible to any consumer and to the OCCC for all pawnshop activity performed under the license. The transferee is responsible for any transactions that it purchases from the transferor. In addition, if the transferee receives a license transfer, then the transferee's responsibility includes all activity performed under the license before the license transfer.

§85.206. Processing of Application.

(a) (No change.)

(b) Application acceptance. An application will not be accepted until it contains the appropriate fees and substantially all of the items required in accordance with §85.202 of this title (relating to Filing of New Application), §85.203 of this title (relating to Relocation), or §85.205 of this title (relating to Transfer of License; New License Application on Transfer of Ownership) as appropriate.

(c) - (h) (No change.)

§85.208. Change in Form or Proportionate Ownership.

(a) (No change.)

(b) Merger.

(1) If a licensee is a party to a merger that results in a new or different surviving entity other than the licensee, then the merger is a transfer of ownership, and the licensee must file a license transfer application or a new license application on transfer of ownership [~~A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a transfer application~~] pursuant to §85.205 of this title (relating to Transfer of License; New License Application on Transfer of Ownership).

(2) If a licensee's parent entity is a party to a merger that [~~If the merger of the parent entity of a licensee~~] leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the OCCC in writing of the change within 14 calendar days by filing a license amendment and paying the required fees as provided in §85.211 of this title.

(3) Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 14 calendar days in accordance with the OCCC's instructions.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection or the requirements of §85.205(b)(3)(D) or (E) [~~§85.205(a)(4) or (5)~~] of this title, does not require a transfer. Such a proportionate change in ownership does not require the filing of a license transfer application or a new license application on transfer of ownership, but does require written notification to the OCCC when the cumulative ownership change to a single entity or individual amounts to 5% or greater. This subsection does not apply to a publicly held corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly held parent corporation, although a license transfer application or a new license application on transfer of ownership may be required under §85.205 of this title.

(2) (No change.)

(d) (No change.)

§85.209. Updating Application and Contact Information [~~Amendments to Pending Application~~].

(a) Supplemental information. Upon request, each applicant must provide information supplemental to that contained in the applicant's original application documents.

(b) Applicant's updates to license application information. Before a license application is approved, an applicant must report to the OCCC any [~~Any action, fact, or~~] information that would require a materially different answer than that given in the original license application and that [~~which~~] relates to the qualifications for license [~~must be reported to the commissioner~~] within 10 business days after the person has knowledge of the [~~action, fact, or~~] information.

(c) Licensee's updates to license application information. A licensee must report to the OCCC any information that would require a different answer than that given in the original license application within 30 calendar days after the licensee has knowledge of the information, if the information relates to any of the following:

(1) the names of principal parties;

(2) criminal history;

(3) actions by regulatory agencies; or

(4) court judgments.

(d) Contact information. Each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, including all mailing addresses, all phone numbers, and all e-mail addresses. It is a best practice for licensees to regularly review contact information on file with the OCCC to ensure that it is current and correct.

§85.211. Fees.

(a) - (c) (No change.)

(d) Fingerprint processing. An applicant must pay a fee to a party designated by the Texas Department of Public Safety for processing fingerprints. The Texas Department of Public Safety and the designated party determine the amount of the fee and whether it is refundable.

(e) [~~(d)~~] Annual renewal and assessment fees.

(1) An annual assessment fee is required for each licensed pawnshop of:

(A) A fee not to exceed $625; and

(B) A volume fee not to exceed $0.05 per each $1,000 loaned as calculated from the most recent annual report as described in §85.502 of this title (relating to Annual Report).

(2) The maximum annual assessment for each active license will be no more than $1,200.

(3) The annual assessment for each inactive license will not exceed $250.

(4) A pawnshop license will expire on the later of June 30 or the 16th day after the written notice of delinquency is given unless the annual assessment fees have been paid.

(5) Upon approval of a new pawnshop license pursuant to §85.206 of this title (relating to Processing of Application), the first year's fixed fee will be $625.

(f) [~~(e)~~] License amendments. A fee of $25 must be paid each time a licensee amends a license by inactivating a license, activating an inactive license in a county with a population of less than 250,000,

changing the assumed name of the licensee, changing the organizational form or proportionate ownership that results in the exact same individuals or entities still owning the business and does not require a transfer under §85.205(b)(3)(D) or (E) [~~§85.205(a)(4) or (5)~~] of this title (relating to Transfer of License; New License Application on Transfer of Ownership) or §85.208(c)(2) of this title (relating to Change in Form or Proportionate Ownership), providing notification of a new parent entity, or relocating an office in a county with a population of less than 250,000. An activation or relocation in a county with a population of 250,000 or more will require a $250 investigation fee and other fees as may be required of a new license applicant.

(g) [~~(f)~~] License duplicates sent by mail. The fee for a license duplicate to be sent by mail is $10.

(h) [~~(g)~~] Notice of application. Each applicant for a new or relocated license will pay $1.00 to the commissioner for each notice of application that is required to be mailed.

(i) [~~(h)~~] Costs of hearings. The commissioner or administrative law judge may assess the costs of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §85.206(g) of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter, and agency staff representing the OCCC at a hearing. If it is determined that a protest is frivolous or without basis, then the cost associated with the hearing may be assessed solely to the protesting party.

(j) [~~(i)~~] Excess payment of fees. Any excess payment of fees received by the commissioner may be held to offset anticipated fees that may be owed by the licensee or applicant.

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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7 TAC §85.205

The repeal is proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act.

The statutory provisions affected by the proposed repeal are contained in Texas Finance Code, Chapters 11 and 371.

§85.205. Transfer of License.

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

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DIVISION 3. PAWNSHOP EMPLOYEE LICENSE

7 TAC §85.305, §85.306

The rule changes are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 11 and 371.

§85.305. Updating Application and Contact Information [~~Amendments to Pending Application~~].

(a) Supplemental information. Upon request, each applicant must provide information supplemental to that contained in the applicant's original application documents.

(b) Applicant's updates to license application information. Before a license application is approved, an applicant must report to the OCCC any [~~Any action, fact, or~~] information that would require a materially different answer than that given in the original license application and that [~~which~~] relates to the qualifications for license [~~must be reported to the commissioner~~] within 10 business days after the person has knowledge of the [~~action, fact, or~~] information.

(c) Licensee's updates to license application information. A licensee must report to the OCCC any information that would require a different answer than that given in the original license application within 30 calendar days after the licensee has knowledge of the information, if the information relates to any of the following:

(1) the licensee's name;

(2) criminal history;

(3) actions by regulatory agencies; or

(4) court judgments.

(d) Contact information. Each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, including all mailing addresses, all phone numbers, and all e-mail addresses. It is a best practice for licensees to regularly review contact information on file with the OCCC to ensure that it is current and correct.

§85.306. Fees.

(a) (No change.)

(b) Fingerprint processing. An applicant must pay a fee to a party designated by the Texas Department of Public Safety for processing fingerprints. The Texas Department of Public Safety and the designated party determine the amount of the fee and whether it is refundable.

(c) [~~(b)~~] Annual renewal fees. The annual renewal fee for a pawnshop employee license is $15. The fee must be paid by June 30 each year. A pawnshop employee license will expire on the later of June 30 or the 16th day after the written notice of delinquency is given unless the annual renewal fee has been paid.

(d) [~~(c)~~] License amendments. An employee seeking to amend a license by changing the name of the licensee or relocating to another pawnshop is not required to pay an additional fee. Any relocation requires notice to the OCCC in the format prescribed by the commissioner.

(e) [~~(d)~~] License duplicates sent by mail. The fee for a license duplicate to be sent by mail is $10.

(f) [~~(e)~~] Cost of hearings. The commissioner or the administrative law judge may assess the cost of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §85.304(e) of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter, and agency staff representing the OCCC at a hearing.

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DIVISION 4. OPERATION OF PAWNSHOPS

7 TAC §§85.402, 85.405, 85.413, 85.420, 85.423

The rule changes are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act. The proposed amendment to §85.420 is proposed under Texas Finance Code, §371.181(b), which provides that the commission shall adopt rules allowing a pawnshop to assist law enforcement agencies in locating and recovering stolen property. The proposed amendments to §85.423 are proposed under Texas Finance Code, §11.307(b), which provides that the commission shall adopt rules requiring regulated entities to include complaint notices on legally required privacy notices.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 11 and 371.

§85.402. Recordkeeping.

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

(g) Requirements of electronic recordkeeping system. In an electronic recordkeeping system, the pawn ticket must be a three-part form. Entries made to the top copy of the pawn ticket must be legible and simultaneously reproduced on the remaining parts. The form must provide a perforated stub to be utilized in labeling and identifying pledged goods. Each part of the pawn ticket must be numbered sequentially by the supplier of the pawn ticket form. As an alternative to sequential numbering by the supplier, the licensee may sequentially number each pawn ticket in accordance with written policies and procedures (maintained by the licensee) that ensure the integrity of the numbering system through appropriate management and accounting controls. [~~unless the commissioner approves, in writing, an alternative method of numbering the pawn ticket.~~] The stub and the three parts of the pawn ticket must be numbered simultaneously with the same sequential number. The second part of the pawn ticket (law enforcement copy) may be omitted or properly destroyed (i.e., pawn ticket is completely shredded or incinerated) if the pawn and purchase ticket information is exchanged electronically, directly or indirectly, with the primary law enforcement agency in the jurisdiction that the pawnshop is located.

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

(h) Military Lending Act records.

(1) A licensee must maintain any record that the licensee obtains under the Department of Defense's Military Lending Act Rule, 32 C.F.R. §232.5, regarding whether a consumer is a covered borrower. The licensee must maintain the record for at least two years after the last recorded event, as provided by subsection (b).

(2) A licensee must maintain any mandatory disclosure to a covered borrower under the Military Lending Act Rule, 32 C.F.R. §232.6. The licensee must maintain the disclosure for at least two years after the last recorded event, as provided by subsection (b).

§85.405. Pawn Transaction.

(a) Pawn Ticket.

(1) (No change.)

(2) Modifications of pawn ticket.

(A) (No change.)

(B) Military Lending Act disclosure. A licensee may modify the pawn ticket to add the mandatory disclosure to a covered borrower under the Department of Defense's Military Lending Act Rule, 32 C.F.R. §232.6. Alternatively, a licensee may provide the mandatory disclosure on a separate form.

(C) [~~(B)~~] Other changes. Any other changes to the prescribed forms must be approved, in writing, in advance, by the commissioner.

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

(6) Identification of pledgor or seller.

(A) Proper identification. The pledgor must present a proper form of identification at the time of the pawn transaction. For purposes of this paragraph, any form of identification found in Texas Finance Code, §371.174(b) that is either current or has not been expired for more than one year will be considered acceptable. A Texas handgun license issued under Texas Government Code, Chapter 411 is an acceptable form of identification, as provided by Texas Business and Commerce Code, §506.001(a). A pawnbroker is not required to take a photograph of any pledgor or seller for purposes of identification.

(B) (No change.)

(7) (No change.)

(b) - (h) (No change.)

§85.413. Lost or Damaged Goods.

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

(e) Communications with pledgors.

(1) - (5) (No change.)

(6) When an attempt or offer to redeem, renew, or extend a pawn transaction is made and it is known or learned that pledged goods have been lost or damaged, the pledgor must accurately be informed of the facts of the situation, the status of the pledged goods, the pawnbroker's responsibility under Texas Finance Code, Chapter 371, and the

pledgor's rights under paragraph (5) of this subsection. A model disclosure is provided in the following example.
Figure: 7 TAC §85.413(e)(6)

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

(h) Replacement complaints. A person attempting to redeem lost or damaged goods may file a written complaint with the OCCC. [~~Upon request by the person attempting to redeem pledged goods, a complaint form issued by the commissioner must be provided.~~] The complaint form is available on the OCCC's website [~~provided in the following figure~~]. The OCCC will begin review of a complaint for lost or damaged items upon receipt of the written complaint.
[~~Figure: 7 TAC §85.413(h)~~]

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

§85.420. Purchase Transactions.

(a) (No change.)

(b) Hold period.

(1) (No change.)

(2) A reduced hold period of less than 20 days [~~seven days or less~~] may be agreed upon by the pawnbroker and the law enforcement agency if the pawn and purchase ticket information is exchanged electronically. The agreement for a reduced hold period must not conflict with any local ordinance and must be submitted to the commissioner in writing by and through the chief local law enforcement officer for the jurisdiction.

§85.423. OCCC [~~Complaints and Inquiries~~] Notice.

(a) (No change.)

(b) Required notice.

(1) The following notice must be given to let consumers know how to file complaints: "For questions or complaints about this pawn loan, contact (insert name of pawnshop) at (insert pawnshop's phone number and, at pawnshop's option, one or more of the following: mailing address, fax number, website, e-mail address). The pawnshop is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the pawnshop, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. Email: consumer.complaints@occc.texas.gov." [~~"The (your name) is (licensed and examined or registered) under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (your name) should contact: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207. Telephone No.: 800/538-1579. Fax No.: 512/936-7610. E-mail: consumer.complaints@occc.state.tx.us. Website: www.occc.state.tx.us."~~]

(2) - (4) (No change.)

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

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

TRD-201604278
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: October 2, 2016
For further information, please call: (512) 936-7621

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DIVISION 6. LICENSE REVOCATION, SUSPENSION, AND SURRENDER

7 TAC §85.601, §85.602

The repeals are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act.

The statutory provisions affected by the proposed repeals are contained in Texas Finance Code, Chapters 11 and 371.

§85.601. Effect of Criminal History Information on Applicants and Licensees.
§85.602. Crimes Directly Related to Fitness for License; Mitigating Factors.
The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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

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7 TAC §85.601

The rule changes are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 11 and 371.

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

(a) Criminal history record information. After an applicant for a pawnshop license or pawnshop employee license submits a complete license application, including all required fingerprints, and pays the fees required by §85.211 of this title (relating to Fees) or §85.306 of this title (relating to Fees), the OCCC will investigate the applicant and any principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the

belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and any principal parties;

(2) reliable documents or testimony necessary to make a determination under subsection (c), including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

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

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a pawnshop license or pawnshop employee license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 371, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Being a pawnbroker or pawnshop employee involves or may involve representations to borrowers and sellers, receiving money from borrowers, collecting due amounts in a legal manner, maintenance of accounts to make loans and replace lost or damaged goods, and compliance with reporting requirements to governmental agencies relating to certain transactions including firearms. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft (including receiving or concealing stolen property);

(B) assault;

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

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

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

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

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

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

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; and

(F) evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation from one or more of the following:

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

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

(iii) other persons in contact with the convicted person.

(d) Crimes related to moral character and fitness.

(1) The OCCC may deny a pawnshop license application if the applicant is not of good moral character, if the applicant does not show that the business will be operated lawfully and fairly, or if the applicant does not show that the applicant or the applicant's owners have the financial responsibility, experience, character, and general fitness to command the confidence of the public, as provided by Texas Finance Code, §371.052(a).

(2) The OCCC may deny a pawnshop employee license if the applicant is not of good moral character and good business repute, or if the applicant does not possess the character and general fitness necessary to warrant the belief that the individual will operate the business lawfully and fairly, as provided by Texas Finance Code, §371.102(b).

(3) In conducting its review of moral character and fitness, the OCCC will consider the criminal history of the applicant and any principal parties. The OCCC considers the offenses described by subsections (c)(1) and (f)(2) of this section to be crimes involving moral character. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's moral character. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, how-

ever, consider the factors identified in subsection (c)(2) - (3) of this section in its review of moral character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

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

(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42.12, §3g (effective through December 31, 2016), art. 42A.054 (effective January 1, 2017), or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3) - (4);

(3) a conviction of a pawnshop licensee or a principal party for an offense directly related to the licensed occupation, as provided by Texas Finance Code, §371.251(a)(6);

(4) errors or incomplete information in the license application;

(5) a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §371.251(a)(3) and §371.255(2);

(6) a finding by the OCCC that the financial responsibility, experience, character, or general fitness of a pawnshop licensee or a principal party do not command the confidence of the public or warrant the belief that the business will be operated lawfully, fairly, and within the purposes of this chapter, as provided by Texas Finance Code, §371.251(a)(7); and

(7) a finding by the OCCC that the moral character, business repute, and general fitness of a pawnshop employee license holder do not warrant belief that the license holder will operate the business lawfully and fairly, as provided by Texas Finance Code, §371.255(3).

The agency certifies that legal counsel has reviewed the 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 August 19, 2016.

TRD-201604279
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: October 2, 2016
For further information, please call: (512) 936-7621

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DIVISION 7. ENFORCEMENT; PENALTIES

7 TAC §85.702

The rule changes are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 grants the Finance Commission the authority to adopt rules to enforce the Texas Pawnshop Act.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 11 and 371.

§85.702. Accepting Prohibited Merchandise.

(a) (No change.)

(b) Individual violations. A pawnbroker or a pawnshop employee found to have taken an item [~~items~~] in violation of §85.418(a)(1) or [~~and~~] (3) of this title (relating to Acceptance of Goods), is subject to the following penalty:

(1) - (2) (No change.)

(c) - (d) (No change.)

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

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

TRD-201604280
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: October 2, 2016
For further information, please call: (512) 936-7621

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

SUBCHAPTER C. RATE-MAKING APPEALS

16 TAC §24.41

The Public Utility Commission of Texas (commission) proposes an amendment to §24.41, relating to Appeal of Rate-making Decision, Pursuant to Texas Water Code §13.043.

The proposed amendment will allow the commission's substantive rule relating to water and sewer rate-making decisions to conform to §4 Senate Bill 1148 (SB 1148) of the 84th Legislature, Regular Session, which amended chapter 13 of the Texas Water Code Annotated (West 2008 & Supp. 2016) (TWC). The proposed amendment will add provisions to §24.41 relating to a person's access to a municipal water/sewer utility's ratepayer count and ratepayer names and addresses in order to implement §4 of SB 1148. Additionally, the proposed amendment makes minor changes to clarify the filing procedures for petitions filed pursuant to TWC §13.043(c). Project Number 45113 is assigned to this proceeding.

Tammy Benter, Division Director of the commission's Water Utility Regulation Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state government and *de minimis* or no fiscal implications for local governments as a result of enforcing or administering the section.

Ms. Benter has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be in compliance with SB 1148. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Benter has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Monday, October 17, 2016. The request for a public hearing must be received by Monday, October 3, 2016.

Comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by Monday, October 3, 2016. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted by Wednesday, October 12, 2016. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendment. The commission will consider the costs and benefits in deciding whether to amend the identified section. All comments should refer to Project Number 45113.

The amendment is proposed under TWC §13.043, which provides the commission with appellate jurisdiction over water/sewer rate-making decisions and SB 1148.

Cross Reference to Statutes: TWC §13.043 and SB 1148.

§24.41. Appeal of Rate-making Decision, Pursuant to the Texas Water Code §13.043.

(a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission. This subsection does not apply to a municipally owned utility, but does include privately owned utilities operating within the corporate limits of a municipality. An appeal under this subsection may be initiated by filing with the commission a petition signed by a responsible official of the party to the rate proceeding or its authorized representative and by serving a copy of the petition on all parties to the original proceeding. The petition should be filed in accordance with Chapter 22 of this title (relating to Procedural Rules). The appeal must be initiated within 90 days after the date of notice of the final decision of the governing body, or within 30 days if the appeal relates to the rates of a Class A utility, by filing a petition for review with the commission and by serving a copy of the petition [~~copies~~] on all parties to the original rate proceeding.

(b) (No change.)

(c) Retail ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water utility, [~~or~~] sewer utility, or drainage rates to the commission:

(1) - (2) (No change.)

(3) a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality;

(A) A municipally owned utility shall:

(i) disclose to any person, on request, the number of ratepayer(s) who reside outside the corporate limits of the municipality; and

(ii) subject to subparagraph (B) of this paragraph, provide to any person, on request, a list of the names and addresses of the ratepayers who reside outside the corporate limits of the municipality.

(B) If a ratepayer has requested that a municipally owned utility keep the ratepayer's personal information confidential under Tex. Util. Code Ann. §182.052, the municipally owned utility may not disclose the address of the ratepayer under subparagraph (A)(ii) of this paragraph to any person.

(C) In complying with this subsection, the municipally owned utility:

(i) may not charge a fee for disclosing the information under subparagraph (A)(i) of this paragraph;

(ii) shall provide information requested under subparagraph (A)(i) of this paragraph by telephone or in writing as preferred by the person making the request; and

(iii) may charge a reasonable fee for providing information under subparagraph (A)(ii) of this paragraph.

(4) - (6) (No change.)

(d) - (f) (No change.)

(g) An applicant requesting service from an affected county or a water supply or sewer service corporation may appeal to the commission a decision of the county or water supply or sewer service corporation affecting the amount to be paid to obtain service other than the regular membership or tap fees. An appeal under TWC §13.043(g) must be initiated within 90 days after written notice of the amount to be paid to obtain service is provided to the service applicant or member of the decision of an affected county or water supply or sewer service corporation affecting the amount to be paid to obtain service as requested in the applicant's initial request for that service.

(1) If the commission finds the amount charged to be clearly unreasonable, it shall establish the fee to be paid and shall establish conditions for the applicant to pay any amount(s) [~~amounts~~] due to the affected county or water supply or sewer service corporation. Unless otherwise ordered, any portion of the charges paid by the applicant that exceed the amount(s) [~~amount~~] determined in the commission's order shall be refunded [~~repaid~~] to the applicant within 30 days of the date the commission issues the order, at an interest rate determined by the commission [~~with interest at a rate determined by the commission within 30 days of the signing of the order~~].

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

(h) - (j) (No change.)

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

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

TRD-201604294

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 2, 2016
For further information, please call: (512) 936-7293

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TITLE 19. EDUCATION

PART 8. WINDHAM SCHOOL DISTRICT

CHAPTER 300. GENERAL PROVISIONS

19 TAC §300.2

The Windham School District Board of Trustees proposes amendments to §300.2 concerning Windham School District Board of Trustees Operating Procedures. The amendments are proposed in conjunction with a proposed rule review of §300.2 as published in other sections of the *Texas Register.* The proposed amendments are necessary to provide clarification of Open Meetings requirements and update formatting.

Paul D. Brown, Chief Financial Officer for the Windham School District, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. Brown has also determined that for each year of the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to provide clarification of Open Meetings requirements.

Comments should be directed to Michael Mondville, General Counsel, Windham School District, P.O. Box 40, Huntsville, Texas 77342, Michael.Mondville@wsdtx.org. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013.

Cross Reference to Statutes: None.

§300.2. Windham School District Board of Trustees Operating Procedures.

(a) General. This section establishes operating procedures for the Windham School District (WSD) Board of Trustees (board) to conduct business.

(b) Organization.

(1) The Texas Board of Criminal Justice (TBCJ) serves as the WSD board, pursuant to Chapter 19, Texas Education Code. The TBCJ is a nine member body appointed by the governor to oversee the Texas Department of Criminal Justice (TDCJ). The TBCJ chairman, who serves as the board chairman, is designated by and serves at the request of the governor pursuant to Texas Government Code §492.005.

(2) The board operates utilizing the same officers and structure established by the TBCJ.

(3) The chairman, on behalf of the board, is empowered to appoint members of the board to be members or chairs of standing or limited-purpose committees, or to serve as liaisons to the WSD on particular subject areas within the WSD's jurisdiction. The purpose of a committee, if appointed, is to have certain members become particularly familiar with various issues and to facilitate discussion and recommend potential strategies as appropriate.

(c) Meetings.

(1) The board shall hold its regular meetings in conjunction with those of the TBCJ. [~~Special called meetings of the board can be held at the discretion of the board chairman.~~]

(2) The TBCJ and the board shall attempt to hold a regular meeting [~~meetings~~] at least every other month of the year, but shall meet at least once each quarter of the calendar year pursuant to Texas Government Code §492.006. Special called meetings can be held at the discretion of the board chairman. [~~These meetings shall be held in Austin or Huntsville, Texas. If the board uses video conference technology to convene a meeting, at least one conference site must be located in Huntsville or Austin. To convene a video conference meeting, a quorum of the board must be present at one of the video conference sites. The other members may convene using the technology from remote sites.~~]

(3) Meetings shall be held in Austin or Huntsville, Texas. If the board uses video conference technology to convene a meeting, at least one conference site must be located in Huntsville or Austin. To convene a video conference meeting, a quorum of the board must be present at one of the video conference sites. The other members may convene using the technology from remote sites.

(4) [~~(3)~~] The agenda and date for the board meetings shall be set by the board chairman in consultation with the WSD superintendent.

(5) [~~(4)~~] The agenda for committee meetings shall be set by the board chairman in consultation with the committee's chairman and the WSD superintendent. If the board committee uses video conference technology to convene a meeting, at least one conference site must be located in Huntsville or Austin. To convene a video conference meeting, a quorum of the committee must be present at one of the video conference sites [~~shall convene in one location~~]. The other member(s) may convene using the technology from remote sites.

(6) [~~(5)~~] A majority of the board, or of a committee of the board, constitutes a quorum for the convening of and transaction of business at any meeting. A quorum of a committee with two members consists of both members.

(7) [~~(6)~~] Meetings of the board and its committees shall be conducted according to standard parliamentary procedures.

(8) [~~(7)~~] Board meetings [~~Meetings of the board~~] are governed by the *Texas Open Meetings Act*, [~~(~~]Texas Government Code §§551.001 - .146 [~~Chapter 551)~~].

(9) [~~(8)~~] The WSD superintendent, in coordination with appropriate TDCJ staff, shall ensure members are provided the materials necessary to conduct the business of the board and its committees well in advance of the meetings.

(10) [~~(9)~~] The WSD superintendent, in coordination with appropriate TDCJ staff, shall ensure the minutes of each meeting are prepared, retained, and filed with the Legislative Reference Library, and made available to the public. The minutes shall state the subject matter of each deliberation and shall indicate each vote, order, decision, or other action taken by the board.

(11) [~~(10)~~] Requests by the public to make presentations or comments to the board are governed by 19 Texas Administrative Code §300.1, pursuant to Texas Government Code §492.007 and §551.042.

(12) [~~(11)~~] The board shall approve meeting minutes for any committees deleted, renamed, or for which their limited-purpose has concluded.

(13) [~~(12)~~] Prior to each regularly scheduled meeting, the board shall offer the opportunity for:

(A) The WSD superintendent to present any item [~~items~~] relating to the WSD as determined by the superintendent or the board chairman.

(B) The board chairman to present any item [~~items~~] relating to the board or the WSD as determined by the board chairman in consultation with the WSD superintendent.

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 August 22, 2016.

TRD-201604287
Michael Mondville
General Counsel
Windham School District
Earliest possible date of adoption: October 2, 2016
For further information, please call: (936) 291-5300

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 107. DENTAL BOARD PROCEDURES

SUBCHAPTER A. PROCEDURES GOVERNING GRIEVANCES, HEARINGS, AND APPEALS

22 TAC §§107.49 - 107.52

The State Board of Dental Examiners (Board) proposes amendments to §§107.49 - 107.52, concerning procedures governing grievances, hearings, and appeals. The proposed amendments provide greater clarification and explanation of the board's process for handling proposals for decision following a hearing at SOAH.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments to the rule.

Ms. Parker has also determined that for the first five-year period the proposed rules are in effect, the public benefit anticipated as a result of administering this section will be to clarify the board's internal processes concerning processing of complaints and investigations. Ms. Parker has determined that for the first five-year period the proposed rules are in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rules are enforced or administered.

Comments on the proposed amendments may be submitted to Tyler Vance, Assistant General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 475-0977, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register.*

These amendments are proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by these proposed amendments.

§107.49. Proposals for Decision.

A proposal for decision (PFD) issued by an Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH) may not be considered by the board until the time period set out in SOAH rules for the filing of exceptions and replies has expired. If exceptions were filed in accordance with SOAH rules, the board may not consider the PFD until the ALJ has ruled on the exceptions. The PFD must contain a statement of the of the reasons for the proposed decision and of each finding of fact and conclusion of law necessary to the proposed decision prepared by the person who conducted the hearing or by one who has read the record.

[~~(a) If in a contested case a majority of the members of the Board who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, may not be made until a proposal for decision is served on the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs to the members of the board who are to render the decision. The proposal for decision must contain a statement of the of the reasons for the proposed decision and of each finding of fact and conclusion of law necessary to the proposed decision prepared by the person who conducted the hearing or by one who has read the record. The parties by written stipulation may waive compliance with this section.~~]

[~~(b) Upon the expiration of the twentieth day following the time provided for the filing of exceptions and briefs in §107.50 of this title (Relating to Filing of Exceptions, Briefs, and Replies), the proposal for decision may be adopted by written order of the agency, unless exceptions and briefs shall have been filed in the manner required in §107.50 of this title (Relating to Filing of Exceptions, Briefs, and Replies).~~]

§107.50. Filing of Exceptions[~~, Briefs,~~] and Replies.

All exceptions to proposals for decision and replies to exceptions shall be filed in accordance with State Office of Administrative Hearings rules. [~~Exceptions shall be filed within fifteen (15) days after the date of service of the Proposal for Decision. A reply to the exceptions shall be filed within fifteen (15) days of the filing of the exceptions. All SOAH rules regarding exceptions and replies shall govern this section.~~]

§107.51. Findings of Fact and Conclusions of Law.

(a) The board [~~agency~~] may change a finding of fact or conclusion of law in a proposal for decision made by the administrative law judge if the board [~~agency~~] determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions;

(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

(b) The board [~~agency~~] shall state in writing the specific reason and legal basis for a change made under this section.

§107.52. Oral Argument.

All parties shall be given notice of the scheduling of a proposal for decision (PFD) for consideration by the board. The notice shall include a statement that the parties may attend the meeting of the board and provide oral argument concerning the PFD before the board. Board staff shall send notice by electronic mail or regular mail to the attorneys of record, or if a party is not represented by an attorney, by regular mail to the party's address of record with the board. Notice shall be sent by board staff no later than seven days prior to the meeting of the board at which the PFD is scheduled to be considered by the board. [~~Any party may request oral argument prior to the final determination of any proceeding, but oral argument shall be allowed only in the sound discretion of the agency. A request for oral argument may be incorporated in exceptions, briefs, replies to exceptions, motions for rehearing, or in separate pleadings.~~]

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 August 17, 2016.

TRD-201604215
Kelly Parker
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: October 2, 2016
For further information, please call: (512) 475-0977

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CHAPTER 108. PROFESSIONAL CONDUCT
SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.15

The State Board of Dental Examiners (Board) proposes new rule §108.15, concerning emergency preparedness. The rule requires dentists to maintain an emergency preparedness plan.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to clarify the procedures relating to creating ad hoc committees. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed new rule may be submitted to Tyler Vance, Assistant General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register.*

This new rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule.

§108.15. Emergency Preparedness.

A dentist shall maintain and annually update written policies and procedures for responding to emergency situations.

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 August 17, 2016.

TRD-201604210
Kelly Parker
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: October 2, 2016
For further information, please call: (512) 475-0977

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CHAPTER 111. STANDARDS FOR PRESCRIBING CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

22 TAC §111.1

The State Board of Dental Examiners (Board) proposes new rule §111.1, concerning conditional education in controlled substances. The rule requires dentists permitted to prescribe controlled substances to complete at least two hours of continuing education in controlled substances every 3 years.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to clarify the procedures relating to creating ad hoc committees. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed new rule may be submitted to Tyler Vance, Assistant General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register.*

This new rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule.

§111.1. Additional Continuing Education Required.

Each dentist who is permitted by the Drug Enforcement Agency to prescribe controlled substances shall complete every three years a minimum of two hours of continuing education in the abuse and misuse of controlled substances, opioid prescription practices, and/or pharmacology. This continuing education may be utilized to fulfill the continuing education requirements of annual renewal.

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 August 17, 2016.

TRD-201604208
Kelly Parker
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: October 2, 2016
For further information, please call: (512) 475-0977

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22 TAC §111.2

The State Board of Dental Examiners (Board) proposes new rule §111.2, concerning self-query of the prescription management program. The rule requires dentists permitted to prescribe controlled substances to conduct at least one self-query per year through the Prescription Monitoring Program.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Parker has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to clarify the procedures relating to creating ad hoc committees. Ms. Parker has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed new rule may be submitted to Tyler Vance, Assistant General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register.*

This new rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule.

§111.2. Self-query of Prescription Monitoring Program.

Each dentist who is permitted by the Drug Enforcement Agency to prescribe controlled substances shall annually conduct a minimum of one self-query regarding the issuance of controlled substances through the Prescription Monitoring Program of the Texas State Board of Pharmacy.

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 August 17, 2016.

TRD-201604209
Kelly Parker
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: October 2, 2016
For further information, please call: (512) 475-0977

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PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 272. ADMINISTRATION

22 TAC §272.3

The Texas Optometry Board proposes amendments to Rule §272.3 to provide procedures to implement contracting and purchasing requirements in the Texas Government Code.

Chris Kloeris, executive director of the Texas Optometry Board, estimates that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Chris Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated is that the public will have guidance on the procedures used to implement the contracting procedures in the Texas Government Code.

It is anticipated that there will be no economic costs imposed as a result of adopting the amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

The agency licenses approximately 4,000 optometrists and therapeutic optometrists. A significant majority of licensees own or work in one or more of the 1,000 to 3,000 optometric practices which meet the definition of a small business. Some of these practices meet the definition of a micro business. The agency does not license these practices.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed rule 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.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register.*

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §§351.151, and Tex. Government Code §§2156.005, 2260.052, 2155.076, and 2261.202. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §§2156.005, 2260.052, 2155.076, and 2261.202 as establish-

ing various contracting procedures, including bid protest, bid opening, negotiation and mediation, and monitoring.

§272.3. Contract [~~Bid~~] and Purchasing [~~Protest~~] Procedures.

(a) In accordance with Tex. Gov't Code §2155.076, the Board adopts by reference the rules of the Comptroller of Public Accounts regarding purchasing protest procedures set forth in 34 Tex. Admin. Code §20.384. All vendor protests under this rule must be submitted to the Board's purchaser, who shall initiate a review of the protest. Any appeal to a determination of a protest by the purchaser shall be to the executive director, who may elect to submit the appeal to the Board for final determination. The Board shall maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the Board's retention schedule.

(b) In accordance with Tex. Gov't Code §2156.005, the Board adopts by reference the rules of the Comptroller of Public Accounts regarding bid opening and tabulation set forth in 34 Tex. Admin. Code §20.35.

(c) In accordance with Tex. Gov't Code §2260.052, the Board adopts by reference the rules of the Office of the Attorney General in 1 Tex. Admin. Code Part 3, Chapter 68 (relating to Negotiation and Mediation of Certain Contract Disputes). The rules set forth a process to permit parties to structure a negotiation or mediation in a manner that is most appropriate for a particular dispute regardless of the contract's complexity, subject matter, dollar amount, or method and time of performance.

(d) In accordance with Tex. Gov't Code §2261.202, the executive director shall be responsible for monitoring agency contracts and for monitoring agency compliance with all applicable laws governing agency contracting. The executive director may delegate those duties necessary to carry out this responsibility to other agency staff who report directly to the executive director.

[~~The Texas Optometry Board adopts by reference the rules promulgated by the General Services Commission regarding vendor protests relating to purchasing issues which are set forth in Chapter 111, Subchapter A, of Title 1, Part 5 of the Texas Administrative Code.~~]

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 August 17, 2016.

TRD-201604200
Chris Kloeris
Executive Director
Texas Optometry Board
Earliest possible date of adoption: October 2, 2016
For further information, please call: (512) 305-8500

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 534. GENERAL ADMINISTRATION

22 TAC §534.2

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §534.2, Processing Fees for Dishonored Payments, in Chapter 534, General Administration.

The amendments are proposed to clarify that a processing fee is due when a payment to the Commission, through any form of payment, is dishonored or reversed due to insufficient funds or for any other reason, including stop payment.

Kerri Lewis, 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 significant anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be better clarity in the rule.

Comments on the proposal may be submitted to Kerri Lewis, 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 statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§534.2. Processing Fees for Dishonored Payments.

(a) If a payment to the Commission by or on behalf of a license holder or applicant is dishonored or reversed by a bank or other financial institution [~~depository for insufficient funds~~], the Commission shall charge the fee to the license holder or applicant [~~drawer or endorser~~] for processing the dishonored or reversed payment required by §535.101(b)(23) of this title (relating to Fees). The Commission shall notify the license holder or applicant [~~drawer or endorser~~] of the fee by sending a request for payment of the dishonored or reversed payment and the processing fee by certified mail to the last known mailing address of the license holder or applicant [~~person~~] as shown in the records of the Commission. If the Commission has sent a request for payment in accordance with the provisions of this section, the failure of the license holder or applicant [~~drawer or endorser~~] to pay the processing fee within 15 days after the Commission has mailed the request is a violation of this section.

(b) (No change.)

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

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

TRD-201604244
Kerri Lewis
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: October 2, 2016
For further information, please call: (512) 936-3092

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CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER B. GENERAL PROVISIONS RELATING TO THE REQUIREMENTS OF LICENSURE

22 TAC §535.2

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.2, Broker Responsibility, in Chapter 535, General Provisions.

The amendments are proposed to clarify that a broker must notify the Commission when the appointment of a delegated supervisor has ended except that a newly licensed broker or a broker associate named as a delegated supervisor is responsible to notify the Commission if their status as a delegated supervisor changes.

Kerri Lewis, 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 significant anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be better clarity in the rule and greater consumer protection.

Comments on the proposal may be submitted to Kerri Lewis, 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 statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.2. Broker Responsibility.

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

(e) A broker may delegate to another license holder the responsibility to assist in administering compliance with the Act and Rules, but the broker may not relinquish overall responsibility for the supervision of license holders sponsored by the broker. Any such delegation must be in writing. A broker shall provide the name of each delegated supervisor to the Commission on a form or through the online process approved by the Commission within 30 days of any such delegation that has lasted or is anticipated to last more than six months. The broker shall notify the Commission in the same manner within 30 days after the delegation of a supervisor has ended. It is the responsibility of the broker associate or newly licensed broker to notify the Commission in writing when they are no longer associated with the broker or no longer act as a delegated supervisor.

(f) - (m) (No change.)

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

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

TRD-201604245
Kerri Lewis
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: October 2, 2016
For further information, please call: (512) 936-3092

22 TAC §535.4, §535.5

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.4, License Required, and §535.5, License Not Required in Chapter 535, General Provisions.

The amendments are proposed to clarify the definition of what constitutes showing property in light of the statutory requirement that license holders must pass criminal background reviews prior to licensure. The amendments also set out the only circumstances under which an unlicensed assistant can show or an unescorted person can be provided access to a vacant property. The rule was also updated to replace the term "salesperson" with the new statutory term of "sales agent."

Kerri Lewis, 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 significant anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be better clarity in the rule and greater consumer protection.

Comments on the proposal may be submitted to Kerri Lewis, 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 statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.4. License Required.

(a) The Act applies to any person acting as a real estate broker or sales agent [~~salesperson~~] while physically within Texas, regardless of the location of the real estate involved or the residence of the person's customers or clients. For the purposes of the Act, a person conducting brokerage business from another state by mail, telephone, the Internet,

email, or other medium is acting within Texas if the real property concerned is located wholly or partly in Texas.

(b) This section does not prohibit cooperative arrangements between non-resident brokers and Texas brokers pursuant to §1101.651(a)(2) of the Act and §535.131 of this title.

(c) Unless otherwise exempted by the Act, a person must be licensed as a broker or sales agent [~~salesperson~~] to show a property [~~broker's listings~~]. For purposes of this section, "show" a property includes causing or permitting the property to be seen by a prospective buyer or tenant, unlocking or providing access onto or into a property, or hosting an open house at the property.

(d) Notwithstanding subsection (c), an unlicensed assistant of a broker or sales agent may show a property only if:

(1) no person lives at, and no personal property except any intended to remain or convey is stored at, the property; and

(2) the property owner and the prospective buyer or tenant, prior to the property being shown, have signed a written consent acknowledging that:

(A) the unlicensed assistant is an employee of the broker or a sales agent sponsored by the broker as defined by §535.5(d) of this title;

(B) the unlicensed assistant has not had a criminal history background check performed by the Commission;

(C) the unlicensed assistant may not point out or answer questions about the features of the property or neighborhood; and

(D) the broker is responsible for all acts and omissions of the unlicensed assistant.

(e) Notwithstanding subsection (c), a license holder may allow an unlicensed person unescorted access to view a property only if:

(1) no person lives at, and no personal property except any intended to remain or convey is stored at, the property; and

(2) the property owner, prior to the property being viewed, has signed a written consent acknowledging that:

(A) the property owner is aware that unescorted access may occur; and

(B) the broker enabling access is responsible for any damage that results from such unescorted access.

(f) [~~(d)~~] The employees, agents or, associates of a licensed broker must be licensed as brokers or sales agents [~~salespersons~~] if they direct or supervise other persons who perform acts for which a license is required.

(g) [~~(e)~~] A real estate license is required for a person to solicit listings or to negotiate in Texas for listings.

(h) [~~(f)~~] A business entity owned by a broker or sales agent [~~salesperson~~] which receives compensation on behalf of the license holder must be licensed as a broker under the Act.

(i) [~~(g)~~] A person controls the acceptance or deposit of rent from a resident of a single-family residential real property unit and must be licensed under the Act if the person has the authority to:

(1) use the rent to pay for services related to management of the property;

(2) determine where to deposit the rent; or

(3) sign checks or withdraw money from a trust account.

(j) [~~(h)~~] For purposes of subsection (i)[~~(g)~~] of this section, a single-family residential unit includes a single family home or a unit in a condominium, co-operative, row-home or townhome. The term does not include a duplex, triplex or four-plex unless the units are owned as a condominium, cooperative, row-home, or townhome.

(k) [~~(i)~~] A person must be licensed as a broker to operate a rental agency.

(l) [~~(j)~~] A real estate license is required of a subsidiary corporation, which, for compensation, negotiates in Texas for the sale, purchase, rent, or lease of its parent corporation's real property.

(m) [~~(k)~~] A person who arranges for a tenant to occupy a residential property must have a real estate license if the person:

(1) does not own the property or lease the property from its owner;

(2) receives valuable consideration; and

(3) is not exempt under the Act.

(n) [~~(l)~~] A real estate license is required for a person to receive a fee or other consideration for assisting another person to locate real property for sale, purchase, rent, or lease, including the operation of a service which finds apartments or homes.

(o) [~~(m)~~] The compilation and distribution of information relating to rental vacancies or property for sale, purchase, rent, or lease is activity for which a real estate license is required if payment of any fee or other consideration received by the person who compiles and distributes the information is contingent upon the sale, purchase, rental, or lease of the property. An advance fee is a contingent fee if the fee must be returned if the property is not sold, purchased, rented, or leased.

(p) [~~(n)~~] A person must be licensed as a broker or sales agent [~~salesperson~~] if, for compensation, the person:

(1) advertises for others regarding the sale, purchase, rent, or lease of real property;

(2) accepts inquiries received in response to such advertisements; and

(3) refers the inquiry to the owner of the property.

§535.5. License Not Required.

(a) Acting as a principal, a person may purchase, sell, lease, or sublease real estate for profit without being licensed as a broker or sales agent [~~salesperson~~].

(b) - (g) (No change.)

~~[(h) A broker may hire an unlicensed person to act as a host or hostess at a property being offered for sale by the broker, provided the unlicensed person engages in no activity for which a license is required.]~~

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

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

TRD-201604246
Kerri Lewis
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: October 2, 2016
For further information, please call: (512) 936-3092

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SUBCHAPTER D. THE COMMISSION

22 TAC §535.45

The Texas Real Estate Commission (TREC) proposes new 22 TAC §535.45, Certain Uses of Seal, Logo, or Name Prohibited, in Chapter 535, General Provisions.

The new rule is proposed to clarify that license holders may not use the seal, logo, or name of the Commission to imply they are a government agency or have received special Commission endorsement or status.

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposed 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 sections. There is no significant anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is no anticipated significant economic cost to persons who are required to comply with the proposal.

Ms. Lewis also has determined that for each year of the first five years the new rule as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be better clarity in the rule and greater consumer protection.

Comments on the proposal may be submitted to Kerri Lewis, 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; 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 statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposal.

§535.45. Certain Uses of Seal, Logo, or Name Prohibited.

A license holder, certificate holder, registrant or provider may not use all or part of the seal, logo, or name of the Commission or another governmental agency in a manner that implies that the person:

(1) is a governmental agency;

(2) is endorsed by the Commission or other agency other than as a license holder, certificate holder, registrant, or provider; or

(3) holds a special status that the Commission or other agency has not granted.

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 August 18, 2016.

TRD-201604248
Kerri Lewis
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: October 2, 2016
For further information, please call: (512) 936-3092

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SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §535.57

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.57, Examinations, in Chapter 535, General Provisions.

The amendments are proposed to clarify the period that examination results remain valid for an application and better align the rules with the statutory period set forth in Texas Occupations Code, §1101.401(f).

Kerri Lewis, 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 significant anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be better clarity in the rule and greater consumer protection.

Comments on the proposal may be submitted to Kerri Lewis, 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 statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.57. Examinations.

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

(e) Examination results for the national part and state part of the examination are valid for a period of one year from the date each part of the examination is passed.

(f) [~~(e)~~] An applicant who fails the examination three consecutive times may not apply for reexamination or submit a new license application unless the applicant submits evidence satisfactory to the Commission that the applicant has completed additional mandatory qualifying education listed in §535.64(a) as follows, after the date the applicant failed the examination for the third time:

(1) for an applicant who failed the national part of the examination, 30 hours;

(2) for an applicant who failed the state part of the examination, 30 hours; and

(3) for an applicant who failed both parts of the examination, 60 hours.

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

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

TRD-201604249
Kerri Lewis
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: October 2, 2016
For further information, please call: (512) 936-3092

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SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES AND INSTRUCTORS FOR QUALIFYING EDUCATION

22 TAC §535.62

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.62, Approval of Qualifying Courses, in Chapter 535, General Provisions.

The amendments are proposed to clarify that authorization for subsequent use of a previously approved course must be given by the owner of the rights to the course, which may or may not be the provider for whom the course was initially approved.

Kerri Lewis, 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 significant anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be better clarity in the rule.

Comments on the proposal may be submitted to Kerri Lewis, 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 statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.62. Approval of Qualifying Courses.

(a) - (c) (No change.)

(d) Approval of currently approved courses by a subsequent provider.

(1) If a subsequent provider wants to offer a course currently approved for another provider, the subsequent provider must:

(A) submit the course application and approval forms including all materials required;

(B) submit written authorization to the Commission from the owner of the rights to the course material [~~author or provider for whom the course was initially approved~~] granting permission for the subsequent provider to offer the course; and

(C) pay the fee required by §535.101 or §535.210 of this title.

(2) If approved to offer the previously approved course, the subsequent provider is required to:

(A) offer the course as originally approved, including expiration date, with any approved revisions, using all materials required for the course; and

(B) meet the requirements of §535.65 of this subchapter.

(e) - (i) (No change.)

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

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Kerri Lewis
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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22 TAC §535.63

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.63, Approval of Instructors of Qualifying Courses, in Chapter 535, General Provisions.

The proposed amendments to §535.63 conform this section with the proposed amendments to §535.218, Continuing Education Required for Renewal, for consistency.

Kristen Worman, Deputy 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 significant anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Worman also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be consistent requirements that are easier for consumers and license holders to read and understand.

Comments on the proposal may be submitted to Kristen Worman, Deputy 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 Texas Occupations Code §1102.058, which authorizes the Commission to adopt rules relating to continuing education requirements for inspectors.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1102. No other statute, code or article is affected by the proposed amendments.

§535.63. Approval of Instructors of Qualifying Courses.

(a) (No change.)

(b) Standards for instructor approval. To be approved as an instructor by the Commission to teach real estate or real estate inspection qualifying courses, the applicant must meet the following standards:

(1) The applicant must satisfy the Commission as to:

(A) the applicant's honesty, trustworthiness, and integrity; and

(B) the person's competency in the subject matter to be taught and ability to teach effectively.

(2) Except as provided by paragraph (3) of this subsection, the applicant must possess the following qualifications:

(A) a college degree in the subject area or five years of active experience as a license holder and three years of experience in teaching or training; or

(B) the equivalent of paragraph (2)(A) of this subsection as determined by the Commission after consideration of the applicant's professional experience, research, authorship, or other significant endeavors in real estate or real estate inspection; and

(C) beginning January 1, 2016, provide a completion certificate from an adult education instructor training course of at least 8 hours that is acceptable to the Commission and dated within four years of the date of application.

(3) To be approved as an instructor of Texas Standards of Practice, Texas Standards of Practice/Legal/Ethics [~~Update~~], or as an instructor of a ride along inspection course [~~as defined in §535.218 of this title~~], an applicant must have five years of active licensure as a Texas professional inspector, and have:

(A) performed a minimum of 200 real estate inspections as a Texas professional inspector; or

(B) three years of experience in teaching and/or sponsoring trainees or inspectors.

(4) To be approved as an instructor of a Commission approved adult education instructor training course, an applicant must satisfy the Commission that the applicant:

(A) is currently approved to teach an adult education certification course accepted by the Commission for credit under paragraph (2)(C), such as CREI or ITI;

(B) has a college degree in adult education from an accredited college or university and two years of recent experience training adult educators; or

(C) the equivalent of paragraph (4)(A) or (B) of this subsection as determined by the Commission after consideration of the applicant's professional experience, references, research, authorship, or other significant endeavors in training adult educators.

(c) - (f) (No change.)

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

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Kristen Worman
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22 TAC §535.65

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.65, Responsibilities and Operations of Providers of Qualifying Courses, in Chapter 535, General Provisions.

An amendment to subsection (j) was previously published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3600). No comments were received on that amendment; however, the Education Standards Advisory Committee recommends a new amendment to another section of the rule and therefore the Commission is proposing all amendments to the rule together.

The amendments to subsection (j) are proposed to remove the requirement for education completion certificates to include the registration date since that information is not necessary for the Commission to calculate compliance with statutory timeframes for course completion. The amendments to subsection (k) are proposed to clarify that the questions required by the Commission on the approved evaluation and the order they appear are what is required, not the use of the actual form.

Kerri Lewis, 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 significant anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be better clarity in the rule.

Comments on the proposal may be submitted to Kerri Lewis, 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 statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.65. Responsibilities and Operations of Providers of Qualifying Courses

(a) - (i) (No change.)

(j) Course completion certificate.

(1) Upon successful completion of a core course, a provider shall issue a course completion certificate that a student can submit to the Commission. The course completion certificate shall show:

(A) the provider's name and approval number;

(B) the instructor's name and instructor license number assigned by the Commission;

(C) the course title;

(D) course numbers;

(E) the number of classroom credit hours;

(F) the dates the student [~~registered for,~~] began and completed the course; and

(G) printed name and signature of an official of the provider on record with the Commission.

(2) A provider may withhold any official completion documentation required by this subsection from a student until the student has fulfilled all financial obligations to the provider.

(3) A provider shall maintain adequate security against forgery for official completion documentation required by this subsection.

(k) Instructor and course evaluations.

(1) A provider shall provide each student enrolled in a course with an instructor and course evaluation form and provide a link to an online version of the form that a student can complete and submit any time after course completion.

(2) An instructor may not be present when a student is completing the evaluation form and may not be involved in any manner with the evaluation process.

(3) When evaluating an instructor or course, a provider shall use all of the questions from the evaluation form approved by the Commission, in the same order as listed on that form. A provider may also add additional questions to the end of the Commission evaluation questions [~~form~~] or request the students to also complete the provider's evaluation form.

(4) A provider shall maintain any comments made by the provider's management relevant to instructor or course evaluations with the provider's records.

(5) At the Commission's request, a provider shall produce instructor and course evaluation forms for inspection by Commission staff.

(l) - (m) (No change.)

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

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General Counsel
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SUBCHAPTER G. REQUIREMENTS FOR CONTINUING EDUCATION PROVIDERS, COURSES AND INSTRUCTORS

22 TAC §535.72

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.72, Approval of Non-elective Continuing Education Courses in Chapter 535, General Provisions.

Amendments to subsection (i) clarify that classroom students must take the promulgated final examination independently prior to the instructor reviewing the correct answers, and to correct the reference to the third party proctor definition were previously published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3600). No comments were received on the amendments; however, the Texas Real Estate Inspector Committee recommended changing the continuing education requirements for non-elective coursework to include a four-hour course developed by the Commission in conjunction with the Texas A&M University Real Estate Center. Conforming changes need to be made to this rule to clarify procedures for approval of that course for providers. Therefore, the Commission is now proposing all of the amendments to the rule together.

Kerri Lewis, 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 anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis 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 the sections will be consistent requirements that are easier for consumers and license holders to read and understand.

Comments on the proposal may be submitted to Kerri Lewis, 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 Texas Occupations Code §1102.058, which authorizes the Commission to adopt rules relating to continuing education requirements for inspectors.

The statute affected by this proposal are Chapters 1101 and 1102, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§535.72. Approval of Non-elective Continuing Education Courses.

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

(c) Use of certified instructors. A CE provider offering a real estate non-elective CE course must use a CE instructor who has received certification to teach the current version of the real estate non-elective CE course approved by the Commission.

(d) Application for approval to offer non-elective inspector CE courses.

(1) A CE provider seeking to offer the non-elective Texas Standards of Practice Review inspector CE course shall:

(A) submit an ICE Course Application form and the Texas Standards of Practice Review course approval form to the Commission; and

(B) pay the fee required by §535.210 of this title.

(2) A CE provider seeking to offer the non-elective Legal/Ethics/Texas Standards of Practice Update inspector CE course shall:

(A) submit a CE Course Application Supplement to the Commission; and

(B) pay the fee required by §535.210 of this title.

(3) A CE provider may file a single application for a CE course offered through multiple delivery methods. A fee is required for content review of each CE course and for each distinct delivery method utilized by a provider for that course.

(4) A CE provider who seeks approval of a new delivery method for a currently approved CE course must submit a new application, and pay all required fees, including a fee for content review.

(5) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(e) [~~(c)~~]Commission approval of non-elective course materials. [~~Real estate non-elective CE courses.~~] Every two years, the Commission shall approve subject matter and course materials to be used for the following non-elective [~~real estate~~] continuing education courses [~~as required by the Act~~]:

(1) a four hour Legal Update I: Laws, Rules and Forms course;

(2) a four hour Legal Update II: Agency, Ethics and Hot Topics course; [~~and~~]

(3) a six hour broker responsibility course; and[~~.~~]

(4) a four-hour Legal/Ethics/Texas Standards of Practice Update course.

(f) [~~(d)~~] Course expiration.

(1) Each legal update course expires on December 31 of each odd-numbered year.

(2) Each broker responsibility course expires on December 31 of each even-numbered year.

(3) Each Legal/Ethics/Texas Standards of Practice Update course expires on December 31 of each even-numbered year. [~~A CE provider must use a CE instructor who has received certification to teach the version of the real estate non-elective CE course being offered.~~]

[~~(e) Application for approval to offer non-elective inspector CE courses.~~]

[~~(1) A CE provider seeking to offer a specific non-elective inspector CE course as outlined in this section shall:~~]

[~~(A) submit:~~]

~~*[(i)*~~ ~~ICE Course Application form and the Texas Standards of Practice/Legal/Ethics Update Course approval form (PIEAC-SP_LEU-1); or]~~

~~*[(ii)*~~ ~~Qualifying Real Estate (or Inspector) Qualifying Course Application form and the Texas Standards of Practice/Legal/Ethics Update course approval form (PIEAC-SP_LEU-1); and]~~

[~~(B) pay the fee required by §535.210 of this title.~~]

[~~(2) A separate application is required for each course delivery method.~~]

[~~(f) Requirements for inspector non-elective CE courses.~~]

[~~(1) A Texas Standards of Practice/Legal/Ethics Update course shall contain the following topics, the units of which are outlined the Texas Standards of Practice/Legal/Ethics Update Course Approval form (PIEAC-SP_LEU-1), adopted herein by reference:~~]

[~~(A) 4 hours of Standards of Practice;~~]

[~~(B) 2 hours of Legal; and~~]

[~~(C) 2 hours of Ethics.~~]

[~~(2) [A Texas Standards of Practice/Legal/Ethics Update course expires two years from the date of approval and providers must reapply and meet all current requirements of this section to offer the course for another two years.~~]

(g) - (h) (No change.)

(i) Course examinations.

(1) A provider must administer a final examination promulgated by the Commission for non-elective CE courses beginning January 1, 2017 as follows:

(A) For classroom delivery, the examination will be given as a part of class instruction time with each student answering the examination questions independently followed by a review of the correct answers [~~being reviewed~~] by the instructor. There is no minimum passing grade required to receive credit. [~~and students will not be graded;~~]

(B) For distance education delivery, the examination will be given after completion of regular course work and must be:

(i) proctored by a member of the provider faculty or staff, or third party proctor set out in §535.65(h)(5)[~~§535.65(i)(5)~~] of this title, who is present at the test site and has positively identified that the student taking the examination is the student registered for and who took the course; or

(ii) administered using a computer under conditions that satisfy the Commission that the student taking the examination is the student registered for and who took the course; and

(iii) graded with a pass rate of 70% in order for a student to receive credit for the course; and

(iv) kept confidential.

(2) A provider may not give credit to a student who fails a final examination and subsequent final examination as provided for in subsection (j) of this section.

(j) - (m) (No change.)

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

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22 TAC §535.73

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.73, Approval of Elective Continuing Education Courses, in Chapter 535, General Provisions.

The amendments are proposed to clarify that authorization for subsequent use of a previously approved course must be given by the owner of the rights to the course, which may or may not be the provider for whom the course was initially approved.

Kerri Lewis, 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 significant anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be better clarity in the rule.

Comments on the proposal may be submitted to Kerri Lewis, 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 statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.73. Approval of Elective Continuing Education Courses.

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

(e) Approval of currently approved courses by a subsequent provider.

(1) If a CE provider wants to offer a course currently approved for another provider, that subsequent provider must:

(A) submit the applicable course approval form(s);

(B) submit written authorization to the Commission from the owner of the rights to the course material [~~provider for whom the course was initially approved~~] granting permission for the subsequent provider to offer the course; and

(C) pay the fee required by §535.101 or §535.210 of this title.

(2) If approved to offer the currently approved course, the subsequent provider is required to:

(A) offer the course as originally approved, with any approved revisions, using all materials required for the course; and

(B) meet the requirements of §535.75 of this 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.

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22 TAC §535.74

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.74, Approval of Continuing Education Instructors.

The proposed amendments to §535.74 conform this section with the proposed amendments to §535.218, Continuing Education Required for Renewal, for consistency.

Kristen Worman, Deputy 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 anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Worman 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 the sections will be consistent requirements that are easier for consumers and license holders to read and understand.

Comments on the proposal may be submitted to Kristen Worman, Deputy 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 Chap-

ters 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 Texas Occupations Code §1102.058, which authorizes the Commission to adopt rules relating to continuing education requirements for inspectors.

The statute affected by this proposal is Chapter 1102, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§535.74. Approval of Continuing Education Instructors.

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

(c) To be approved as an instructor of a Texas Standards of Practice Review course[~~/Legal/Ethics Update~~], a Legal/Ethics/Texas Standards of Practice Update course, or [~~as an instructor of~~] a ride along inspection course [~~as defined in §535.218 of this title~~], an applicant must have five years of active licensure as a Texas professional inspector, and have:

(1) performed a minimum of 200 real estate inspections as a Texas professional inspector; or

(2) three years of experience in teaching and/or sponsoring trainees or inspectors.

(d) - (i) (No change.)

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

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Kristen Worman
Deputy General Counsel
Texas Real Estate Commission
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SUBCHAPTER J. FEES

22 TAC §535.101

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.101, Fees, in Chapter 535, General Provisions.

The amendments are proposed to implement the budget and budget policies adopted by the Commission at their August meeting. Accordingly, renewal fees for sales agents are being reduced by $6. Additionally, the fee section for examinations was amended to indicate that those fees are a pass through fee negotiated in a contract with the vendor and can vary from contract to contract. Finally, the rule was amended to clarify that a processing fee is due when a payment to the Commission, through any form of payment, is dishonored due to insufficient funds or any other reason, including stop payment.

Kerri Lewis, 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 significant anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be a reduction in licensing fees and greater clarity in the rule.

Comments on the proposal may be submitted to Kerri Lewis, 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 statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.101. Fees.

(a) The Commission shall charge and collect the following fees:

(1) a fee of $150 for filing an original or reinstatement application for a real estate broker license, which includes a fee for transcript evaluation;

(2) a fee of $72 for the timely renewal of a real estate broker license;

(3) a fee of $120 for filing an application to step down from a real estate broker license to a real estate sales agent license;

(4) a fee of $150 for filing an original or reinstatement application for a real estate sales agent license, which includes a fee for transcript evaluation;

(5) a fee of $66 [~~$72~~] for the timely renewal of a real estate sales agent license;

(6) a fee equal to 1-1/2 times the timely renewal fee for the late renewal of a license within 90 days of expiration;

(7) a fee equal to 2 times the timely renewal fee for the late renewal of a license more than 90 days but less than six months after expiration;

(8) a fee of $50 for filing a request for, or renewal of, a license for each additional office or place of business for a period of two years;

(9) the [~~a~~] fee charged by an examination provider pursuant to a contract with the Commission [~~of $54~~] for taking a license examination;

(10) a fee of $10 for deposit into the real estate recovery trust account upon the filing of an original sales agent or broker application;

(11) a fee of $20 for filing a request for a license certificate due to a change of place of business, change of a license holder name, or to establish a relationship with a sponsoring broker:

(A) A change of address or name submitted with an application to renew a license, however, does not require payment of a fee in addition to the fee for renewing the license.

(B) The Commission may require written proof of a license holder's right to use a different name before issuing a license certificate reflecting a change of name.

(12) a fee of $50 to request an inactive broker license be returned to active status;

(13) a fee of $40 for preparing a certificate of license history, active licensure, or sponsorship;

(14) a fee of $50 for filing a moral character determination;

(15) a fee of $400 for filing an application for accreditation of a qualifying education program for a period of four years;

(16) after initial approval of accreditation, a fee of $200 a year for operation of a qualifying real estate education program;

(17) a fee of $50 plus the following fees per classroom hour approved by the Commission for each qualifying education course for a period of four years:

(A) $10 for content and examination review;

(B) $10 for classroom delivery design and presentation review; and

(C) $20 for distance education delivery design and presentation review;

(18) a fee of $400 for filing an application for accreditation as a Continuing Education provider for a period of two years;

(19) a fee of $50 plus the following fees per classroom hour approved by the Commission for each continuing education course for a period of two years:

(A) $5 for content and examination review;

(B) $5 for classroom delivery design and presentation review; and

(C) $10 for distance education delivery design and presentation review;

(20) the fee required under paragraphs (17)(C) and (19)(C) will be waived if the course has already been certified by a distance learning certification center acceptable to the Commission;

(21) a fee of $150 for filing an application for approval as an instructor for a two-year period for real estate qualifying or continuing education courses;

(22) the fee charged by the Federal Bureau of Investigation and Texas Department of Public Safety for fingerprinting or other service for a national or state criminal history check in connection with a license application or renewal;

(23) the fee required by the Department of Information Resources as a subscription or convenience fee for use of an online payment system;

(24) a continuing education deferral fee of $200;

(25) a late reporting fee of $250 to reactivate a license under §535.93 of this title;

(26) a fee of $30 for processing a check or other equivalent instrument returned by a bank or depository as dishonored or reversed [~~for insufficient funds~~];

(27) a fee of $20 for filing any application, renewal, change request, or other record on paper that a person may otherwise file with the Commission electronically by accessing the Commission's website, entering the required information online, and paying the appropriate fee; and

(28) a fee of $20 per certification when providing certified copies of documents.

(b) Fees established by this section must be paid when an application is filed and are not refundable once an application has been accepted for filing.

(c) If the Commission receives an application that requires payment of a fee, and a sufficient fee was not submitted with the application, the Commission will return the application and notify the person filing the application that the person must pay the fee before the application will be processed.

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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Kerri Lewis
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Texas Real Estate Commission
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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.201, §535.212

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.201, Definitions, and §535.212, Education and Experience Requirements for a License, in Subchapter R, Real Estate Inspectors.

The proposed amendments to §535.201 and §535.212 conform those sections with the proposed amendments to §535.218, Continuing Education Required for Renewal, for consistency.

Kristen Worman, Deputy 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 anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Worman 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 the sections will be consistent requirements that are easier for consumers and license holders to read and understand.

Comments on the proposal may be submitted to Kristen Worman, Deputy 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 Chap-

ters 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 Texas Occupations Code §1102.058, which authorizes the Commission to adopt rules relating to continuing education requirements for inspectors.

The statute affected by this proposal is Chapter 1102, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§535.201. Definitions.

The following definitions shall apply to this subchapter.

(1) Code organization--A non-profit organization whose primary mission is to develop and advocate scientifically-based codes and standards relating to one or more of the systems found in an improvement to real estate.

(2) Committee--The Texas Real Estate Inspector Committee.

(3) Texas Standards of Practice/Legal/Ethics [~~Update~~]--An inspector qualifying course [~~Course~~] addressing developments related to the inspection field, including the requirements of Chapter 1102, rules of the Commission, case law, and agency enforcement actions.

(4) Trade association--A cooperative, voluntarily joined association of business or professional competitors that is designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

§535.212. Education and Experience Requirements for a License.

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

(c) Effective September 1, 2013, a person may satisfy the 130-hour education requirement for licensure as a professional inspector pursuant to subsection (a)(1) or (2) of this section by completing the following coursework:

(1) the courses required for licensure as a real estate inspector in subsection (b) of this section;

(2) 8 additional hours in Texas Standard Report Form/Report Writing;

(3) 8 additional hours in Texas Standards of Practice/Legal/Ethics [~~Update as defined in §535.218 of this title (relating to Continuing Education)~~]; and

(4) 24 additional hours in any core inspection subject(s).

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

(f) Effective January 1, 2014, a person may satisfy the substitute experience requirements for licensure as a real estate inspector pursuant to subsection (a)(2) of this section as follows:

(1) A person who does not have two years of experience as an architect, engineer, or engineer-in-training must:

(A) complete a total of 32 additional hours of core inspection coursework, which must include the following:

(i) 8 hours in Texas Standard Report Form/Report Writing;

(ii) 8 hours in Texas Standards of Practice/Legal/Ethics [~~Update as defined in §535.218 of this title~~];

(iii) 16 hours in any core inspection subject(s); and

(B) either:

(i) complete 20 hours of field work through ride along inspection course sessions as defined in §535.218 of this title, except there may be up to 10 students per session and 12 hours of an approved interactive experience training module;

(ii) complete 8 hours of field work through ride along inspection course sessions as defined in §535.218 of this title, except there may be up to 10 students per session and 30 hours of an approved interactive experience training module;

(iii) upon delivery of a Commission approved affidavit form that the applicant is unable to reasonably complete clause (i) or (ii) of this subparagraph, complete 60 hours of an approved interactive experience training module presented by a licensed professional inspector; or

(iv) have three years of experience in a field directly related to home inspection, including but not limited to installing, servicing, repairing or maintaining the structural, mechanical and electrical systems found in improvements to real property and provide two affidavits from persons who have personal knowledge of the applicant's work, detailing the time and nature of the applicant's relevant experience.

(2) A person who has at least two years of experience as an active practicing licensed or registered architect, professional engineer, or engineer-in-training must:

(A) complete a total of 16 additional hours of core inspection coursework, which must include the following:

(i) 8 hours in Texas Standard Report Form/Report Writing; and

(ii) 8 hours in Texas Standards of Practice/Legal/Ethics Update; and

(B) submit a license history from the regulatory agency that issued the license or registration documenting the period of practice as a licensed or registered architect, professional engineer, or engineer-in-training.

(3) Subsection (f)(1)(B)(iii) of this section will only be accepted to satisfy the substitute experience requirement if completed prior to March 1, 2015.

(g) Effective January 1, 2014, a person may satisfy the substitute experience requirements for licensure as a professional inspector pursuant to subsection (a)(2) of this section as follows:

(1) A person who does not have three years of experience as an architect, engineer, or engineer-in-training must:

(A) complete a total of 200 additional hours of core inspection coursework, which must include the following:

(i) 30 hours in foundations;

(ii) 30 hours in framing;

(iii) 24 hours in building enclosure;

(iv) 24 hours in roof systems;

(v) 16 hours in plumbing systems;

(vi) 24 hours in electrical systems;

(vii) 24 hours in heating, ventilation, and air conditioning systems;

(viii) 6 hours in appliances;

(ix) 8 hours in Texas Standards of Practice/Legal/Ethics [~~Update as defined in §535.218 of this title~~];

(x) 8 hours in Texas Standard Report Form/Report writing; and

(xi) 6 hours in any core inspection subject(s); and

(B) either:

(i) complete 40 hours of field work through ride along inspection course sessions as defined in §535.218 of this title, except there may be up to 10 students per session and 24 hours of an approved interactive experience training module;

(ii) complete 16 hours of field work through ride along inspection course sessions as defined in §535.218 of this title, except there may be up to 10 students per session and 60 hours of an approved interactive experience training module;

(iii) upon delivery of a Commission approved affidavit form that the applicant is unable to reasonably complete clause (i) or (ii) of this subparagraph, complete 120 hours of an approved interactive experience training module presented by a licensed professional inspector; or

(iv) have five years of experience in a field directly related to home inspection, including but not limited to installing, servicing, repairing or maintaining the structural, mechanical and electrical systems found in improvements to real property, and provide two affidavits from persons who have personal knowledge of the applicant's work, detailing the time and nature of the applicant's relevant experience.

(2) A person who has at least three years of experience as an active practicing licensed or registered architect, professional engineer, or engineer-in-training must:

(A) complete a total of 16 additional hours of core inspection coursework, which must include the following:

(i) 8 hours in Texas Standard Report Form/Report Writing; and

(ii) 8 hours in Texas Standards of Practice/Legal/Ethics [~~Update as defined in §535.218 of this title~~]; and

(B) submit a license history from the regulatory agency that issued the license or registration documenting the period of practice as a licensed or registered architect, professional engineer, or engineer-in-training.

(3) Subsection (g)(1)(B)(iii) of this section will only be accepted to satisfy the substitute experience requirement if completed prior to March 1, 2016.

(h) (No change.)

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

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

TRD-201604256
Kristen Worman
Deputy General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: October 2, 2016
For further information, please call: (512) 936-3093

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22 TAC §535.218

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.218, Continuing Education Required for Renewal in Subchapter R, Real Estate Inspectors.

The proposed amendments to §535.218 change the continuing education requirements for non-elective coursework to include a four-hour course developed by the Commission in conjunction with the Texas A&M University Real Estate Center. The proposed amendments would allow license holders to receive continuing education credit for education courses taken outside of Texas and for in-person attendance at the February meeting of the Texas Real Estate Inspector Advisory Committee. The proposed amendments also make typographical corrections and conforming changes for consistency with other Commission rules.

Kristen Worman, Deputy 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 anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Worman 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 the sections will be improved education for license holders, as well as additional continuing education options for license holders, and requirements that are easier for consumers and license holders to read and understand.

Comments on the proposal may be submitted to Kristen Worman, Deputy 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 Texas Occupations Code §1102.058, which authorizes the Commission to adopt rules relating to continuing education requirements for inspectors.

The statute affected by this proposal is Chapter 1102, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§535.218. Continuing Education Required for Renewal.

(a) Continuing education required for renewal.

(1) Prior to renewal of a real estate inspector or professional inspector license, a license holder must take the 32 hours of continuing education which shall include the following:

(A) 24 hours of qualifying course subjects as described in §535.213(e)(1) - (8), (11) and (12) of this title, with a maximum of 16 hours on any one single subject; and

(B) eight hours of non-elective coursework in [~~of~~] Texas Standards of Practice, legal, and ethics consisting [~~/Legal/Ethics Update. The Texas Standards of Practice/Legal/Ethics Update is a non-elective course and must consist~~] of the following coursework:

(i) 4 hours of Standards of Practice review; and

(ii) 4 [2] hours of Legal/Ethics/Texas Standards of Practice Update[; and]

[(iii) 2 hours of Ethics].

(2) A real estate inspector or professional inspector who files an application for reinstatement of an [a] expired license within two years of the expiration date of the previous license, must provide evidence satisfactory to the Commission that the applicant has completed any continuing education that would have been otherwise required for timely renewal of the previous license had that license not expired.

(b) - (c) (No change.)

(d) Continuing education credit for course taken outside of Texas. A course taken by a real estate inspector or professional inspector licensed in Texas to satisfy continuing education requirements of a country, territory, or state other than Texas may be approved on an individual basis for continuing education elective credit in Texas upon the Commission's determination that:

(1) the real estate inspector or professional inspector licensed in Texas held an active inspector license in a country, territory, or state other than Texas at the time the course was taken;

(2) the course was approved for continuing education credit for an inspector license by a country, territory, or state other than Texas at the time the course was taken;

(3) the successful completion of the course has been evidenced by a course completion certificate, a letter from the provider or such other proof satisfactory to the Commission;

(4) the subject matter of the course was predominately devoted to a subject acceptable for continuing education credit for a real estate inspector or professional inspector licensed in Texas; and

(5) the real estate inspector or professional inspector licensed in Texas has filed a Continuing Education (CE) Credit Request for an Out of State Course, with the Commission.

(e) [(d)] Continuing education credit for instructors.

(1) Providers may request continuing education credit be given to instructors of real estate inspection courses subject to the following guidelines:

(A) instructors may receive credit for only those portions of the course which they teach; and

(B) instructors may receive full course credit by attending all of the remainder of the course.

(2) An Instructor of a ride along inspection course is eligible to receive continuing education credit for a ride-along inspection course conducted by the instructor if the Commission is provided a certification of course completion within one week of completion of the course, on a form approved by the Commission.

(3) Instructors of ride along inspection course sessions may only receive up to 8 hours of continuing education credit for teaching the course per [two year] license [renewal] period.

(f) Continuing education credit for attendance at a meeting of the Texas Real Estate Inspector Committee. A real estate inspector or professional inspector licensed in Texas may receive up to four hours of continuing education elective credit per license period for attendance in person at the February meeting of the Texas Real Estate Inspector Committee.

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 August 18, 2016.

TRD-201604253
Kristen Worman
Deputy General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: October 2, 2016
For further information, please call: (512) 936-3093

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER F. HEMOPHILIA ASSISTANCE PROGRAM

25 TAC §§37.112 - 37.114, 37.116 - 37.118

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§37.112 - 37.114 and 37.116 - 37.118, concerning the Hemophilia Assistance Program (program).

BACKGROUND AND PURPOSE

As authorized by Health and Safety Code, Chapter 41, the program contracts with pharmacies, hospitals, and blood banks throughout the state to provide blood factor replacement products that have been approved for payment by the program and are indicated for the treatment of hemophilia. House Bill 1038, 84th Legislature, Regular Session, 2015, amended Health and Safety Code, §41.002, and allows the program to provide insurance premium payment assistance to Texas residents with hemophilia. All program clients are adults who have been diagnosed with hemophilia and have met all program eligibility requirements.

The proposed amendments establish guidelines by which the program may reimburse eligible clients for insurance premium payments.

SECTION-BY-SECTION SUMMARY

Proposed amendments to §37.112 revise existing definitions and add new definitions. New terms used in this subchapter include "approved health plan" and "insurance premium payment."

Proposed amendment to §37.113 updates eligibility requirements to allow program clients to be dually eligible for Medicare and the program.

Proposed amendments to §37.114 revise benefits and limitations by adding language regarding the payment of insurance premiums.

Proposed amendments to §37.116 add new language for the payment of insurance premiums and establish filing deadlines for premium reimbursements.

Proposed amendment to §37.117 updates clients' rights to include choosing a health plan, subject to program limitations.

Proposed amendment to §37.118 adds new language allowing the department to modify, suspend, deny, or terminate a client's eligibility for failure to reimburse the department for overpayments.

FISCAL NOTE

Carol Labaj, RN, BSN, Director, Children with Special Health Care Needs Unit, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESSES IMPACT ANALYSIS

Ms. Labaj has also determined that there will be no adverse effect on small businesses or micro-businesses required to comply with the sections as proposed because small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Ms. Labaj has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The anticipated benefit is the ability to help individuals by paying for insurance premiums with the existing funds allotted to the program. Historically, the funds were only used to pay for costly blood factor replacement products. The new benefit is a cost-effective use of program funding and will help provide comprehensive health care to people seeking treatment for hemophilia.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted by mail to Jayne Rollison, Purchased Health Services Unit, Mail Code 1938, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347; by telephone at (512) 776-3664; or by email to jayne.rollison@hhsc.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The amendments are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendments affect Government Code, Chapter 531; and Health and Safety Code, Chapters 41 and 1001.

§37.112. Definitions.

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

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

(4) Approved health plan--An insurance plan that provides coverage for hemophilia medical treatment.

(5) [~~(4)~~] Attestation--A statement by a person or the person's legally authorized representative attesting that:

(A) the person does not have access to private health care insurance that provides coverage for the benefit, service, or assistance; or

(B) the person has access to private health care insurance that provides coverage for the benefit, service, or assistance.

(6) [~~(5)~~] CHIP--The Children's Health Insurance Program administered by the Commission under Title XXI of the Social Security Act.

(7) [~~(6)~~] Claim--A request for payment or reimbursement of services or insurance premiums.

(8) [~~(7)~~] Client--A person who has applied for program services and who meets all program eligibility requirements and is determined to be eligible for program services, and may include:

(A) a person who has applied to the program for the first time and is determined to be eligible for program services;

(B) a person who has re-applied to the program (after a lapse in eligibility) and is determined to be eligible for program services; or

(C) a person who has applied to the program and is determined to be eligible for program services and is currently on the program's waiting list.

(9) [~~(8)~~] Commission--The Health and Human Services Commission.

(10) [~~(9)~~] CSHCN Services Program--Children with Special Health Care Needs Services Program.

(11) [~~(10)~~] Date of service--The date the allowable products are dispensed.

(12) [~~(11)~~] Denial--An action by the program that disallows program eligibility, benefits, or administrative review requests.

(13) [~~(12)~~] Department--Department of State Health Services.

(14) [~~(13)~~] Eligibility date for program benefits--The effective date of client eligibility for program benefits is the date of receipt of a complete, approved application.

(15) [~~(14)~~] Exclusion--The federal and state offices of Inspector General maintain lists that exclude certain people or businesses from participating as service providers for federal and state health care programs.

(16) [~~(15)~~] Factor--A substance that is injected into the vein of a person with hemophilia to replace the missing blood clotting factor and allow the blood to clot properly.

(17) [~~(16)~~] Fair hearing--The informal hearing process the department follows in accordance with §§1.51 - 1.55 of this title (relating to Fair Hearing Procedures).

(18) [~~(17)~~] Family--In order to determine family size for the calculation of the applicant's percentage of the Federal Poverty Level for program eligibility, the family includes the following persons who live in the same residence:

(A) the applicant;

(B) any persons who have a legal responsibility to support the applicant;

(C) children under age 18 or wards of the applicant; and

(D) children under age 18 or wards of any persons who have a legal responsibility to support the applicant.

(19) [~~(18)~~] Federal Poverty Level guidelines (FPL)--The minimum income needed by a family for food, clothing, transportation, shelter, and other necessities in the United States, according to the United States Department of Health and Human Services, or its successor agency or agencies. FPL varies according to family size, and after adjustment for inflation, is published annually in the *Federal Register.*

(20) [~~(19)~~] Filing deadline--The last date that a claim may be received by the program and still be considered eligible for payment of benefits.

(21) [~~(20)~~] Hemophilia Assistance Program (program)--A state funded program that provides limited financial assistance to persons age 18 and older who have been diagnosed with hemophilia and meet other program eligibility requirements for blood factor replacement products that are administered or dispensed by program-approved providers or insurance premium payment assistance.

(22) [~~(21)~~] Hemophilia--A human physical condition characterized by bleeding, resulting from a genetically determined deficiency of a blood coagulation factor or an abnormal or deficient plasma procoagulant that prevents the blood from clotting properly. The diagnoses covered by the program include:

(A) congenital factor VIII disorder (Hemophilia A);

(B) congenital factor IX disorder (Hemophilia B); and

(C) congenital factor XI disorder (Hemophilia C).

(23) [~~(22)~~] Income--The gross income, either earned or unearned, before deductions over a given period of time for each family member.

(24) [~~(23)~~] Incomplete claim--A request for payment or reimbursement of services or insurance premiums that is missing required information.

(25) Insurance premium payment--A payment made to an approved health plan.

(26) [~~(24)~~] Medicaid--A program of medical care authorized by Title XIX of the Social Security Act and the Human Resources Code.

(27) [~~(25)~~] Medicare--A federal program that provides medical care for people age 65 or older and the disabled as authorized by Title XVIII of the Social Security Act.

(28) [~~(26)~~] Other Coverage--Coverage, in addition to benefit coverage as referenced in §37.114 of this title (related to Benefits and Limitations), to which a person is entitled for payment of the costs of services or insurance premiums included in the scope of coverage of the program, but not limited to, benefits available from:

(A) an insurance policy, group health plan, health maintenance organization, or prepaid medical plan;

(B) Title XVIII, Title XIX, or Title XXI of the Social Security Act (42 U.S.C. §§1395 et seq., 1396 et seq., and 1397aa et seq.), as amended;

(C) the United States Department of Veterans Affairs;

(D) the TRICARE program of the United States Department of Defense;

(E) workers' compensation or any other compulsory employers' insurance program;

(F) a public program created by federal or state law or under the authority of a municipality or other political subdivision of the state, excluding benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital, a county hospital authority, a hospital district, a county indigent health care program, or the facilities of a publicly supported medical school; or

(G) a cause of action for the cost of care, including medical care, dental care, facility care, and medical supplies, required for a person applying for or receiving services from the department or a settlement or judgment based on the cause of action if the expenses are related to the need for services provided under this chapter.

(29) [~~(27)~~] Physician--An individual licensed by the Texas Medical Board to practice medicine in the state.

(30) [~~(28)~~] Prior Authorization--The process of getting approval from the program, before a product is dispensed, to determine if it can be considered for reimbursement.

(31) [~~(29)~~] Program--The Hemophilia Assistance Program.

(32) [~~(30)~~] Provider--Any individual or entity, as defined in §37.115, of this title (relating to Providers) approved by the program to provide allowable products to clients.

(33) [~~(31)~~] Recertification of Program Eligibility--Upon request of the program, clients must submit the information required in order to determine their continuing eligibility for program services.

(34) [~~(32)~~] Reimbursement--Payment of a claim for insurance premiums submitted by a client or allowable products administered or dispensed to a client submitted by a program provider.

(35) [~~(33)~~] Reimbursement rate--The program payment rate for allowable products, determined annually for the following fiscal year.

(36) [~~(34)~~] Social Security Administration (SSA)--A United States government agency that administers the social insurance programs in the United States. The agency covers a wide range of

social security services, such as disability, retirement and survivors' benefits.

(37) [~~(35)~~] Social Security Disability Insurance (SSDI)--A payroll tax-funded, federal insurance program managed by the SSA, that provides income to people who are unable to work because of a disability.

(38) [~~(36)~~] State--The State of Texas.

(39) [~~(37)~~] Texas resident--A person who:

(A) is physically present within the geographic boundaries of the state:

(i) intends to remain within the state;

(ii) maintains an abode within the state (i.e., house or apartment, not merely a post office box);

(iii) has not come to the state from another country for the purpose of obtaining medical care with the intent to return to the person's native country; and

(B) does not claim residency in any other state or country; or

(C) is a person residing in the state who is the legally dependent spouse of a Texas resident; or

(D) is an adult residing in the state, and plans to continue to reside, with a parent(s), managing conservator, guardian of the adult's person, or caretaker who is a Texas resident.

§37.113. Program Eligibility.

(a) Client Requirements. In order to be determined eligible for program benefits, applicants must meet the medical, age, residency, financial, and other criteria in this section, and submit a complete application for program benefits.

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

(5) Other criteria. The applicant must not be eligible for Medicaid or[~~, Medicare,~~] the Children's Health Insurance Program (CHIP). The program may require an applicant currently not enrolled in Medicaid, Medicare, CHIP, SSDI, or the CSHCN Services Program to apply for any of these applicable programs when the applicant's age, income, or medical disability determination meets the eligibility criteria for any of these programs and, if eligible, to participate in those programs.

(6) (No change.)

(7) Application.

(A) To be considered by the program, a complete application must be made on forms required by the department. The application must have the signature or mark of the applicant, or the applicant's legally authorized representative, and the physician's signature.

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

(8) - (9) (No change.)

(b) (No change.)

§37.114. Benefits and Limitations.

An eligible client may receive either blood factor replacement products or insurance premium payment assistance in the same fiscal year, but not at the same time.

(1) [~~(a)~~] Blood Factor Replacement Products. The program provides limited reimbursement to program providers for blood factor replacement products indicated for the treatment of hemophilia and prescribed to eligible clients for use in medical or dental facilities, or in the home.

(2) [~~(b)~~] Program [~~All program~~] benefits for allowable products are limited to those [~~allowable products~~] prescribed by a physician and dispensed by a program provider.

(3) [~~(c)~~] The program will pay for allowable products based upon:

(A) [~~(1)~~] available funds;

(B) [~~(2)~~] established limits for allowable products by type or category; and

(C) [~~(3)~~] the reimbursement rates established by the department.

(4) [~~(d)~~] Eligible clients with [~~a~~] private or group health insurance for which the program does not provide insurance premium payment assistance must exhaust all benefits prior to receiving program benefits for allowable products [~~from the program~~].

(5) Insurance Premium Payment Assistance. The program may assist eligible clients in obtaining public or private health insurance by providing insurance premium payment assistance if paying for such health insurance can reasonably be expected to be cost effective for the program.

(6) [~~(e)~~] The program is payer of last resort. Applicants and currently eligible clients are no longer eligible when they become eligible for the CHIP, SSDI, or Medicaid [~~or Medicare~~].

(7) [~~(f)~~] To meet budgetary limitations, the department may:

(A) [~~(1)~~] adjust the reimbursement rates established by the department;

(B) [~~(2)~~] restrict [~~the~~] allowable products and insurance premium payments paid for under the program;

(C) [~~(3)~~] adjust the annual benefit limits; or

(D) [~~(4)~~] establish a waiting list of persons eligible for the program. Appropriate information will be collected from each applicant who is placed on a waiting list. The information will be used to facilitate contacting the applicant and to allow efficient enrollment of the applicant when benefits become available. Eligibility must be maintained while on the waiting list.

§37.116. Claims Payment.

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

(c) The program reimburses eligible clients for insurance premium payments made to program approved health plans. Reimbursements may be made after the program's receipt of a valid proof of insurance premium payment.

(d) [~~(c)~~] Filing Deadlines.

(1) Complete claims must be received by the program within 95 calendar days from the end of the month of the date of service or 95 calendar days from the end of the month for which the premium was paid.

(2) Incomplete and ineligible claims will be denied.

(3) Denied claims may be considered for payment if the claim is corrected and resubmitted within 30 days following the date of the program notice of denial or within the initial 95 day filing deadline, whichever is later.

§37.117. Rights and Responsibilities.

(a) Client Rights. The applicant, client, or legally authorized representative have the right to:

(1) - (2) (No change.)

(3) choose a health plan, if applicable, subject to program limitations;

(4) [~~(3)~~] be notified of program decisions relating to modifications, suspensions, denials, or terminations;

(5) [~~(4)~~] have all client files and other information maintained in a confidential manner to the extent authorized by law;

(6) [~~(5)~~] appeal program decisions and receive a response within the deadline as described in §37.119 of this title (relating to Right of Appeal); and

(7) [~~(6)~~] reapply for the program when eligibility for the program is denied or terminated.

(b) - (d) (No change.)

§37.118. Modifications, Suspensions, Denials and Terminations.

(a) Any applicant or client shall be notified in writing of the action, the reason(s) for the action, and the right of appeal in accordance with §37.119 of this title (relating to Right of Appeal), if the program proposes to modify, suspend, deny, or terminate program eligibility or benefits for reasons, which include but are not limited to the following:

(1) - (7) (No change.)

(8) failure to receive allowable products through a program provider; [~~or~~]

(9) failure to reimburse the department, as requested, for overpayments made to the client; or

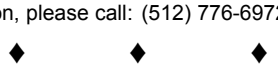
(10) [~~(9)~~] failure to continue insurance premium payments on individual or group insurance or prepaid medical plans, where such plans provide benefits for the care and treatment of persons who have hemophilia and eligibility for benefits under the plan(s) was effective prior to eligibility for the program, and failure to provide a statement on the application form outlining the reason(s) why such insurance cannot be maintained.

(b) (No change.)

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

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

TRD-201604317
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: October 2, 2016
For further information, please call: (512) 776-6972



PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 701. POLICIES AND PROCEDURES

25 TAC §§701.3, 701.7, 701.9, 701.19, 701.27

The Cancer Prevention and Research Institute of Texas (Institute) proposes amendments to §§701.3, 701.7, 701.9, 701.19, and 701.27 regarding the definition of Authorized Signing Official; Chief Compliance Officer report frequency; fraud, waste, and abuse; electronic signature policy; and reporting requirements on the Institute's public website.

Background and Justification

Section 701.3 is amended to include designated alternates in the Institute's definition of "Authorized Signing Official."

Section 701.7 is amended to require the Chief Compliance Officer to report at least quarterly, instead of annually, to the Oversight Committee regarding grantee compliance with Institute rules.

Section 701.9 is amended to include fraud, waste, and abuse as part of the compliance program. The proposed amendment adds reports and investigations of fraud, waste, and abuse to the activities that the Chief Compliance Officer oversees.

Section 701.19 is amended to replace all of the current text relating to advance payment of grant award funds with text that outlines requirements for Texas location for grant awards and to change the name of the rule to "Texas Location for Grant Awards." The proposed rule sets out specific actions a grantee may take to demonstrate a Texas location sufficient to be eligible for a grant award.

Section 701.27 is amended to clarify the information that needs to be reported on the Institute's public website. The Institute is required to report all gifts, grants, or other consideration given to an Oversight Committee member, Institute employee, or Program Integration Committee. The proposed amendment makes it clear that the gifts covered by the exceptions specified by Rule §702.7, related to gifts, grants, or consideration, do not need to be posted on the Institute's public website.

Fiscal Note

Kristen Pauling Doyle, General Counsel for the Cancer Prevention and Research Institute of Texas, has determined that for the first five-year period the rule changes are in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the rules.

Public Benefit and Costs

Ms. Doyle has determined that for each year of the first five years the rule changes are in effect the public benefit anticipated as a result of enforcing the rules will be clarification of policies and procedures the Institute will follow to implement its statutory duties.

Small Business and Micro-business Impact Analysis

Ms. Doyle has determined that the rule changes shall not have an effect on small businesses or on micro businesses.

Written comments on the proposed rule changes may be submitted to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711 no later than October 3, 2016. Parties filing comments are asked to indicate whether or not they support the rule revisions proposed by the Institute and, if a change is requested, to provide specific text proposed to be included in the rule. Comments may be submitted electronically to kdoyle@cprit.texas.gov. Comments may be submitted by facsimile transmission to (512) 475-2563.

Kristen Pauling Doyle, the Institute's General Counsel, has reviewed the proposed amendments and certifies the proposal to be within the Institute's authority to adopt.

Statutory Authority

The rule changes are proposed under the authority of the Texas Health and Safety Code Annotated, §102.108 and §102.251, which provide the Institute with broad rule-making authority to administer the chapter and to issue rules regarding the procedures for awarding grants.

There is no other statute, article or code that is affected by these rules.

§701.3. Definitions.

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

(1) Advisory Committee--a committee of experts, including practitioners and patient advocates, created by the Oversight Committee to advise the Oversight Committee on issues related to cancer.

(2) Allowable Cost--a cost that is reasonable, necessary for the proper and efficient performance and administration of the project, and allocable to the project.

(3) Annual Public Report--the report issued by the Institute pursuant to Texas Health and Safety Code §102.052 outlining Institute activities, including Grant Awards, research accomplishments, future Program directions, compliance, and Conflicts of Interest actions.

(4) Authorized Expense--cost items including honoraria, salaries and benefits, consumable supplies, other operating expenses, contracted research and development, capital equipment, construction or renovation of state or private facilities, travel, and conference fees and expenses.

(5) Approved Budget--the financial expenditure plan for the Grant Award, including revisions approved by the Institute and permissible revisions made by the Grant Recipient. The Approved Budget may be shown by Project Year and detailed budget categories.

(6) Authorized Signing Official (ASO)--the individual, including designated alternates, named by the Grant Applicant, who is authorized to act for the Grant Applicant or Grant Recipient in submitting the Grant Application and executing the Grant Contract and associated documents or requests.

(7) Bylaws--the rules established by the Oversight Committee to provide a framework for its operation, management, and governance.

(8) Cancer Prevention--a reduction in the risk of developing cancer, including early detection, control and/or mitigation of the incidence, disability, mortality, or post-diagnosis effects of cancer.

(9) Cancer Prevention and Control Program--effective strategies and interventions for preventing and controlling cancer designed to reduce the incidence and mortality of cancer and to enhance the quality of life of those affected by cancer.

(10) Cancer Prevention and Research Fund--the dedicated account in the general revenue fund consisting of legislative appropriations, gifts, grants, other donations, and earned interest.

(11) Cancer Research--research into the prevention, causes, detection, treatments, and cures for all types of cancer in humans, including basic mechanistic studies, pre-clinical studies, animal model studies, translational research, and clinical research to develop preventative measures, therapies, protocols, medical pharmaceuticals, medical devices or procedures for the detection, treatment, cure or substantial mitigation of all types of cancer and its effects in humans.

(12) Chief Compliance Officer--the individual employed by the Institute to monitor and report to the Oversight Committee regarding compliance with the Institute's statute and administrative rules. The term may also apply to an individual designated by the Chief Compliance Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(13) Chief Executive Officer--the individual hired by the Oversight Committee to perform duties required by the Institute's Statute or designated by the Oversight Committee. The term may apply to an individual designated by the Chief Executive Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(14) Chief Prevention Officer--the individual hired by the Chief Executive Officer to oversee the Institute's Cancer Prevention program, including the Grant Review Process, and to assist the Chief Executive Officer in collaborative outreach to further Cancer Research and Cancer Prevention. The term may also apply to an individual designated by the Chief Prevention Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(15) Chief Product Development Officer--the individual hired by Chief Executive Officer to oversee the Institute's Product Development program for drugs, biologicals, diagnostics, or devices arising from Cancer Research, including the Grant Review Process, and to assist the Chief Executive Officer in collaborative outreach to further Cancer Research and Cancer Prevention. The term may apply to an individual designated by the Chief Product Development Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(16) Chief Scientific Officer--the individual hired by the Chief Executive Officer to oversee the Institute's Cancer Research program, including the Grant Review Process, and to assist the Chief Executive Officer in collaborative outreach to further Cancer Research and Cancer Prevention. The term may apply to an individual designated by the Chief Scientific Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(17) Code of Conduct and Ethics--the code adopted by the Oversight Committee pursuant to Texas Health and Safety Code §102.109 to provide guidance related to the ethical conduct expected of Oversight Committee Members, Program Integration Committee Members, and Institute Employees.

(18) Compliance Program--a process to assess and ensure compliance by the Oversight Committee Members and Institute Employees with applicable laws, rules, and policies, including matters of ethics and standards of conduct, financial reporting, internal accounting controls, and auditing.

(19) Conflict(s) of Interest--a financial, professional, or personal interest held by the individual or the individual's Relative that is contrary to the individual's obligation and duty to act for the benefit of the Institute.

(20) Encumbered Funds--funds that are designated by a Grant Recipient for a specific purpose.

(21) Financial Status Report--form used to report all Grant Award related financial expenditures incurred in implementation of the Grant Award. This form may also be referred to as "FSR" or "Form 269-A."

(22) Grant Applicant--the public or private institution of higher education, as defined by §61.003, Texas Education Code, re-

search institution, government organization, non-governmental organization, non-profit organization, other public entity, private company, individual, or consortia, including any combination of the aforementioned, that submits a Grant Application to the Institute. Unless otherwise indicated, this term includes the Principal Investigator or Program Director.

(23) Grant Application--the written proposal submitted by a Grant Applicant to the Institute in the form required by the Institute that, if successful, will result in a Grant Award.

(24) Grant Award--funding, including a direct company investment, awarded by the Institute pursuant to a Grant Contract providing money to the Grant Recipient to carry out the Cancer Research or Cancer Prevention project in accordance with rules, regulations, and guidance provided by the Institute.

(25) Grant Contract--the legal agreement executed by the Grant Recipient and the Institute setting forth the terms and conditions for the Cancer Research or Cancer Prevention Grant Award approved by the Oversight Committee.

(26) Grant Management System--the electronic interactive system used by the Institute to exchange, record, and store Grant Application and Grant Award information.

(27) Grant Mechanism--the specific Grant Award type.

(28) Grant Program--the functional area in which the Institute makes Grant Awards, including research, prevention and product development.

(29) Grant Progress Report--the required report submitted by the Grant Recipient at least annually and at the close of the grant award describing the activities undertaken to achieve the goals and objectives of the funded project and including information, data and program metrics. Unless the context clearly indicates otherwise, the Grant Progress Report also includes other required reports such as a Historically Underutilized Business and Texas Supplier form, a single audit determination form, an inventory report, a single audit determination form, a revenue sharing form, and any other reports or forms designated by the Institute.

(30) Grant Recipient--the entire legal entity responsible for the performance or administration of the Grant Award pursuant to the Grant Contract. Unless otherwise indicated, this term includes the Principal Investigator, Program Director, or Company Representative.

(31) Grant Review Cycle--the period that begins on the day that the Request for Applications is released for a particular Grant Mechanism and ends on the day that the Oversight Committee takes action on the Grant Award recommendations.

(32) Grant Review Process--the Institute's processes for Peer Review, Program Review and Oversight Committee approval of Grant Applications.

(33) Indirect Costs--the expenses of doing business that are not readily identified with a particular Grant Award, Grant Contract, project, function, or activity, but are necessary for the general operation of the Grant Recipient or the performance of the Grant Recipient's activities.

(34) Institute--the Cancer Prevention and Research Institute of Texas or CPRIT.

(35) Institute Employee--any individual employed by the Institute, including any individual performing duties for the Institute pursuant to a contract of employment. Unless otherwise indicated, the term does not include an individual providing services to the Institute pursuant to a services contract.

(36) Intellectual Property Rights--any and all of the following and all rights in, arising out of, or associated therewith, but only to the extent resulting from the Grant Award:

(A) The United States and foreign patents and utility models and applications therefore and all reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations and such claims of continuations-in-part as are entitled to claim priority to the aforesaid patents or patent applications, and equivalent or similar rights anywhere in the world in Inventions and discoveries;

(B) All trade secrets and rights in know-how and proprietary information;

(C) All copyrights, whether registered or unregistered, and applications therefore, and all other rights corresponding thereto throughout the world excluding scholarly and academic works such as professional articles and presentations, lab notebooks, and original medical records; and

(D) All mask works, mask work registrations and applications therefore, and any equivalent or similar rights in semiconductor masks, layouts, architectures or topography.

(37) Invention--any method, device, process or discovery that is conceived and/or reduced to practice, whether patentable or not, by the Grant Recipient in the performance of work funded by the Grant Award.

(38) License Agreement--an understanding by which an owner of Technology and associated Intellectual Property Rights grants any right to make, use, develop, sell, offer to sell, import, or otherwise exploit the Technology or Intellectual Property Rights in exchange for consideration.

(39) Matching Funds--the Grant Recipient's Encumbered Funds equal to one-half of the Grant Award available and not yet expended that are dedicated to the research that is the subject of the Grant Award. For public and private institutions of higher education, this includes the dollar amount equivalent to the difference between the indirect cost rate authorized by the federal government for research grants awarded to the Grant Recipient and the five percent (5%) Indirect Cost limit imposed by §102.203(c), Texas Health and Safety Code.

(40) Numerical Ranking Score--the score given to a Grant Application by the Review Council that is substantially based on the final Overall Evaluation Score submitted by the Peer Review Panel, but also signifies the Review Council's view related to how well the Grant Application achieves program priorities set by the Oversight Committee, the overall Program portfolio balance, and any other criteria described in the Request for Applications.

(41) Overall Evaluation Score--the score given to a Grant Application during the Peer Review Panel review that signifies the reviewers' overall impression of the Grant Application. Typically it is the average of the scores assigned by two or more Peer Review Panel members.

(42) Oversight Committee--the Institute's governing body, composed of the nine individuals appointed by the Governor, Lieutenant Governor, and the Speaker of the House of Representatives.

(43) Oversight Committee Member--any person appointed to and serving on the Oversight Committee.

(44) Patient Advocate--a trained individual who meets the qualifications set by the Institute and is appointed to a Scientific Research and Prevention Programs Committee to specifically represent the interests of cancer patients as part of the Peer Review of Grant Applications assigned to the individual's committee.

(45) Peer Review--the review process performed by Scientific Research and Prevention Programs Committee members and used by the Institute to provide guidance and recommendations to the Program Integration Committee and the Oversight Committee in making decisions for Grant Awards. The process involves the consistent application of standards and procedures to produce a fair, equitable, and objective evaluation of scientific and technical merit, as well as other relevant aspects of the Grant Application. When used herein, the term applies individually or collectively, as the context may indicate, to the following review process(es): Preliminary Evaluation, Individual Evaluation by Primary Reviewers, Peer Review Panel discussion and Review Council prioritization.

(46) Peer Review Panel--a group of Scientific Research and Prevention Programs Committee members conducting Peer Review of assigned Grant Applications.

(47) Prevention Review Council--the group of Scientific Research and Prevention Programs Committee members designated as the chairpersons of the Peer Review Panels that review Cancer Prevention program Grant Applications. This group includes the Review Council chairperson.

(48) Primary Reviewer--a Scientific Research and Prevention Programs Committee member responsible for individually evaluating all components of the Grant Application, critiquing the merits according to explicit criteria published in the Request for Applications, and providing an individual Overall Evaluation Score that conveys the general impression of the Grant Application's merit.

(49) Principal Investigator, Program Director, or Company Representative--the single individual designated by the Grant Applicant or Grant Recipient to have the appropriate level of authority and responsibility to direct the project to be supported by the Grant Award.

(50) Product Development Review Council--the group of Scientific Research and Prevention Programs Committee Members designated as the chairpersons of the Peer Review Panels that review Grant Applications for the development of drugs, drugs, biologicals, diagnostics, or devices arising from earlier-stage Cancer Research. This group includes the Review Council chairperson.

(51) Product Development Prospects--the potential for development of products, services, or infrastructure to support Cancer Research efforts, including but not limited to pre-clinical, clinical, manufacturing, and scale up activities.

(52) Program Income--income from fees for services performed, from the use or rental of real or personal property acquired with Grant Award funds, and from the sale of commodities or items fabricated under the Grant Contract. Except as otherwise provided, Program Income does not include rebates, credits, discounts, refunds, etc. or the interest earned on any of these items. Interest otherwise earned in excess of $250 on Grant Award funds is considered Program Income.

(53) Program Integration Committee--the group composed of the Chief Executive Officer, the Chief Scientific Officer, the Chief Product Development Officer, the Commissioner of State Health Services, and the Chief Prevention Officer that is responsible for submitting to the Oversight Committee the list of Grant Applications the Program Integration Committee recommends for Grant Awards.

(54) Project Results--all outcomes of a Grant Award, including publications, knowledge gained, additional funding generated, and any and all Technology and associated Intellectual Property Rights.

(55) Project Year--the intervals of time (usually 12 months each) into which a Grant Award is divided for budgetary, funding, and reporting purposes. The effective date of the Grant Contract is the first day of the first Project Year.

(56) Real Property--land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

(57) Relative--a person related within the second degree by consanguinity or affinity determined in accordance with §§573.021 - 573.025, Texas Government Code. For purposes of this definition:

(A) examples of an individual within the second degree by consanguinity are a child, grandchild, parent, grandparent, brother, sister, uncle, aunt, niece, or nephew;

(B) examples of an individual within the second degree by affinity are a spouse, a person related to a spouse within the second degree by consanguinity, or a spouse of such a person;

(C) an individual adopted into a family is considered a Relative on the same basis as a natural born family member; and

(D) an individual is considered a spouse even if the marriage has been dissolved by death or divorce if there are surviving children of that marriage.

(58) Request for Applications--the invitation released by the Institute seeking the submission of Grant Applications for a particular Grant Mechanism. It provides information relevant to the Grant Award to be funded, including funding amount, Grant Review Process information, evaluation criteria, and required Grant Application components.

(59) Review Council--the term used to generally refer to one or more of the Prevention Review Council, the Product Development Review Council, or Scientific Review Council.

(60) Scientific Research and Prevention Programs Committee--a group of experts in the field of Cancer Research, Cancer Prevention or Product Development, including trained Patient Advocates, appointed by the Chief Executive Officer and approved by the Oversight Committee for the purpose of conducting Peer Review of Grants Applications and recommending Grant Awards. A Peer Review Panel is a Scientific Research and Prevention Programs Committee, as is a Review Council.

(61) Scientific Research and Prevention Programs Committee Member--an individual appointed by the Chief Executive Officer and approved by the Oversight Committee to serve on a Scientific Research and Prevention Programs Committee. Peer Review Panel Members are Scientific Research and Prevention Programs Committee Members, as are Review Council Members.

(62) Scientific Review Council--the group of Scientific Research and Prevention Programs Committee Members designated as the chairpersons of the Peer Review Panels that review Cancer Research Grant Applications. This group includes the Review Council chairperson.

(63) Scope of Work--the goals and objectives of the Cancer Research or Cancer Prevention project, including the timeline and milestones to be achieved.

(64) Senior Member or Key Personnel--the Principal Investigator, Project Director or Company Representative and other individuals who contribute to the scientific development or execution of a project in a substantive, measurable way, whether or not the individuals receive salary or compensation under the Grant Award.

(65) Technology--any and all of the following resulting or arising from work funded by the Grant Award:

(A) Inventions;

(B) Third-Party Information, including but not limited to data, trade secrets and know-how;

(C) databases, compilations and collections of data;

(D) tools, methods and processes; and

(E) works of authorship, excluding all scholarly works, but including, without limitation, computer programs, source code and executable code, whether embodied in software, firmware or otherwise, documentation, files, records, data and mask works; and all instantiations of the foregoing in any form and embodied in any form, including but not limited to therapeutics, drugs, drug delivery systems, drug formulations, devices, diagnostics, biomarkers, reagents and research tools.

(66) Texas Cancer Plan--a coordinated, prioritized, and actionable framework that helps to guide statewide efforts to fight the human and economic burden of cancer in Texas.

(67) Third-Party Information--generally, all trade secrets, proprietary information, know-how and non-public business information disclosed to the Institute by Grant Applicant, Grant Recipient, or other individual external to the Institute.

(68) Tobacco--all forms of tobacco products, including but not limited to cigarettes, cigars, pipes, water pipes (hookah), bidis, kreteks, electronic cigarettes, smokeless tobacco, snuff and chewing tobacco.

§701.7. Compliance Program.

(a) Oversight Committee Members, Institute Employees, Scientific Research and Prevention Program Committee Members, Program Integration Committee Members, Grant Applicants, Grant Recipients, and contract service providers are expected to comply with applicable laws, rules, regulations, and policies in conduct of their official duties and responsibilities as well as professional standards of business and personal ethics.

(b) The Institute's Compliance Program shall ensure that agency operations conform to federal and state regulations, and that such operations are undertaken consistent with the Institute's administrative rules, policies, and procedures.

(1) The Compliance Program shall specifically address at least the following agency operations: Grant Review Process, Grant Award financial reporting and performance monitoring, Institute financial reporting, internal accounting controls, and auditing.

(2) The Compliance Program shall implement and oversee systems and activities to detect and report instances of conduct that do not conform to applicable law or policy, as well as the timely response to non-conforming conduct and to prevent future similar conduct.

(3) The Compliance Program shall implement and enforce the Code of Conduct and Ethics as well as the consistent enforcement of other compliance standards and procedures adopted by the Oversight Committee.

(c) The Compliance Program shall operate under the direction of the Chief Compliance Officer.

(1) In performing the duties under this program, the Chief Compliance Officer shall have direct access to the Oversight Committee.

(2) The Chief Compliance Officer is responsible and will be held accountable for apprising the Oversight Committee and the Chief Executive Officer of the institutional compliance functions and activities.

(A) The Chief Compliance Officer shall report at least quarterly to the Oversight Committee on the Institute's compliance with the applicable laws, rules and Institute policies. The Chief Compliance Officer may report more frequently to the Audit Subcommittee of the Oversight Committee.

(B) The Chief Compliance Officer shall report at least annually on the Institute's compliance program activities, including any proposed legislation or other recommendations identified through the activities. The compliance report shall be included in the Institute's Annual Public Report.

(C) The Chief Compliance Officer shall report [~~at least annually~~] to the Oversight Committee on the Grant Recipients' compliance with the terms and conditions of the Grant Contracts. This report shall be presented at each quarterly [~~made at the first~~] Oversight Committee meeting [~~following the submission of the Institute's Annual Public Report~~].

(D) The Chief Compliance Officer shall inquire into and monitor the timely submission status of required Grant Recipient reports and notify the Oversight Committee and General Counsel of a Grant Recipient's failure to meaningfully comply with reporting deadlines.

(d) Oversight Committee Members and Institute Employees shall participate in periodic Compliance Program training.

§701.9. Report and Investigation of Compliance Violations.

(a) The Chief Compliance Officer oversees the Institute's activities related to the report and investigation of suspected compliance violations, including fraud, waste, and abuse.

(b) To encourage good faith reporting of suspected noncompliance, the Institute shall establish a system to receive confidential reports of suspected instances or events that failed to comply with the Institute's applicable laws, rules and policies, including allegations of fraud, waste, and abuse. The Institute may use a telephonic and/or electronic mailbox system, such as an "ethics hotline" to preserve confidentiality of communications regarding suspected compliance violations and the anonymity of a person making a compliance report or participating in a compliance investigation.

(1) Information describing how to report a suspected compliance violation, including a designated telephone number and electronic mail address for confidentially reporting suspected compliance violations, shall be displayed on the Institute's Internet website and included in all Institute contracts and agreements.

(2) Information describing how to report a suspected compliance violation shall be included in the Institute's employee policies manual, and discussed internally with Institute Employees and included in ethics training sessions.

(3) Only good faith reports made to the designated telephone number or electronic mailbox shall be investigated.

(c) The Institute shall implement procedures to investigate a good faith report of a suspected violation, including:

(1) The prompt initiation of an investigation by the Chief Compliance Officer;

(2) Assignment to an appropriate individual or individuals to conduct the investigation, including the Audit Subcommittee, the Compliance Office, General Counsel, the Internal Auditor, or outside experts or advisors; and

(3) A recommendation for appropriate corrective actions, if any are warranted by the investigation, made to the Oversight Committee.

(d) To the extent allowed by law, the Institute will preserve the confidential nature of the good faith report of a suspected violation, including the identity of the individual submitting the report.

(e) The Chief Compliance Officer shall maintain a log that tracks the receipt, investigation, and resolution of reports made regarding compliance violations.

(f) In performing duties under this rule, the Chief Compliance Officer has direct access to the Oversight Committee. The Chief Compliance Officer shall report to the Oversight Committee at least quarterly on compliance activity.

(g) The following information is confidential and not subject to disclosure under Chapter 552, Texas Government Code, unless the information relates to an individual who consents to the disclosure:

(1) information that directly or indirectly reveals the identity of an individual who made a report to the Institute's Compliance Program office, sought guidance from the office, or participated in an investigation conducted under the Compliance Program;

(2) information that directly or indirectly reveals the identity of an individual who is alleged to have or may have planned, initiated, or participated in activities that are the subject of a report made to the Compliance Program if, after completing an investigation, the Compliance Program determines the report to be unsubstantiated or without merit; and

(3) other information that is collected or produced in a Compliance Program investigation if releasing the information would interfere with an ongoing compliance investigation.

(h) The Oversight Committee may meet in a closed session under Chapter 551, Texas Government Code, to discuss an on-going compliance investigation into issues related to fraud, waste or abuse of state resources.

§701.19. Texas Location for Grant Awards [~~Advance Payment of Grant Award Funds~~].

(a) Except as addressed by the Request for Applications or this rule, only Texas-based entities are eligible to receive Grant Awards.

(b) Grant Applicants responding to a Request for Applications may be located outside the state of Texas when the Grant application is submitted and reviewed. However, the Institute requires the Grant Applicant to demonstrate that it will relocate to Texas as a condition of the Grant Award.

(c) A Grant Applicant for a Product Development Grant Award may demonstrate compliance with subsection (b) by fulfilling a majority of the following requirements:

(1) The U.S. headquarters is physically located in Texas;

(2) The Chief Executive Officer resides in Texas;

(3) A majority of the company's personnel, including at least two other C-level employees (or equivalent) reside in Texas;

(4) Manufacturing activities take place in Texas;

(5) At least 90% of Grant Award funds are paid to individuals and entities in Texas, including salaries and personnel costs for employees and contractors;

(6) At least one clinical trial site in Texas; and

(7) Collaboration with a medical research organization in Texas, including a public or private institution of higher education.

(d) The location criteria to be fulfilled by the Grant Recipient are reflected in the Grant Contract.

(e) Unless otherwise specified by the Grant Contract, the Grant Recipient must fulfill the requirements within one year of receiving the disbursement of Grant Award funds.

(f) The Grant Recipient will report on the location criteria at least annually.

(g) The Institute will monitor compliance with this policy. Failure to meet and maintain the Texas location requirements may result in suspension of the Grant Award, termination of the Grant Contract, repayment of Grant Award funds; or other appropriate action as determined by the Chief Executive Officer and reported to the Oversight Committee.

(h) Nothing herein prohibits the Grant Recipient from proposing and the Institute from approving one or more alternative or additional location requirements. The Chief Executive Officer shall notify the Oversight Committee of the alternative criteria at an open meeting. The proposed alternative location requirement is approved unless a simple majority of the Oversight Committee votes to reject the Chief Executive Officer's recommendation.

~~[It is the Institute's policy to disburse Grant Award funds on a reimbursement basis; however, the nature and circumstances of the Grant Mechanism or a particular Grant Award may justify advance payment of funds by the Institute pursuant to the Grant Contract.]~~

~~[(1) The Chief Executive Officer shall seek approval from the Oversight Committee to disburse Grant Award funds by advance payment. The Chief Executive Officer's advance payment recommendation for the Grant Award must be approved by a simple majority of Oversight Committee Members present and voting. Unless specifically stated, the Oversight Committee's approval to disburse Grant Award funds by advance payment is effective for the term of the project.]~~

~~[(2) The Grant Contract must specify the amount, schedule, and requirements for advance payment of Grant Award funds.]~~

~~[(3) The Grant Recipient receiving advance payment of Grant Award funds must maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the Grant Award funds and disbursement by the Grant Recipient.]~~

~~[(4) Grant Recipient must comply with all financial reporting requirements regarding use of Grant Award funds.]~~

~~[(5) Nothing herein creates an entitlement to advance payment of Grant Award funds; the Institute may determine in its sole discretion that circumstances justify limiting the amount of Grant Award funds eligible for advance payment, may restrict the period that advance payment of Grant Award funds will be made, or may revert to payment on a reimbursement-basis.]~~

§701.27. Publicly Available Institute Reports and Records.

To promote transparency in its activities, the Institute maintains the information described in this section and makes such information publicly available through the Institute's Internet website or upon request.

(1) The Texas Cancer Plan;

(2) The Institute's Annual Public Report;

(3) The Conflict of Interest information described in this paragraph for the previous 12 months:

(A) A list of disclosed Conflicts of Interest requiring recusal.

(B) Any unreported Conflicts of Interest confirmed by an Institute investigation and actions taken by the Institute regarding same.

(C) Any Conflict of Interest waivers granted.

(4) An annual report of political contributions exceeding $1,000 made to candidates for state or federal office by Oversight Committee Members for the five years preceding the Member's appointment and each year after the Member's appointment until the Member's term expires;

(5) The annual Grant Program priorities set by the Oversight Committee;

(6) Oversight Committee Bylaws;

(7) Code of Conduct and Ethics;

(8) A list, separated by Grant Program and Peer Review Panel, of the Scientific Research and Prevention Programs Committee Members provisionally appointed or approved by the Oversight Committee;

(9) The Institute's honoraria policy for Scientific Research and Prevention Programs Committee Members;

(10) The supporting documentation regarding the Institute's implementation of its Conflict of Interest policy and actions taken to exclude a conflicted Oversight Committee Member, Program Integration Committee Member, Scientific Research and Prevention Programs Committee Member or Institute Employee from participating in the review, discussion, deliberation and vote on the Grant Application;

(11) The Chief Executive Officer's annual report to the Oversight Committee on the progress and continued merit of each research Program funded by the Institute;

(12) Grant Applicant information:

(A) Name and address;

(B) Amount of funding applied for;

(C) Type of cancer addressed by the Grant Application; and

(D) A high-level summary of work proposed to be funded by the Grant Award;

(13) Information related to Grant Awards, including the name of the Grant Recipient, the amount of the Grant Award approved by the Oversight Committee, the type of cancer addressed, and a high-level summary of the work funded by the Grant Award;

(14) Records of a nonprofit organization established to provide support to the Institute;

(15) Except as excluded by §702.7(f) of this title, information [~~Information~~] related to any gift, grant, or other consideration provided to the Institute, Institute Employee, or a member of an Institute committee. Such information shall state:

(A) Donor's name;

(B) Amount of donation; and

(C) Date of donation;

(16) A list of the Institute's Advisory Committees and the reports presented to the Oversight Committee by each Advisory Committee;

(17) The Institute's approved internal audit annual report and the internal audit plan posted no later than thirty (30) days after approval by the Oversight Committee, or the Chief Executive Officer if the Oversight Committee is unable to meet;

(18) A detailed summary of the weaknesses, deficiencies, wrongdoings, or other concerns raised by the audit plan or annual report and a summary of the action taken by the Institute to the address concerns, if any, that are raised by the audit plan or annual report;

(19) Information regarding staff compensation in compliance with §659.026, Texas Government Code.

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 August 22, 2016.

TRD-201604310
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Earliest possible date of adoption: October 2, 2016
For further information, please call: (512) 463-3190

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CHAPTER 702. INSTITUTE STANDARDS ON ETHICS AND CONFLICTS, INCLUDING THE ACCEPTANCE OF GIFTS AND DONATIONS TO THE INSTITUTE

25 TAC §§702.7, 702.9, 702.13, 702.19

The Cancer Prevention and Research Institute of Texas (Institute) proposes amendments to §§702.7, 702.9, 702.13, and 702.19 regarding acceptance of gifts, registration fees paid for the Institute conference, gift reporting to the Chief Compliance Officer, how Oversight Committee members, Program Integration Committee members, and Scientific Research and Prevention Programs Committee members provide written notice of conflicts of interest, and how those conflicts are disclosed; and how waivers of the restriction on communication granted by the Chief Executive Officer are provided to the Oversight Committee and disclosed publicly.

Background and Justification

Section 702.7 is amended in several ways. The first proposed amendment, to §702.7(c)(3), clarifies that the Oversight Committee may vote by a simple majority to accept gifts of cash, stock, bonds, or personal property with a value in excess of $10,000. Section 702.7(c)(4) is amended to require that the Chief Executive Officer prepare a report for the Oversight Committee related to any proposed gifts to the Institute of cash, stock, bonds, or personal property with a value over $1,000,000 and any gifts of real property, regardless of value. Section 702.7(f)(3) is amended to clarify that any registration fees paid to the Institute for a conference hosted by the Institute do not constitute consideration subject to the reporting requirement.

Section 702.9 is amended to require an Oversight Committee member, Institute employee, or Program Integration Committee member to report any gifts to the Chief Compliance Officer rather than the Chief Executive Officer.

Section 702.13 is amended to clarify how Oversight Committee members, Program Integration Committee members, and Scientific Research and Prevention Programs Committee members provide written notice of conflicts of interest, and how those conflicts are disclosed. The proposed rule makes it clear that

the individual's declaration of conflicts of interest made through the agency's designated electronic portal constitutes appropriate written notice.

Section 702.19 is amended to clarify the process for making waivers granted pursuant to this section publicly available. The proposed amendment requires the Chief Executive Officer to provide the Oversight Committee written notice of any waiver granted at the time that it is granted and to include the waiver in the Chief Executive Officer's affidavit for grant award recommendations.

Fiscal Note

Kristen Pauling Doyle, General Counsel for the Cancer Prevention and Research Institute of Texas, has determined that for the first five-year period the rule changes are in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the rules.

Public Benefit and Costs

Ms. Doyle has determined that for each year of the first five years the rule changes are in effect the public benefit anticipated as a result of enforcing the rules will be clarification of policies and procedures the Institute will follow to implement its statutory duties.

Small Business and Micro-business Impact Analysis

Ms. Doyle has determined that the rule changes shall not have an effect on small businesses or on micro businesses.

Written comments on the proposed rule changes may be submitted to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711 no later than October 3, 2016. Parties filing comments are asked to indicate whether or not they support the rule revisions proposed by the Institute and, if a change is requested, to provide specific text proposed to be included in the rule. Comments may be submitted electronically to kdoyle@cprit.texas.gov. Comments may be submitted by facsimile transmission to (512) 475-2563.

Kristen Pauling Doyle, the Institute's General Counsel, has reviewed the proposed amendments and certifies the proposal to be within the Institute's authority to adopt.

Statutory Authority

The rule changes are proposed under the authority of the Texas Health and Safety Code Annotated, §102.108 and §102.251, which provide the Institute with broad rule-making authority to administer the chapter and to issue rules regarding the procedures for awarding grants.

There is no other statute, article or code that is affected by these rules.

§702.7. Acceptance of Gifts and Donations by the Institute.

(a) As authorized by Texas Health and Safety Code §102.054, the Institute may solicit and accept gifts from any source to support the operations of the Institute and to further its purposes; except that the Institute may not supplement the salary of any Institute Employee with a gift or grant received by the Institute.

(b) An Oversight Committee Member or an Institute Employee shall not authorize a donor to use the property of the Institute unless the property is used in accordance with a contract between the Institute and the donor, the contract is found by the Institute to serve a public purpose, the contract contains provisions to ensure the public purpose continues, and the Institute is reasonably compensated for the use of the property.

(c) Procedure for acceptance of gifts.

(1) Gifts to the Institute may be designated for one of the following categories:

(A) Unrestricted General Support;

(B) Restricted Programmatic Support;

(C) Endowed and Restricted Funds; or

(D) Other (includes gifts of real or personal property).

(2) Gifts of ten thousand dollars ($10,000) or less may be accepted on behalf of the Institute by the Chief Executive Officer.

(3) The [~~Executive Committee of the~~] Oversight Committee by a majority vote may accept gifts of cash, stock, bonds, or personal property with a value in excess of ten thousand dollars ($10,000), gifts of real property regardless of value, and all other gifts not herein described [~~but less than one million dollars ($1,000,000)~~] on behalf of the Institute. [~~If one or more Executive Committee members do not agree with the decision to accept the gift on behalf of the Institute, the decision to accept the gift will be made by a majority vote of the Oversight Committee.~~]

(4) For gifts [~~Acceptance of gifts~~] made to the Institute of cash, stock, bonds, or personal property with a value in excess of one million dollars, gifts of real property regardless of value, and all other gifts not herein described [~~shall be approved by a majority vote of the Oversight Committee. To assist in its decision~~], a report shall be created by the Chief Executive Officer for the Oversight Committee that includes the following information:

(A) Name and biographical data regarding the individual or organization making the gift;

(B) A description of the gift;

(C) A list of conditions or requirements to be imposed on the Institute as a result of accepting the gift;

(D) If one of the conditions is naming, then include a description of the object to be named and whether there is a time limit on continuing the name;

(E) If the gift is real property, an evaluation of the gift by the General Land Office;

(F) If the gift is stock or other investments, a description of how they will be sold and the expected net proceeds; and

(G) A description of how the gift will be used.

(5) All funds received from donations to the Institute will be deposited to the state treasury and used for the purpose specified by the donor or for general Institute programs when no purpose is specified.

(d) The Institute encourages the offer of gifts of additional revenue and real and personal property through naming.

(1) Naming can be given to both real objects and inanimate objects, such as Grant Awards.

(2) The Oversight Committee will consider a request for naming in connection with a gift of real or personal property of substantial value to the Institute and its programs. In determining whether a gift has substantial value, the Oversight Committee will evaluate the following factors:

(A) The size of the real or personal property in relation to other fund sources--including bonds--available at the same time and consideration of whether the donation will make a material contribution to the Institute's goals and programs that otherwise would not be made;

(B) Availability of the real or personal property; and

(C) The degree of flexibility and discretion the Institute will have in the use of the real or personal property.

(3) The Oversight Committee must approve the recommendation to name an object or program by a majority vote of its members.

(e) The Oversight Committee may refuse a gift to the Institute for any reason, including:

(1) The gift requires an initial and/or on-going expenditure that will likely equal or exceed the value of the gift.

(2) The gift is from an institution, entity, or organization, or a director, officer, or an executive of an institution, entity or organization that has applied for funding from the Institute, or currently receives funding from the Institute, or the gift is from a Senior Member or Key Personnel of the research or prevention program team listed on a Grant Application or Grant Award.

(3) The Institute may return a gift made by an institution, entity, organization, or individual that was otherwise eligible to make the donation at the time that the gift was accepted by the Institute in the event that the donor subsequently submits a Grant Application for funding from the Institute within the fiscal year of the donation.

(4) For purposes of this section, the limitation on gifts does not apply to a donation made as the result of the final bequeathal.

(f) The Institute shall report information pertaining to gifts, grants, or other consideration provided to the Institute, an Institute Employee, or a member of an Institute committee, subject to the requirements in this subsection.

(1) The information shall be posted on the Institute's Internet website.

(2) The information to be posted shall include the donor's name, the date of the donor's donation, and the amount of the donor's donation.

(3) The reporting requirement applies to all gifts, grants, or other consideration provided to the Institute except that individual conference registration fees for a conference hosted by the Institute and paid to the Institute [~~CPRIT~~] by conference attendees shall not be treated as consideration for purposes of the reporting requirement. The total amount received for conference registration fees may be reported.

(4) The reporting requirement applies to all gifts, grants, or other consideration given to a Oversight Committee Member, Institute Employee, or Program Integration Committee Member except that the following items are not considered gifts, grants or consideration subject to the reporting requirement:

(A) Books, pamphlets, articles, or other similar materials that contain information directly related to the job duties of an Oversight Committee Member, Institute Employee, or Program Integration Committee Member and that are accepted by the individual on behalf of Institute for use in performing the individual's job duties.

(B) A gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient so long as:

(i) The personal friend or a Relative of the personal friend is not an employee of an entity receiving or applying to receive money from the Institute; and

(ii) The individual subject to this provision has no reason to believe that the item or consideration is being offered through an intermediary in an attempt to evade reporting requirements.

(C) Items with a value of less than $50, excluding cash or a negotiable instrument described by §3.104, Business and Commerce Code.

(5) The reporting requirement applies only to the gifts, grants, or other consideration given to a Scientific Research and Prevention Programs Committee Member by a Grant Applicant or Grant Recipient during the period that the Member is appointed except that the following items are not considered gifts, grants or consideration subject to the reporting requirement:

(A) Books, pamphlets, articles, or other similar materials that contain information directly related to the job duties of the Scientific Research and Prevention Programs Committee Member and that are accepted by the individual for use in performing the individual's job duties.

(B) Items [~~of~~] with a value of less than $50, excluding cash or a negotiable instrument as described by §3.104, Business and Commerce Code.

(6) The reporting requirement applies to a member of an Advisory Committee of the Institute only to the extent that the individual participates in the Grant Review Process.

(A) A gift or other benefit conferred on account of kinship or personal, professional, or business relationship independent of the official status of the recipient so long as:

(i) The personal friend or a Relative of the personal friend is not an employee of an entity receiving or applying to receive money from the Institute; and

(ii) The individual subject to this provision has no reason to believe that the item or consideration is being offered through an intermediary in an attempt to evade reporting requirements.

(B) If the individual participates in the Grant Review Process, then the individual must report gifts, grants, or other consideration given to the Advisory Committee member by a Grant Applicant or Grant Recipient during the period that the Advisory Committee member participates in the Grant Review Process except that the following items are not considered gifts, grants or consideration subject to the reporting requirement:

(i) Books, pamphlets, articles, or other similar materials that contain information directly related to the job duties of the Advisory Committee member and that are accepted by the individual for use in performing the individual's job duties.

(ii) Items with a value of less than $50, excluding cash or a negotiable instrument as described by §3.104, Business and Commerce Code.

(C) For purposes of this subsection, participation in the Grant Review Process by an Advisory Committee member does not include submitting a Grant Application or receiving a Grant Award.

§702.9. Code of Conduct and Ethics for Oversight Committee Members, Institute Employees, and Program Integration Committee Members.

(a) All Oversight Committee Members, Program Integration Committee Members, and Institute Employees shall avoid acts which

are improper or give the appearance of impropriety in the disposition of state funds.

(b) The Oversight Committee shall adopt a Code of Conduct and Ethics to provide guidance related to the ethical conduct required of Oversight Committee Members, Program Integration Committee Members, and Institute Employees. The Code of Conduct and Ethics shall be distributed to each new Oversight Committee Member, Program Integration Committee Member, and Institute Employee not later than the third business day after the date that the person begins employment with or service to the Institute.

(c) The Code of Conduct and Ethics shall include at least the following requirements and prohibitions. Nothing herein prevents the Oversight Committee from adopting stricter standards:

(1) A member of the Oversight Committee, Institute Employee, or Program Integration Committee Member, or the spouse of an individual governed by this provision shall not accept or solicit any gift, favor, or service that could reasonably influence him or her in the discharge of official duties or that he or she knows or should know is being offered with the intent to influence him or her or with the intent to influence the member or employee's official conduct.

(2) A member of the Oversight Committee, Institute Employee, or Program Integration Committee Member, or the spouse of an individual governed by this provision shall not accept employment or engage in any business or professional activity that would reasonably require or induce that person to disclose confidential information acquired by reason of the member or employee's official position.

(3) A member of the Oversight Committee, Institute Employee, or Program Integration Committee Member, or the spouse of an individual governed by this provision shall not accept other employment or compensation that could reasonably impair his or her independent judgment in the performance of the member or employee's official duties.

(4) A member of the Oversight Committee, Institute Employee, or Program Integration Committee Member, or the spouse of an individual governed by this provision shall not make personal investments or have a financial interest that could reasonably create a substantial conflict between his or her private interest and the member or employee's official duties.

(5) A member of the Oversight Committee, Institute Employee, or Program Integration Committee Member, or the spouse of an individual governed by this provision shall not intentionally or knowingly solicit, accept, or agree to accept any benefit for exercising his or her official powers or performing the member or employee's official duties in favor of another.

(6) A member of the Oversight Committee, Institute Employee, or Program Integration Committee Member, or the spouse of an individual governed by this provision shall not lease, directly or indirectly, any property, capital equipment, employee or service to a Grant Recipient.

(7) A member of the Oversight Committee, Institute Employee, or Program Integration Committee Member, or the spouse of an individual governed by this provision shall not submit a Grant Application to the Institute.

(8) A member of the Oversight Committee, the member's spouse, or an Institute Employee shall not be employed by or participate in the management of a business entity or other organization receiving money from the Institute.

(9) A member of the Oversight Committee or the member's spouse shall not own or control, directly or indirectly, an interest in a business or entity or other organization receiving money from the Institute.

(10) A member of the Oversight Committee or the member's spouse shall not use or receive a substantial amount of tangible goods, services, or money from the Institute other than reimbursement authorized for Oversight Committee Members attendance or expenses.

(11) A member of the Oversight Committee, Institute Employee, Program Integration Committee Member, or the spouse of an individual governed by this provision shall not serve on the Grant Recipient's board of directors or similar committee that exercises governing powers over the Grant Recipient. This prohibition also applies to serving on the board of directors or similar committee of a non-profit foundation established to benefit the Grant Recipient.

(12) A member of the Oversight Committee, Institute Employee, Program Integration Committee Member, or the spouse of an individual governed by this provision shall not use non-public Third-Party Information, or knowledge of non-public decisions related to Grant Applicants, received by virtue of the individual's employment or official duties associated with the Institute to make an investment or take some other action to realize a personal financial benefit.

(13) A member of the Oversight Committee, Institute Employee, or a Program Integration Committee Member who is a member of a professional organization shall comply with any standards of conduct adopted by the organizations of which he or she is a member.

(14) A member of the Oversight Committee, Institute Employee, or a Program Integration Committee Member shall be honest in the exercise of all duties and may not take actions that will discredit the Institute.

(15) A member of the Oversight Committee or an Institute Employee shall not have an office in a facility owned by an entity receiving or applying to receive money from the Institute.

(16) An Oversight Committee Member, Institute Employee, or Program Integration Committee Member shall report to the Institute's Chief Compliance [~~Executive~~] Officer any gift, grant, or consideration received by the individual as soon as possible, but no later than thirty (30) days after receipt of the gift, grant or consideration. The individual shall provide the name of the donor, the date of receipt, and amount of the gift, grant, or consideration.

(17) An Oversight Committee Member or Institute Employee may not solicit, agree to accept, or accept an honorarium in consideration for services the Oversight Committee Member or Institute Employee would not have been asked to provide but for the person's official position.

(18) An Oversight Committee Member and the Chief Executive Officer shall not make any communication to or appearance before an Institute officer or employee before the second anniversary of the date the Oversight Committee Member or Chief Executive Officer ceased to be a Oversight Committee Member or Chief Executive Officer if the communication or appearance is made:

(A) with the intent to influence; and

(B) on behalf of any person in connection with any matter on which the person seeks official action.

(19) An Oversight Committee Member or Institute Employee who ceases service or employment with the Institute may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former Oversight Committee Member or Institute Employee participated during the period of state service or employment, either through personal

involvement or because the issue was a matter within the Oversight Committee Member's or Institute Employee's official responsibility.

(A) This paragraph applies to an Institute Employee who is compensated, as of the last date of state employment, at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule, including an employee who is exempt from the state's position classification plan.

(B) This paragraph does not apply to a rulemaking proceeding that was concluded before the Oversight Committee Member's or Institute Employee's service or employment ceased.

(C) For purposes of this paragraph, "participated" means to have taken action as an Oversight Committee member or Institute Employee through decision, approval, disapproval, recommendation, giving advice, investigation or similar matter.

(D) For purposes of this paragraph, "particular matter" means a specific investigation, application, request for ruling or determination, rulemaking proceeding, contract, claim, charge, accusation, or judicial or other proceeding.

(d) The Code of Conduct and Ethics shall include information about reporting an actual or potential violation of the standards adopted by the Oversight Committee.

(e) Any reports due under Texas Government Code §572.021 shall be simultaneously filed with the Institute.

§702.13. Disclosure of Conflict of Interest and Recusal from Review.

(a) If an Oversight Committee Member or a Program Integration Committee Member has a Conflict of Interest as described in this chapter with respect to an entity or Grant Application that comes before the individual for review or other action, the Member shall:

(1) Provide written notice of the Conflict of Interest to the Chief Executive Officer and the presiding officer of the Oversight Committee (or the next ranking member of the Oversight Committee if the presiding officer has the Conflict of Interest). For purposes of this requirement, an Oversight Committee member or Program Integration Committee member who designates the Conflict of Interest on the secure website provided to review the recommended Grant Awards is deemed to have provided written notice;

(2) Disclose the Conflict of Interest in an open meeting of the Oversight Committee; and

(3) Recuse himself or herself from participation in the review, discussion, deliberation and vote on the entity or Grant Application, including access to information regarding the matter to be decided, unless a waiver has been granted pursuant to §702.15 of this chapter (relating to Investigation of Unreported Conflicts of Interest Affecting the Grant Review Process).

(b) If a Scientific Research and Prevention Programs Committee Member has a Conflict of Interest as described in this chapter with respect to a Grant Application that comes before the individual for review or other action, the member shall:

(1) Provide written notice of the Conflict of Interest to the Chief Executive Officer. For purposes of this requirement, a Scientific Research and Prevention Program Committee Member who designates the Conflict of Interest on the secure website provided to review the Grant Applications is deemed to have provided written notice; and

(2) Recuse himself or herself from any participation in the review, discussion, scoring, deliberation and vote on the Grant Application, including access to information regarding the matter to be decided unless a waiver has been granted pursuant to §702.15 of this chapter.

(c) Some Conflicts of Interest are such that the existence of a conflict with a Grant Applicant applying for a Grant Mechanism raises the presumption that the conflict may affect the individual's impartial review of other Grant Applications pursuant to the same Grant Mechanism in the Grant Review Cycle. The Institute has determined that the existence of one or more of the following Conflicts of Interest for an Oversight Committee Member, Scientific Research and Prevention Programs Committee Member, Program Integration Committee Member, Institute employee, Independent Contractor or a Relative of an individual subject to this rule shall require recusal of the individual from participating in the review, discussion, scoring, deliberation and vote on all Grant Applications competing for the same Grant Mechanism in the entire Grant Review Cycle, unless a waiver has been granted pursuant to §702.15 of this chapter:

(1) The individual subject to this provision is an employee of a Grant Applicant;

(2) The individual subject to this provision is actively seeking employment with a Grant Applicant. For the purposes of this paragraph, "actively seeking employment" includes activities such as submission of an employment application, resume, curriculum vitae, or similar document and/or interviewing with one or more representatives from the organization with no final action taken by the organization regarding consideration of such employment;

(3) The individual subject to this provision serves on the board of directors or as an elected or appointed officer of a Grant Applicant or a foundation or similar organization affiliated with the Grant Applicant; or

(4) The individual subject to this provision owns or controls, directly or indirectly, an ownership interest in a Grant Applicant or a foundation or similar organization affiliated with the Grant Applicant. Interests subject to this provision include sharing in profits, proceeds, or capital gains. Examples of ownership or control, include but are not limited to owning shares, stock, or otherwise, and are not dependent on whether voting rights are included.

(d) If an Institute Employee or independent contractor involved in the Grant Review Process has a Conflict of Interest as described in this chapter with respect to a Grant Application that comes before the individual for review or other action, the Institute Employee or independent contractor shall:

(1) Provide written notice to the Chief Executive Officer of the Conflict of Interest; and

(2) Recuse himself or herself from participation in the review of the Grant Application and be prevented from accessing information regarding the matter to be decided, unless a waiver has been granted pursuant to §702.15 of this chapter.

(e) The Institute shall retain supporting documentation regarding the implementation of its Conflict of Interest policy and actions taken to exclude a conflicted Oversight Committee Member, Program Integration Committee Member, Scientific Research and Prevention Programs Committee Member or Institute Employee from participating in the review, discussion, deliberation and vote on the Grant Application.

(1) The supporting documentation retained by the Institute may be stored by the Institute's electronic Grant Management System.

(2) For purposes of this rule, "supporting documentation" may include Conflict of Interest agreements, Conflict of Interest disclosure forms, action taken to address a previously unreported Conflict of Interest after its existence is determined, approved waivers, sign-out

sheets, independent third party observation reports, post-review certifications and Oversight Committee meeting minutes.

(3) All supporting documentation shall be publicly available, except that information included in the supporting documentation that is otherwise protected by Chapter 552, Texas Government Code may be redacted.

(f) Individuals subject to this chapter are encouraged to self-report. Any individual who self-reports a potential Conflict of Interest or any impropriety or self-dealing, and who fully complies with any recommendations of the General Counsel and recusal from any discussion, voting, deliberation or access to information regarding the matter, shall be considered by the Institute to be in compliance with this chapter. The individual is still subject to the operation of other laws, rules, requirements or prohibitions. Substantial compliance with the procedures provided herein constitutes compliance.

(g) Intentional violations of this rule may result in the removal of the individual from further participation in the Institute's Grant Review Process.

§702.19. Restriction on Communication Regarding Pending Grant Application.

(a) Communication regarding the substance of a pending Grant Application between the Grant Applicant and an Oversight Committee Member, a Program Integration Committee Member, or a Scientific Research and Prevention Programs Committee Member is prohibited.

(b) The prohibition on communication begins on the first day that Grant Applications for the Grant Mechanism are accepted by the Institute and extends until the Grant Applicant receives notice regarding a final decision on the Grant Application.

(1) The prohibition on communication does not apply to the time period when pre-applications or letters of interest are accepted.

(2) In special circumstances, an Oversight Committee Member or a Program Integration Committee Member may respond to a question or request for more information from a Grant Applicant so long as the response is made available to all Grant Applicants.

(c) Intentional, serious, or frequent violations of this rule may result in the disqualification of the Grant Applicant from further consideration for a Grant Award.

(d) This rule is not intended to prohibit open dialogue between the public and the Chief Executive Officer, a Program Integration Committee Member or a member of the Oversight Committee regarding the general status or nature of pending Grant Applications.

(e) The Chief Executive Officer may grant a waiver from the general prohibition on communication upon finding that the waiver is in the interest of promoting the objectives of the Institute and is not intended to give one or more Grant Applicants an unfair advantage. The waiver shall be provided to the Oversight Committee in writing at the time it is granted and state the reasons for the granting the waiver. The waiver shall be included as part of the public information supporting the Chief Executive Officer's affidavit(s) for Grant Award recommendations in the Grant Review Cycle(s) corresponding to the waiver [~~publicly available~~].

(f) A Program Integration Committee Member shall not communicate individually with one or more Oversight Committee Members about a Grant Award recommendation for a Grant Application in a pending Grant Review Cycle until such time that the Program Integration Committee has submitted the list of Grant Award Recommendations to the Oversight Committee and the Chief Executive Officer has submitted the written affidavit required by Chapter 703, §703.7 of this title (relating to Program Integration Committee Funding Recommendation). Nothing herein shall prohibit the Chief Executive Officer or a Program Integration Committee Member from responding to an individual Oversight Committee Member's question or request for more information so long as the response is made available to all Oversight Committee Members.

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 August 22, 2016.

TRD-201604311
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Earliest possible date of adoption: October 2, 2016
For further information, please call: (512) 463-3190

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CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §§703.3, 703.5 - 703.8, 703.10 - 703.17, 703.21, 703.23 - 703.26

The Cancer Prevention and Research Institute of Texas (Institute) proposes amendments to §§703.3, 703.5, 703.6, 703.7, 703.8, 703.10, 703.11, 703.12, 703.13, 703.14, 703.15, 703.16, 703.17, and 703.21 regarding institutional limits on grant applications, grant application resubmissions, competitive renewals, submitting more than one application, submission deadline extensions, sources of funding, grant ineligibility, application fees for product development research grantees, review of grant recipient progress reports, when grant application recommendations must be acted on by the Oversight Committee, requirements of Institute employees and Oversight Committee members who attend peer review meetings, Program Integration Committee recommendations sent to the Oversight Committee, how the Chief Executive Officer may recommend considering applications with variations, how the Oversight Committee votes on grant recommendations, grantee responsibilities, single audit determination, no cost extensions, final Financial Status Reports, revenue sharing, who within the Institute is responsible for directing grant award monitoring, grantee documentation of Financial Status Reports, and various typographical corrections that do not substantively change administrative rules. Additionally, the Institute proposes new §§703.23, 703.24, 703.25, and 703.26 relating to disbursement of grant award funds, financial status reports, grant award budgets, and allowable costs.

Background and Justification

The proposed rule changes and new rules provide clarity for grant applicants and grant recipients related to the review, approval, disbursement, and monitoring of Institute grant award funds.

Section 703.3 has several proposed amendments affecting grant applications. The first proposed amendment adds §703.3(b)(3) allowing the agency to set a limit on the number of applications that may be submitted by an entity for a particular grant award mechanism. Section 703.3(e) is amended to allow the Institute to limit the number of times a grant application may be resubmitted to the Institute. Section 703.3(g), which explains the

process for requesting an extension to the application deadline, is amended to clarify that any extension is at the discretion of the Chief Program Officer and any request for such an extension must be made to the CPRIT Helpdesk via electronic mail within 24 hours of the closure of the application submission deadline. An extension to the submission deadline will only be granted for good cause, which will be documented by the Institute. Section 703.3(i) is amended to clarify that only product development applicants are required to provide a capitalization table that includes individuals or entities that have an investment, stock or rights in the company. Section 703.3(j) is amended to clarify that any grant application submitted by an entity or personnel that is debarred, suspended, and ineligible or otherwise excluded from participation in federal or state grant awards is not eligible to receive a grant from the Institute. Section 703.3(k) is amended to allow the agency to withdraw a product development application if the application fee is not received within seven business days of the application submission deadline.

Section 703.5 is amended to expand peer review activities of Scientific Research and Prevention Program Committee members to include post award evaluation of grant progress reports submitted to the Institute by grant recipients.

Section 703.6 is amended to clarify that a final grant award recommendation by a review council must be acted on by the Oversight Committee within the same state fiscal year. Section 703.6 is also amended to clarify that Oversight Committee members may attend peer review meetings as non-participating observers. If an Institute employee or Oversight Committee member attends a peer review meeting, the individual must certify in writing that the employee or Oversight Committee member complied with the Institute's conflict of interest rules.

Section 703.7 is amended to clarify that a list of deferred grant award recommendations, if any, must be provided at the same time the Program Integration Committee submits its list of grant award recommendations to Oversight Committee.

Section 703.8 is amended to clarify the variances in the grant review process as well as any grant applications that the Chief Compliance Officer is required to identify at the time that the Chief Compliance Officer certifies the grant award recommendations. Section 703.8 is further amended to clarify that the Chief Executive Officer may recommend good cause for considering a process variance reported by the Chief Compliance Officer. The proposed amendment to §703.8(3) clarifies that the Oversight Committee may vote on more than one grant award recommendation at a time unless an Oversight Committee member requests taking up a grant recommendation individually. Lastly, §703.8(4) is amended to replace "failure to follow" with "not approving."

Section 703.10 is amended to add two grant contract requirements. The first proposed change requires the grantee to accept legal responsibility for the integrity of the fiscal and programmatic management of the organization. The second proposed change requires the grantee to acknowledge responsibility for the actions of its employees and other research collaborators, as well as enforcing the grantee's standards of conduct.

Section 703.11 is amended to clarify that matching funds may be certified on a project year basis. Additionally, the consequences for not providing matching certification are expanded to include suspension of reimbursements an advances for project costs. Section 703.11 is further amended to clarify that the project year is the period to use when determining whether a grant recipient appropriately expended matching funds.

Section 703.12 is amended to delete text related to unauthorized expenses. Guidance regarding allowable costs, including a list of unauthorized expenses, is now provided in the new proposed §703.26.

Section 703.13 is amended to clarify when a single audit determination form is due. The proposed amendment also increases the annual threshold that triggers the grantee's requirement to submit an audit from $500,000 to $750,000 in state award funds. This section is further amended to include a description of acceptable agreed upon procedures agreement sufficient to fulfill the audit requirement.

Section 703.14 includes several proposed amendments. The first amendment adds the de-obligation of grant award funds to the title of §703.14. As reflected in the proposed amendment for new subsection (h), the rule change authorizes the Institute to de-obligate unspent grant award funds when the grant award contract is terminated and make those funds available for any purpose authorized by Texas Health and Safety Code Chapter 102. Section 703.14 is also amended to clarify the process for requesting, considering and approving no-cost extensions. Section 703.14(d) is amended to clarify that the final Financial Status Report is due within 90 days following the end date of the last state fiscal quarter that includes the grant termination date. This proposed amendment distinguishes a final Financial Status Report from other close out documents and clarifies for grant recipients the specific due date of the final Financial Status Report. Section 703.14(e) is amended to clarify that the Institute may make upward or downward adjustments to allowable costs requested for reimbursement up to 90 days following the approval of close out documents or the final Financial Status Report, whichever is later.

Section 703.15 is amended to replace the current title with "Financial Policies Applicable to Grant Awards." The proposed amendment replaces the current text with requirements related to the grant recipient's financial management systems, fiscal controls and accounting procedures.

Section 703.16 is amended to clarify how grant award proceeds may be used to pay for costs associated with commercialization activities. Section 703.16 is further amended to remove text that requires a grant recipient to report at least annually describing commercialization activities for the project results. If a grant recipient has received a product development grant award, the grant recipient is already required to provide this information pursuant to terms of the grant award contract. Deleting subsection (d)(6) makes it clear that other grant recipients are not required to report this information.

Section 703.17 is amended to add a new subsection clarifying that the revenue sharing obligation is continuous so long as the product resulting from the Institute supported project enjoys governmental exclusivity.

Section 703.21 is amended to clarify that grant award monitoring activities are under the direction of the Chief Compliance Officer. Section 703.21(b)(2) is further amended to remove text concerning financial status reports. The deleted text is moved to new rule §703.24, related to Financial Status Reports. Section 703.21(b)(3)(E) is amended to remove the grant manager as the reviewer of progress reports.

Section 703.23 is a proposed new rule concerning disbursement of grant award funds. The new rule incorporates text that has been moved from §703.19 (advance payment of grant funds) and clarifies Institute practices concerning reimbursement and advancement of grant funds. The new rule provides limits on the amount of award funds that may be advanced and guidance regarding expending award funds prior to seeking additional advances. The rule makes it clear that the Institute maintains the right to limit or restrict advance funds and may disburse the last 10% of total award funds using reimbursement instead of advancement. The proposed rule also provides guidance related to disbursing grant funds as a reimbursement for expenses already incurred.

Section 703.24 is a proposed new rule related to a financial status report (FSR). The proposed rule incorporates text that has been moved from §703.21(b)(1) and (2) as well as clarifies requirements for preparing and submitting FSRs, including deadlines and the waiver appeals process.

Section 703.25 is a proposed new rule related to grant award budgets. The proposed rule addresses appropriate budget categories, budget transfers, and carry forwards of unspent budget funds during a project year.

Section 703.26 is a proposed new rule concerning allowable costs and incorporates text that has been moved from §703.12. The proposed new rule defines an allowable costs and lists examples of expenses that the Institute considers unallowable costs. The rule clarifies that an allowable costs must be incurred during the contract term, unless a grant recipient has received written approval from the Institute's Chief Executive Officer. The Institute makes it clear that the Institute's decision regarding whether an expense is allowable is final.

Fiscal Note

Kristen Pauling Doyle, General Counsel for the Cancer Prevention and Research Institute of Texas, has determined that for the first five-year period the rule changes are in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the rules.

Public Benefit and Costs

Ms. Doyle has determined that for each year of the first five years the rule changes are in effect the public benefit anticipated as a result of enforcing the rules will be clarification of policies and procedures the Institute will follow to implement its statutory duties.

Small Business and Micro-business Impact Analysis

Ms. Doyle has determined that the rule changes shall not have an effect on small businesses or on micro businesses.

Written comments on the proposed rule changes may be submitted to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711 no later than October 3, 2016. Parties filing comments are asked to indicate whether or not they support the rule revisions proposed by the Institute and, if a change is requested, to provide specific text proposed to be included in the rule. Comments may be submitted electronically to kdoyle@cprit.texas.gov. Comments may be submitted by facsimile transmission to (512) 475-2563.

Kristen Pauling Doyle, the Institute's General Counsel, has reviewed the proposed amendments and certifies the proposal to be within the Institute's authority to adopt.

Statutory Authority

The rule changes are proposed under the authority of the Texas Health and Safety Code Annotated, §102.108 and §102.251, which provide the Institute with broad rule-making authority to administer the chapter and to issue rules regarding the procedures for awarding grants.

There is no other statute, article or code that is affected by these rules.

§703.3. Grant Applications.

(a) The Institute shall accept Grant Applications for Cancer Research and Cancer Prevention programs to be funded by the Cancer Prevention and Research Fund or the proceeds of general obligation bonds issued on behalf of the Institute in response to standard format Requests for Applications issued by the Institute.

(b) Each Request for Applications shall be publicly available through the Institute's Internet website. The Institute reserves the right to modify the format and content requirements for the Requests for Applications from time to time. Notice of modifications will be announced and available through the Institute's Internet website. The Request for Applications shall:

(1) Include guidelines for the proposed projects and may be accompanied by instructions provided by the Institute.

(2) State the criteria to be used during the Grant Review Process to evaluate the merit of the Grant Application, including guidance regarding the range of possible scores.

(A) The specific criteria and scoring guidance shall be developed by the Chief Program Officer in consultation with the Review Council.

(B) When the Institute will use a preliminary evaluation process as described in §703.6 of this chapter (relating to Grants Review Process) for the Grant Applications submitted pursuant to a particular Grant Mechanism, the Request for Applications shall state the criteria and Grant Application components to be included in the preliminary evaluation.

(3) Specify limits, if any, on the number of Grant Applications that may be submitted by an entity for a particular Grant Mechanism to ensure timely and high-quality review when a large number of Grant Applications are anticipated.

(c) Requests for Applications for Cancer Research and Cancer Prevention projects issued by the Institute may address, but are not limited to, the following areas:

(1) Basic research;

(2) Translational research, including proof of concept, preclinical, and Product Development activities;

(3) Clinical research;

(4) Population based research;

(5) Training;

(6) Recruitment to the state of researchers and clinicians with innovative Cancer Research approaches;

(7) Infrastructure, including centers, core facilities, and shared instrumentation;

(8) Implementation of the Texas Cancer Plan; and

(9) Evidence based Cancer Prevention education, outreach, and training, and clinical programs and services.

(d) An otherwise qualified applicant is eligible solely for the Grant Mechanism specified by the Request for Applications under which the Grant Application was submitted.

(e) The Institute may limit the number of times a Grant Application not recommended for a Grant Award during a previous Grant Review Cycle may be resubmitted in a subsequent Grant Review Cycle. The Request for Applications will state the resubmission guidelines, including specific instructions for resubmissions. [~~The request for Grant Applications for Cancer Research projects shall seek information from Grant Applicants regarding whether the proposed project has Product Development prospects, including, but not limited to, anticipated regulatory filings, commercial abstracts or business plans.~~]

(f) Failure to comply with the material and substantive requirements set forth in the Request for Applications may serve as grounds for disqualification from further consideration of the Grant Application by the Institute. A Grant Application determined by the Institute to be incomplete or otherwise noncompliant with the terms or instructions set forth by the Request for Applications shall not be eligible for consideration of a Grant Award.

(g) Only those Grant Applications submitted via the designated electronic portal designated by the Institute by the deadline, if any, stated in the Request for Applications shall be eligible for consideration of a Grant Award.

(1) Nothing herein shall prohibit the Institute from extending the submission deadline for one or more Grant Applications upon a showing of good cause, as determined by the Chief Program Officer.

(2) A request to extend the Grant Application submission deadline must be in writing and sent to the CPRIT Helpdesk via electronic mail, within 24 hours of the submission deadline.

(3) [~~(2)~~] The Institute shall document any deadline extension granted, including the good cause [~~reason~~] for extending the deadline and will cause the documentation to be maintained as part of the Grant Review Process records.

(h) The Grant Applicant shall certify that it has not made and will not make a donation to the Institute or any foundation created to benefit the Institute.

(1) Grant Applicants that make a donation to the Institute or any foundation created to benefit the Institute on or after June 14, 2013, are ineligible to be considered for a Grant Award.

(2) For purposes of the required certification, the Grant Applicant includes the following individuals or the spouse or dependent child(ren) of the following individuals:

(A) the Principal Investigator, Program Director, or Company Representative;

(B) a Senior Member or Key Personnel listed on the Grant Application;

(C) an officer or director of the Grant Applicant.

(3) Notwithstanding the foregoing, one or more donations exceeding $500 by an employee of a Grant Applicant not described by paragraph (2) of this subsection shall be considered to be made on behalf of the Grant Applicant for purposes of the certification.

(4) The certification shall be made at the time the Grant Application is submitted.

(5) The Chief Compliance Officer shall compare the list of Grant Applicants to a current list of donors to the Institute and any foundation created to benefit the Institute.

(6) To the extent that the Chief Compliance Officer has reason to believe that a Grant Applicant has made a donation to the Institute or any foundation created to benefit the Institute, the Chief Compliance Officer shall seek information from the Grant Applicant to resolve any issue. The Grant Application may continue in the Grant Review Process during the time the additional information is sought and under review by the Institute.

(7) If the Chief Compliance Officer determines that the Grant Applicant has made a donation to the Institute or any foundation created to benefit the Institute, then the Institute shall take appropriate action. Appropriate action may entail:

(A) Withdrawal of the Grant Application from further consideration;

(B) Return of the donation, if the return of the donation is possible without impairing Institute operations.

(8) If the donation is returned to the Applicant, then the Grant Application is eligible to be considered for a Grant Award.

(i) Grant Applicants shall identify by name all sources of funding[~~, including a capitalization table that reflects private investors, if any,~~] contributing to the project proposed for a Grant Award. A Grant Applicant for a Product Development Research Grant Award must provide a capitalization table that includes [~~This information shall include~~] those individuals or entities that have an investment, stock or rights in the company [~~project~~]. The Institute shall make the information provided by the Grant Applicant available to Scientific Research and Prevention Programs Committee members, Institute employees, independent contractors participating in the Grant Review Process, Program Integration Committee Members and Oversight Committee Members for purposes of identifying potential Conflicts of Interest prior to reviewing or taking action on the Grant Application. The information shall be maintained in the Institute's Grant Review Process records.

(j) A Grant Applicant shall indicate if the Grant Applicant is currently ineligible to receive Federal or State grant funds due to debarment or suspension or if the Grant Applicant has had a grant terminated for cause within five years prior to the submission date of the Grant Application. For purposes of the provision, the term Grant Applicant includes the personnel, including collarborators or contractors, who will be working on the Grant Award. A Grant Applicant is not eligible to receive a Grant Award if the Grant Applicant is debarred, suspended, ineligible or otherwise excluded from participation in a federal or state grant award. [~~Senior Member and Key Personnel.~~]

(k) The Institute may require each Grant Applicant for a Cancer Research Grant Award for Product Development to submit an application fee.

(1) The Chief Executive Officer shall adopt a policy regarding the application fee amount.

(2) The Institute shall use the application fee amounts to defray the Institute's costs associated with the Product Development review processes, including due diligence and intellectual property reviews, as specified in the Request for Application.

(3) Unless a request to submit the fee after the deadline has been approved by the Institute, the Institute may administratively withdraw a Grant Application if the application review fee is not received by the Institute within seven business days of the Grant Application submission deadline.

(l) During the course of administrative review of the Grant Application, the Institute may contact the Grant Applicant to seek clarification on information provided in the Grant Application or to request additional information if such information clarifies the Grant Application. The Institute shall keep a record of requests made under this subsection for review by the Chief Compliance Officer.

§703.5. Scientific Research and Prevention Programs Committees.

(a) The Oversight Committee shall establish Scientific Research and Prevention Programs Committees for the purpose of conducting Peer Review of Grant Applications submitted to the Institute. Such Peer Review activities may include post award evaluation of Grant Progress Reports. The Chief Executive Officer, with approval by simple majority of the Oversight Committee, is responsible for appointing experts in the fields of Cancer Research, Prevention life science Product Development, and patient advocacy to serve as Scientific Research and Prevention Programs Committee members for terms designated by the Chief Executive Officer.

(b) The Chief Executive Officer may provisionally appoint an individual as a Scientific Research and Prevention Programs Committee Member until such time that the individual can be considered for approval by the Oversight Committee. The provisional appointee may participate in the Peer Review Process prior to a vote of the Oversight Committee on the appointment so long as the appointment is considered at the next regular Oversight Committee meeting.

(c) A Scientific Research and Prevention Programs Committee Member is responsible for conducting Peer Review of the Grant Applications assigned to the individual member's Peer Review Panel.

(d) A Scientific Research and Prevention Programs Committee Member may receive an honorarium in accordance with the policy described in Chapter 701, §701.15 of this title (relating to the Scientific Research and Prevention Programs Committee Honoraria Policy).

(e) A member of a Scientific Research and Prevention Programs Committee is prohibited from attempting to use the committee member's official position to influence a decision to approve or award a grant or contract to the committee member's employer.

(f) A member of a Scientific Research and Prevention Programs Committee must comply with the requirements set forth in Chapter 702 of this title (relating to Institute Standards on Ethics and Conflicts, Including the Acceptance of Gifts and Donations to the Institute) and Chapter 102, Texas Health and Safety Code.

(g) The Scientific Research and Prevention Programs Committee Member shall not provide professional services for compensation exceeding $5,000 to any Grant Recipient that was reviewed by the Scientific Research and Prevention Programs Committee Member's Peer Review Panel.

(1) The term of this restriction is for a period of one year from the effective date of the Grant Award, unless waived by a vote of the Oversight Committee.

(2) For purposes of this restriction, "professional services" do not include those services for which an honorarium is paid; however, honoraria exceeding $5,000 paid to a Scientific Research and Prevention Programs Committee Member by a Grant Recipient while the individual is serving as a Committee Member shall be reported within 30 days to the Institute's Chief Executive Officer.

(3) Even if a payment to a Scientific Research and Prevention Programs Committee Member is not otherwise prohibited, a Grant Recipient shall not pay a Scientific Research and Prevention Programs Committee Member with Grant Award funds.

(h) An individual that serves as a Scientific Research and Prevention Programs Committee Member may not concurrently serve on the Board of Directors or other governing board of a Grant Recipient or of a foundation or similar organization affiliated with the entity. This prohibition lasts so long as the Grant Recipient receives Grant Award funds or the Scientific Research and Prevention Programs Committee Member receives an honorarium from the Institute, whichever ends first.

(i) The Scientific Research and Prevention Programs Committee Member shall not use non-public Third-Party Information or knowledge of non-public decisions related to Grant Applicants, gained by virtue of the individual's participation in the Institute's Peer Review Process, to make an investment or take some other action resulting in a financial benefit to the individual or the individual's employer.

(j) A violation of any requirement of this section may result in the removal of the Scientific Research and Prevention Programs Committee Member from further participation in the Institute's Peer Review Process.

(k) The Institute shall provide on the Institute's Internet website a register of the individuals appointed as Scientific Research and Prevention Programs Committee Members, including provisional members. The register may list the Scientific Research and Prevention Programs Committee members by Peer Review Panel. For the purpose of identifying undisclosed Conflicts of Interest, a Grant Applicant may be notified of the Peer Review Panel to which the Grant Application has been assigned.

(l) The Chief Executive Officer shall ensure that at least one Patient Advocate is appointed to each Peer Review Panel. To be considered for a Patient Advocate appointment by the Chief Executive Officer as a Scientific Research and Prevention Programs Committee Member, an applicant must:

(1) Represent an organization or other community of people;

(2) Demonstrate prior community involvement or other work on behalf of cancer patients;

(3) Possess good communication and writing skills, including the ability to analyze information and make judgments with consideration of patient impact;

(4) Express interest in and fundamental knowledge of the medical research process, including basic and translational scientific research and prevention concepts;

(5) Reside outside of the state of Texas;

(6) Have science-based training. This training requirement shall be considered fulfilled if the Patient Advocate has:

(A) attended a science-based training program from the American Association for Cancer Research Survivor-Scientist Program, American Society of Clinical Oncology Research Review Sessions for Patient Advocates, Research Advocacy Network Advocate Institute or National Breast Cancer Coalition Project LEAD no more than three years prior to appointment to the Institute's Scientific Research and Prevention Programs Committee; or

(B) participated in at least one full cycle of grant review conducted by the Institute, National Institutes of Health, Department of Defense Congressionally Directed Medical Research Programs, Federal Drug Administration or Patient-Centered Outcomes Research Institute no more than three years prior to appointment to the Institute's Scientific Research and Prevention Programs Committee.

(m) An individual interested in a Patient Advocate appointment shall submit an application, in a format specified by the Institute that includes at least the following information:

(1) Dates of service on a peer review panel within the past three years, or dates of attendance at advocate training programs within the past three years as documentation of the fulfillment of the science-based training program requirement;

(2) Current resume or curriculum vitae;

(3) A letter of recommendation from a community-based organization and a personal statement on advocacy and education if the applicant has attended a training program but not yet served on a peer review panel.

§703.6. Grant Review Process.

(a) For all Grant Applications that are not administratively withdrawn by the Institute for noncompliance or otherwise withdrawn by the Grant Applicant, the Institute shall use a two-stage Peer Review process.

(1) The Peer Review process, as described herein, is used to identify and recommend meritorious Cancer Research projects, including those projects with Cancer Research Product Development prospects, and evidence-based Cancer Prevention and Control projects for Grant Award consideration by the Program Integration Committee and the Oversight Committee.

(2) Peer Review will be conducted pursuant to the requirements set forth in Chapter 702 of this title (relating to Institute Standards on Ethics and Conflicts, Including the Acceptance of Gifts and Donations to the Institute) and Chapter 102, Texas Health and Safety Code.

(b) The two stages of the Peer Review Process used by the Institute are:

(1) Evaluation of Grant Applications by Peer Review Panels; and

(2) Prioritization of Grant Applications by the Prevention Review Council, the Product Development Review Council, or the Scientific Review Council, as may be appropriate for the Grant Program.

(c) Except as described in subsection (e) of this section, the Peer Review Panel evaluation process encompasses the following actions, which will be consistently applied:

(1) The Institute distributes all Grant Applications submitted for a particular Grant Mechanism to one or more Peer Review Panels.

(2) The Peer Review Panel chairperson assigns each Grant Application to no less than two panel members that serve as the Primary Reviewers for the Grant Application. Assignments are made based upon the expertise and background of the Primary Reviewer in relation to the Grant Application.

(3) The Primary Reviewer is responsible for individually evaluating all components of the Grant Application, critiquing the merits according to explicit criteria published in the Request for Applications, and providing an individual Overall Evaluation Score that conveys the Primary Reviewer's general impression of the Grant Application's merit. The Primary Reviewers' individual Overall Evaluation Scores are averaged together to produce a single initial Overall Evaluation Score for the Grant Application.

(4) The Peer Review Panel meets to discuss the Grant Applications assigned to the Peer Review Panel. If there is insufficient time to discuss all Grant Applications, the Peer Review Panel chairperson determines the Grant Applications to be discussed by the panel. The chairperson's decision is based largely on the Grant Application's initial Overall Evaluation Score; however a Peer Review Panel member may request that a Grant Application be discussed by the Peer Review Panel.

(A) If a Grant Application is not discussed by the Peer Review Panel, then the initial Overall Evaluation Score serves as the final Overall Evaluation Score for the Grant Application. The Grant Application is not considered further during the Grant Review Cycle.

(B) If a Grant Application is discussed by the Peer Review Panel, each Peer Review Panel member submits a score for the Grant Application based on the panel member's general impression of the Grant Application's merit and accounting for the explicit criteria published in the Request for Applications. The submitted scores are averaged together to produce the final Overall Evaluation Score for the Grant Application.

(i) The panel chairperson participates in the discussion but does not score Grant Applications.

(ii) A Primary Reviewer has the option to revise his or her score for the Grant Application after panel discussion or to keep the same score submitted during the initial review.

(C) If the Peer Review Panel recommends changes to the Grant Award funds amount requested by the Grant Applicant or to the goals and objectives or timeline for the proposed project, then the recommended changes and explanation shall be recorded at the time the final Overall Evaluation Score is set.

(5) At the conclusion of the Peer Review Panel evaluation, the Peer Review Panel chairperson submits to the appropriate Review Council a list of Grant Applications discussed by the panel ranked in order by the final Overall Evaluation Score. Any changes to the Grant Award funding amount or to the project goals and objectives or timeline recommended by the Peer Review Panel shall be provided to the Review Council at that time.

(d) The Review Council's prioritization process for Grant Award recommendations encompasses the following actions, which will be consistently applied:

(1) The Review Council prioritizes the Grant Application recommendations across all the Peer Review Panels by assigning a Numerical Ranking Score to each Grant Application that was discussed by a Peer Review Panel. The Numerical Ranking Score is substantially based on the final Overall Evaluation Score submitted by the Peer Review Panel, but also takes into consideration how well the Grant Application achieves program priorities set by the Oversight Committee, the overall Program portfolio balance, and any other criteria described in the Request for Applications.

(2) The Review Council's recommendations are submitted simultaneously to the presiding officers of the Program Integration Committee and Oversight Committee. The recommendations, listed in order by Numerical Ranking Score shall include:

(A) An explanation describing how the Grant Application meets the Review Council's standards for Grant Award funding;

(B) The final Overall Evaluation Score assigned to the Grant Application by the Peer Review Panel, including an explanation for ranking one or more Grant Applications ahead of another Grant Application with a more favorable final Overall Evaluation Score; and

(C) The specified amount of the Grant Award funding for each Grant Application, including an explanation for recommended

changes to the Grant Award funding amount or to the goals and objectives or timeline.

(3) A Grant Award recommendation is not final until the Review Council formally submits the recommendation to the presiding officers of the Program Integration Committee and the Oversight Committee. The Program Integration Committee, and, if appropriate, the Oversight Committee must make a final decision on the Grant Award recommendation in the same state fiscal year that the Review Council submits its final recommendation.

(e) Circumstances relevant to a particular Grant Mechanism or to a Grant Review Cycle may justify changes to the dual-stage Peer Review process described in subsections (c) and (d) of this section. Peer Review process changes the Institute may implement are described in this subsection. The list is not intended to be exhaustive. Any material changes to the Peer Review process, including those listed in this subsection, shall be described in the Request for Applications or communicated to all Grant Applicants.

(1) The Institute may use a preliminary evaluation process if the volume of Grant Applications submitted pursuant to a specific Request for Applications is such that timely review may be impeded. The preliminary evaluation will be conducted after Grant Applications are assigned to Peer Review Panels but prior to the initial review described in subsection (c) of this section. The preliminary evaluation encompasses the following actions:

(A) The criteria and the specific Grant Application components used for the preliminary evaluation shall be stated in the Request for Applications;

(B) No less than two Peer Review Panel members are assigned to conduct the preliminary evaluation for a Grant Application and provide a preliminary score that conveys the general impression of the Grant Application's merit pursuant to the specified criteria; and

(C) The Peer Review Panel chairperson is responsible for determining the Grant Applications that move forward to initial review as described in subsection (c) of this section. The decision will be based upon preliminary evaluation scores. A Grant Application that does not move forward to initial review will not be considered further and the average of the preliminary evaluation scores received becomes the final Overall Evaluation Score for the Grant Application.

(2) The Institute shall assign all Grant Applications submitted for recruitment of researchers and clinicians to the Scientific Review Council.

(A) The Scientific Review Council members review all components of the Grant Application, evaluate the merits according to explicit criteria published in the Request for Applications, and, after discussion by the Review Council members, provide an individual Overall Evaluation Score that conveys the Review Council member's recommendation related to the proposed recruitment.

(B) The individual Overall Evaluation Scores are averaged together for a final Overall Evaluation Score for the Application.

(C) If more than one recruitment Grant Application is reviewed by the Scientific Review Council during the Grant Review Cycle, then the Scientific Review Council shall assign a Numerical Ranking Score to each Grant Application to convey its prioritization ranking.

(D) If the Scientific Review Council recommends a change to the Grant Award funds requested by the Grant Application, then the recommended change and explanation shall be recorded at the time the final Overall Evaluation Score is set.

(E) The Scientific Review Council's recommendations shall be provided to the presiding officer of the Program Integration Committee and to the Oversight Committee pursuant to the process described in subsection (d) of this section.

(3) The Institute may assign continuation Grant Applications to the appropriate Review Council.

(A) The Review Council members review all components of the Grant Application, evaluate the merits according to explicit criteria published in the Request for Applications, and, after discussion by the Review Council members, provide an individual Overall Evaluation Score that conveys the Review Council member's recommendation related to the progress and continued funding.

(B) The individual Overall Evaluation Scores are averaged together for a final Overall Evaluation Score for the Application.

(C) If more than one continuation Grant Application is reviewed by the Review Council during the Grant Review Cycle, then the Review Council shall assign a Numerical Ranking Score to each continuation Grant Application to convey its prioritization ranking.

(D) If the Review Council recommends a change to the Grant Award funds or to the scope of work or timeline requested by the continuation Grant Application, then the recommended change and explanation shall be recorded at the time the final Overall Evaluation Score is set.

(E) The Review Council's recommendations shall be provided to the presiding officer of the Program Integration Committee and to the Oversight Committee pursuant to the process described in subsection (d) of this section.

(4) The Institute's Peer Review process described in subsections (c) and (d) of this section may include the following additional process steps for Product Development of Cancer Research Grant Applications:

(A) A Grant Applicant may be invited to deliver an in-person presentation to the Peer Review Panel. The Product Development Review Council chairperson is responsible for deciding which Grant Applicants will make in-person presentations. The decision is based upon the initial Overall Evaluation Scores of the primary reviewers following a discussion with Peer Review Panel members, as well as explicit criteria published in the Request for Applications.

(i) Peer Review Panel members may submit questions to be addressed by the Grant Applicant at the in-person presentation.

(ii) A Grant Application that is not presented in-person will not be considered further. The average of the primary reviewers' initial Overall Evaluation Scores will be the final Overall Evaluation Score for the Grant Application.

(iii) Following the in-person presentation, each Peer Review Panel member submits a score for the Grant Application based on the panel member's general impression of the Grant Application's merit and accounting for the explicit criteria published in the Request for Applications. The submitted scores are averaged together to produce the final Overall Evaluation Score for the Grant Application.

(B) A Grant Application may undergo business operations and management due diligence review and an intellectual property review conducted by third parties. The Peer Review Panel decides which Grant Applications will undergo business operations and management due diligence and intellectual property review. The decision is based upon the Grant Application's final Overall Evaluation Score, but also takes into consideration how well the Grant Application achieves

program priorities set by the Oversight Committee, the overall Program portfolio balance, and any other criteria described in the Request for Applications. A Grant Application that is not recommended for due diligence and intellectual property review will not be considered further.

(C) After receipt of the business operations and management due diligence and intellectual property reviews for a Grant Application, the Product Development Review Council and the Primary Reviewers meet to determine whether to recommend the Grant Application for a Grant Award based upon the information set forth in the due diligence and intellectual property reviews. The Product Development Review Council may recommend changes to the Grant Award budget and goals and objectives or timeline.

(D) The Product Development Review Council assigns a Numerical Ranking Score to each Grant Application recommended for a Grant Award.

(f) Institute Employees and Oversight Committee members may attend Peer Review Panel and Review Council meetings. If an Institute Employee or an Oversight Committee member attends a Peer Review Panel meeting or a Review Council meeting, the [~~Institute Employee's~~] attendance shall be recorded and the Institute Employee or Oversight Committee member shall certify in writing compliance [~~that the Institute Employee complied~~] with the Institute's Conflict of Interest rules. The Institute Employee's and Oversight Committee member's attendance at the Peer Review Panel meeting or Review Council meeting is subject to the following restrictions:

(1) Unless waived pursuant to the process described in Chapter 702, §702.17 of this title (relating to Exceptional Circumstances Requiring Participation), [~~the~~] Institute Employees and Oversight Committee members [~~Employee~~] shall not be present for any discussion, vote, or other action taken related to a Grant Applicant if the Institute Employee or Oversight Committee member has a Conflict of Interest with that Grant Applicant; and

(2) The Institute Employee or Oversight Committee member shall not participate in a discussion of the merits, vote, or other action taken related to a Grant Application, except to answer technical or administrative questions unrelated to the merits of the Grant Application and to provide input on the Institute's Grant Review Process.

(g) The Institute's Chief Compliance Officer shall observe meetings of the Peer Review Panel and Review Council where Grant Applications are discussed.

(1) The Chief Compliance Officer shall document that the Institute's Grant Review Process is consistently followed, including observance of the Institute's established Conflict of Interest rules and that participation by Institute employees, if any, is limited to providing input on the Institute's Grant Review Process and responding to committee questions unrelated to the merits of the Grant Application. Institute Program staff shall not participate in a discussion of the merits, vote, or any other action taken related to a Grant Application.

(2) The Chief Compliance Officer shall report to the Oversight Committee prior to a vote on the award recommendations specifying issues, if any, that are inconsistent with the Institute's established Grant Review Process.

(3) Nothing herein shall prevent the Institute from contracting with an independent third party to serve as a neutral observer of meetings of the Peer Review Panel and/or the Review Council where Grant Applications are discussed and to assume the reporting responsibilities of the Chief Compliance Officer described in this subsection. In the event that the independent third party observes the meeting of the Peer Review Panel and/or the Review Council, then the independent third party reviewer shall issue a report to the Chief Compliance Officer specifying issues, if any, that are inconsistent with the Institute's established Grant Review Process.

(h) Excepting a finding of an undisclosed Conflict of Interest as set forth in §703.9 of this chapter (relating to Limitation on Review of Grant Process), the Review Council's decision to not include a Grant Application on the prioritized list of Grant Applications submitted to the Program Integration Committee and the Oversight Committee is final. A Grant Application not included on the prioritized list created by the Review Council shall not be considered further during the Grant Review Cycle.

(i) At the time that the Peer Review Panel or the Review Council concludes its tasks for the Grant Review Cycle, each member shall certify in writing that the member complied with the Institute's Conflict of Interest rules. An Institute Employee or an Oversight Committee member attending one or more Peer Review Panel meetings during the Grant Review Cycle shall certify compliance with the Institute's Conflict of Interest rules.

(j) The Institute shall retain a review record for a Grant Application submitted to the Institute, even if the Grant Application did not receive a Grant Award. Such records will be retained by the Institute's electronic Grant Management System. The records retained by the Institute must include the following information:

(1) The final Overall Evaluation Score and Numerical Ranking Score, if applicable, assigned to the Grant Application;

(2) The specified amount of the Grant Award funding for the Grant Application, including an explanation for recommended changes to the Grant Award funding amount or to the goals and objectives or timeline;

(3) The Scientific Research and Prevention Programs Committee that reviewed the Grant Application;

(4) Conflicts of Interest, if any, with the Grant Application identified by a member of the Scientific Research and Prevention Programs Committee, the Review Council, the Program Integration Committee, or the Oversight Committee; and

(5) Documentation of steps taken to recuse any member or members from the Grant Review Process because of disclosed Conflicts of Interest.

(k) For purposes of this rule, a Peer Review Panel chairperson or a Review Council chairperson that is unable to carry out his or her assigned duties due to a Conflict of Interest with regard to one or more Grant Applications or for any other reason may designate a co-chairperson from among the appointed Scientific Research and Prevention Programs committee members to fulfill the chairperson role. Such designation shall be recorded in writing and include the specific time and extent of the designation.

§703.7. Program Integration Committee Funding Recommendation.

(a) The Institute uses a Program Review process undertaken by the Institute's Program Integration Committee to identify and recommend for funding a final list of meritorious Cancer Research projects, including those projects with Cancer Research Product Development prospects, and evidence-based Cancer Prevention and Control Program projects that are in the best overall interest of the State.

(b) Program Review shall be conducted pursuant to the requirements set forth in Chapter 702 of this title (relating to Institute Standards on Ethics and Conflicts, Including the Acceptance of Gifts and Donations to the Institute) and Chapter 102, Texas Health and Safety Code.

(c) The Program Integration Committee shall meet pursuant to a schedule established by the Chief Executive Officer, who serves as the Committee's presiding officer, to consider the prioritized list of Grant Applications submitted by the Prevention Review Council, the Product Development Review Council, or the Scientific Review Council.

(d) The Program Integration Committee shall approve by a majority vote a final list of Grant Applications recommended for Grant Awards to be provided to the Oversight Committee, including a list of Grant Applications, if any, that have been deferred until a future meeting of the Program Integration Committee. In composing the final list of Grant Applications recommended for Grant Award funding, the Program Integration Committee shall:

(1) Substantially base the list upon the Grant Award recommendations submitted by the Review Council.

(2) To the extent possible, give priority for funding to Grant Applications that:

(A) Could lead to immediate or long-term medical and scientific breakthroughs in the area of Cancer Prevention or cures for cancer;

(B) Strengthen and enhance fundamental science in Cancer Research;

(C) Ensure a comprehensive coordinated approach to Cancer Research and Cancer Prevention;

(D) Are interdisciplinary or interinstitutional;

(E) Address federal or other major research sponsors' priorities in emerging scientific or Technology fields in the area of Cancer Prevention, or cures for cancer;

(F) Are matched with funds available by a private or nonprofit entity and institution or institutions of higher education;

(G) Are collaborative between any combination of private and nonprofit entities, public or private agencies or institutions in this state, and public or private institutions outside this state;

(H) Have a demonstrable economic development benefit to this state;

(I) Enhance research superiority at institutions of higher education in this state by creating new research superiority, attracting existing research superiority from institutions not located in this state and other research entities, or enhancing existing research superiority by attracting from outside this state additional researchers and resources;

(J) Expedite innovation and commercialization, attract, create, or expand private sector entities that will drive a substantial increase in high-quality jobs, and increase higher education applied science or Technology research capabilities; and

(K) Address the goals of the Texas Cancer Plan.

(3) Document the factors considered in making the Grant Award recommendations, including any factors not listed in paragraph (2) of this subsection;

(4) Explain in writing the reasons for not recommending a Grant Application that was recommended for a Grant Award by the Review Council or for deferring a Grant Application recommendation until a future meeting date;

(5) Specify the amount of Grant Award funding for each Grant Application.

(A) Unless otherwise specifically stated, the Program Integration Committee adopts the changes to the Grant Award amount recommended by the Review Council.

(B) If the Program Integration Committee approves a change in the Grant Award amount that was not recommended by the Review Council, then the Grant Award amount and a written explanation for the change shall be provided.

(6) Specify changes, if any, to the Grant Application's goals and objectives or timeline recommended for a Grant Award and provide an explanation for the changes made; [~~and~~]

(7) Address how the funding recommendations meet the annual priorities for Cancer Prevention, Cancer Research and Product Development programs and affect the Institute's overall Grant Award portfolio established by the Oversight Committee; and[~~.~~]

(8) Provide a list of deferred Grant Applications, if any.

(e) In the event that the Program Integration Committee's vote on the final list of Grant Award recommendations or deferrals is not unanimous, then the Program Integration Committee Member or Members not voting with the majority may submit a written explanation to the Oversight Committee for the vote against the final list of Grant Award recommendations or deferrals. The explanation may include the Program Integration Committee Member or Members' recommended prioritized list of Grant Award recommendations or deferrals.

(f) The Program Integration Committee's decision to not include a Grant Application on the prioritized list of Grant Applications submitted to the Oversight Committee is final. A Grant Application not included on the prioritized list created by the Program Integration Committee shall not be considered further during the Grant Review Cycle, except for the following:

(1) In the event that the Program Integration Committee's vote on the final list of Grant Award recommendations is not unanimous, then, upon a motion of an Oversight Committee Member, the Oversight Committee may also consider the Grant Award recommendations submitted by the non-majority Program Integration Committee Member or Members;

(2) A finding of an undisclosed Conflict of Interest as set forth in §703.9 of this chapter (relating to Limitation on Review of Grant Process); or

(3) A decision by the Program Integration Committee to defer a decision to include a Grant Application on the prioritized list of Grant Applications submitted to the Oversight Committee until a future meeting of the Program Integration Committee, subject to subsection (k).

(g) The Chief Compliance Officer shall attend and observe Program Integration Committee meetings to document compliance with Chapter 102, Texas Health and Safety Code and the Institute's administrative rules.

(h) At the time that the Program Integration Committee's final Grant Award recommendations are formally submitted to the Oversight Committee, the Chief Executive Officer shall prepare a written affidavit for each Grant Application recommended by the Program Integration Committee containing relevant information related to the Grant Application recommendation.

(1) Information to be provided in the Chief Executive Officer's affidavit may include:

(A) The Peer Review process for the recommended Grant Application, including:

(i) The Request for Applications applicable to the Grant Application;

(ii) The number of Grant Applications submitted in response to the Request for Applications;

(iii) The name of the Peer Review Panel reviewing the Grant Application;

(iv) Whether a preliminary review process was used by the Peer Review Panel for the Grant Mechanism in the Grant Review Cycle;

(v) An overview of the Conflict of Interest process applicable to the Grant Review Cycle noting any waivers granted; and

(vi) A list of all final Overall Evaluation Scores for all Grant Applications submitted pursuant to the same Grant Mechanism, de-identified by Grant Applicant;

(B) The final Overall Evaluation Score and Numerical Ranking Score assigned for the Grant Applications recommended during the Peer Review process; and

(C) A high-level summary of the business operations and management due diligence and intellectual property reviews, if applicable, conducted for a Cancer Research Product Development Grant Application.

(2) In the event that the Program Integration Committee's final Grant Award recommendations are not unanimous and the Program Integration Committee Member or Members in the non-majority recommend Grant Applications not included on the final list of Grant Award recommendations, then the Chief Executive Officer shall also prepare a written affidavit for each Grant Application recommended by the non-majority Program Integration Committee Member or Members.

(i) To the extent that the information or documentation for one Grant Application is the same for all Grant Applications recommended for Grant Award funding pursuant to the same Grant Mechanism, it shall be sufficient for the Chief Executive Officer to provide the information or documentation once and incorporate by reference in each subsequent affidavit.

(j) At least three business days prior to the Oversight Committee meeting held to consider the Grant Applications for Grant Award funding, the Chief Executive Officer shall provide a list of Grant Applications, if any, recommended for an advance of Grant Award funds upon execution of the Grant Contract. The list shall include the reasons supporting the recommendation to advance funds.

(k) The Program Integration Committee's decision to defer the final Grant Award recommendation for a Grant Application is only effective for the state fiscal year in which the Program Integration Committee's deferral decision is made.

(1) A Grant Application that is deferred by the Program Integration Committee and is pending a final Grant Award recommendation at the end of the state fiscal year shall be considered not recommended for a Grant Award without further action from the Program Integration Committee.

(2) A Grant Application that is deferred and pending a final Grant Award recommendation at the end of the state fiscal year may be resubmitted by the Grant Applicant in a subsequent review cycle. Such resubmission will not count against the resubmission limit, if any, stated in the Request for Applications.

§703.8. Oversight Committee Consideration of the Program Integration Committee's Funding Recommendation.

The Oversight Committee must vote to approve each Grant Award recommendation submitted by the Program Integration Committee.

(1) Prior to the Oversight Committee's consideration and approval of the Program Integration Committee's Grant Award recommendations, the Chief Compliance Officer must review the process documentation for each Grant Application recommended for a Grant Award by the Program Integration Committee and report the findings to the Chief Executive Officer and to the Oversight Committee. The Chief Compliance Officer's report shall:

(A) Publicly certify that the Grant Review Process complied with the Institute's administrative rules and procedures, including those procedures stated in the Request for Applications.

(B) Indicate variances, if any, from the Institute's administrative rules and procedures with a Grant Application or [~~in~~] the Grant Review Process.

(C) Compare the list of Grant Applicants recommended for a Grant Award to a list of donors from any nonprofit organization established to provide support to the Institute.

(2) The Chief Executive Officer may recommend good cause for considering [~~corrective actions to address~~] variances, if any, identified by the Chief Compliance Officer. The Oversight Committee shall consider and may approve the recommendation, which may include [~~proposed~~] corrective actions at that time that the Grant Award recommendations are approved by a vote of a simple majority of Oversight Committee members present and voting.

(3) Two-thirds of the Oversight Committee Members present and voting must approve each Grant Award recommendation. The Oversight Committee may take up more than one Grant Award recommendation at a time unless an Oversight Committee member requests taking up a recommendation individually. At the time that the Oversight Committee approves the Grant Award recommendation:

(A) The total amount of money approved to fund a multiyear project must be specified.

(B) The Chief Executive Officer's recommendation, if any, regarding an advance of Grant Award funds must be approved by a majority vote of the Oversight Committee.

(4) If the Oversight Committee does not approve a Grant Award recommendation made by the Program Integration Committee, the minutes of the meeting shall record the explanation for not approving [~~the failure to follow~~] the Grant Award recommendation.

(5) The Oversight Committee may not award more than $300 million in Grant Awards in a fiscal year.

(6) No Oversight Committee action is necessary related to the Program Integration Committee's decision made pursuant to §703.7 to defer a final Grant Award recommendation for one or more Grant Applications.

(7) Nothing herein prevents the Oversight Committee from voting to defer a final decision on a Grant Award recommendation made by the Program Integration Committee until a future meeting date pursuant to the following process:

(A) The motion to defer a final decision on a Grant Award recommendation must be made by an Oversight Committee member that is not recused from taking action on the Grant Application;

(B) The motion must be approved by two-thirds of the Oversight Committee Members present and voting;

(C) The reason for deferring a final decision on one or more Grant Award recommendations must be recorded in the minutes of the Oversight Committee meeting;

(D) Applications that have been deferred shall be considered by the Program Integration Committee at a future meeting date pursuant to §703.7;

(E) The decision to defer the final Grant Award recommendation is only effective for the state fiscal year in which the deferral decision is made;

(F) A Grant Application that is deferred and pending a final Grant Award recommendation at the end of the state fiscal year shall be considered not recommended for a Grant Award without further action from the Program Integration Committee or the Oversight Committee; and

(G) A Grant Application that is deferred and pending a final Grant Award recommendation at the end of the state fiscal year may be resubmitted by the Grant Applicant in a subsequent review cycle. Such resubmission will not count against the resubmission limit, if any, stated in the Request for Applications.

§703.10. Awarding Grants by Contract.

(a) The Oversight Committee shall negotiate on behalf of the state regarding the awarding of grant funds and enter into a written contract with the Grant Recipient.

(b) The Oversight Committee may delegate Grant Contract negotiation duties to the Chief Executive Officer and the General Counsel for the Institute. The Chief Executive Officer may enter into a written contract with the Grant Recipient on behalf of the Oversight Committee.

(c) The Grant Contract shall include the following provisions:

(1) If any portion of the Grant Contract has been approved by the Oversight Committee to be used to build a capital improvement, the Grant Contract shall specify that:

(A) The state retains a lien or other interest in the capital improvement in proportion to the percentage of the Grant Award amount used to pay for the capital improvement; and

(B) If the capital improvement is sold, then the Grant Recipient agrees to repay to the state the Grant Award used to pay for the capital improvement, with interest, and share with the state a proportionate amount of any profit realized from the sale;

(2) Terms relating to Intellectual Property Rights and the sharing with the Institute of revenues generated by the sale, license, or other conveyance of such Project Results consistent with the standards established by this chapter;

(3) Terms relating to publication of materials created with Grant Award funds or related to the Cancer Research or Cancer Prevention project that is the subject of the Grant Award, including an acknowledgement of Institute funding and copyright ownership, if applicable;

(4) Repayment terms, including interest rates, to be enforced if the Grant Recipient has not used Grant Award funds for the purposes for which the Grant Award was intended;

(5) A statement that the Institute does not assume responsibility for the conduct of the Cancer Research or Cancer Prevention project, and that the conduct of the project and activities of all investigators are under the scope and direction of the Grant Recipient;

(6) A statement that the Cancer Research or Cancer Prevention project is conducted with full consideration for the ethical and medical implications of the project and that the project will comply with all federal and state laws regarding the conduct of the Cancer Research or Prevention project;

(7) Terms related to the Standards established by the Oversight Committee in Chapter 701 of this title (relating to Policies and Procedures) to ensure that Grant Recipients, to the extent reasonably possible, demonstrate good faith effort to purchase goods and services for the Grant Award project from suppliers in this state and from historically underutilized businesses as defined by Chapter 2161, Texas Government Code, and any other state law;

(8) An agreement by the Grant Recipient to submit to regular inspection reviews of the Grant Award project by Institute staff during normal business hours and upon reasonable notice to ensure compliance with the terms of the Grant Contract and continued merit of the project;

(9) An agreement by the Grant Recipient to submit Grant Progress Reports to the Institute on a schedule specified by the Grant Contract that include information on a grant-by-grant basis quantifying the amount of additional research funding, if any, secured as a result of Institute funding;

(10) An agreement that, to the extent possible, the Grant Recipient will evaluate whether any new or expanded preclinical testing, clinical trials, Product Development, or manufacturing of any real or intellectual property resulting from the award can be conducted in this state, including the establishment of facilities to meet this purpose;

(11) An agreement that the Grant Recipient will abide by the Uniform Grant Management Standards (UGMS) adopted by the Governor's Office, if applicable unless one or more standards conflicts with a provision of the Grant Contract, Chapter 102, Texas Health and Safety Code, or the Institute's administrative rules. Such interpretation of the Institute rules and UGMS shall be made by the Institute;

(12) An agreement that the Grant Recipient is under a continuing obligation to notify the Institute of any adverse conditions that materially impact milestones and objectives included in the Grant Contract;

(13) An agreement that the design, conduct, and reporting of the Cancer Research or Prevention project will not be biased by conflicting financial interest of the Grant Recipient or any individuals associated with the Grant Award. This duty is fulfilled by certifying that an appropriate written, enforced Conflict of Interest policy governs the Grant Recipient.

(14) An agreement regarding the amount, schedule, and requirements for payment of Grant Award funds, if such advance payments are approved by the Oversight Committee in accordance with this chapter. Notwithstanding the foregoing, the Institute may require that up to ten percent of the final tranche of funds approved for the Grant Award must be expended on a reimbursement basis. Such reimbursement payment shall not be made until close out documents described in this section and required by the Grant Contract have been submitted and approved by the Institute;

(15) An agreement to provide quarterly Financial Status Reports and supporting documentation for expenses submitted for reimbursement or, if appropriate, to demonstrate how advanced funds were expended;

(16) A statement certifying that, as of June 14, 2013, the Grant Recipient has not made and will not make a contribution, during the term of the Grant Contract, to the Institute or to any foundation established specifically to support the Institute;

(17) A statement specifying the agreed effective date of the Grant Contract and the period in which the Grant Award funds must be spent. If the effective date specified in the Grant Contract is different from the date the Grant Contract is signed by both parties, then the effective date shall control;

(18) A statement providing for reimbursement with Grant Award funds of expenses made prior to the effective date of the Grant Contract at the discretion of the Institute. Pre-contract reimbursement shall be made only in the event that:

(A) The expenses are allowable pursuant to the terms of the Grant Contract;

(B) The request is made in writing by the Grant Recipient and approved by the Chief Executive Officer; and

(C) The expenses to be reimbursed were incurred on or after the date the Grant Award recommendation was approved by the Oversight Committee.

(19) Requirements for closing out the Grant Contract at the termination date, including the submission of a Financial Status Report, a final Grant Progress Report, a equipment inventory, a HUB and Texas Business report, a revenue sharing form, a single audit determination report form and a list of contractual terms that extend beyond the termination date;

(20) A certification of dedicated Matching Funds equal to one-half of the amount of the Research Grant Award that includes the name of the Research Grant Award to which the matching funds are to be dedicated, as specified in Section §703.11 of this chapter (relating to Requirement to Demonstrate Available Funds for Cancer Research Grants);

(21) The project deliverables as described by the Grant Application and stated in the Scope of Work for the Grant Contract reflecting modifications, if any, approved during the Peer Review process or during Grant Contract negotiation; and

(22) An agreement that the Grant Recipient shall notify the Institute and seek approval for a change in effort for any of the Senior Members or Key Personnel of the research or prevention team listed on the Grant Application.

(23) An agreement that the Grant Recipient is legally responsible for the integrity of the fiscal and programmatic management of the organization.

(24) An agreement that the Grant Recipient is responsible for the actions of its employees and other research collaborators, including third parties, involved in the project. The Grant Recipient is responsible for enforcing its standards of conduct, taking appropriate action on individual infractions, and, in the case of financial conflict of interest, informing the Institute if the infraction is related to a Grant Award.

(d) The Grant Recipient's failure to comply with the terms and conditions of the Grant Contract may result in termination of the Grant Contract pursuant to the process prescribed in the Grant Contract and trigger repayment of the Grant Award funds.

§703.11. Requirement to Demonstrate Available Funds for Cancer Research Grants.

(a) Prior to the disbursement of Grant Award funds, the Grant Recipient of a Cancer Research Grant Award shall demonstrate that the Grant Recipient has an amount of Encumbered Funds equal to one-half of the Grant Award available and not yet expended that are dedicated to the research that is the subject of the Grant Award. The Grant Recipient's written certification of Matching Funds, as described in this section, shall be included in the Grant Contract. A Grant Recipient of a multiyear Grant Award may certify Matching Funds on a year-by-year basis for the amount of Award Funds to be distributed for the Project Year based upon the Approved Budget. A Grant Recipient receiving multiple Grant Awards may provide certification at the institutional level.

(b) For purposes of the certification required by subsection (a) of this section, a Grant Recipient that is a public or private institution of higher education, as defined by §61.003, Texas Education Code, may credit toward the Grant Recipient's Matching Funds obligation the dollar amount equivalent to the difference between the indirect cost rate authorized by the federal government for research grants awarded to the Grant Recipient and the five percent (5%) Indirect Cost limit imposed by §102.203(c), Texas Health and Safety Code, subject to the following requirements:

(1) The Grant Recipient shall file certification with the Institute documenting the federal indirect cost rate authorized for research grants awarded to the Grant Recipient;

(2) To the extent that the Grant Recipient's Matching Funds credit does not equal or exceed one-half of the Grant Award funds to be distributed for the Project Year, then the Grant Recipient's Matching Funds certification shall demonstrate that a combination of the dollar amount equivalent credit and the funds to be dedicated to the Grant Award project as described in subsection (c) of this section is available and sufficient to meet or exceed the Matching Fund requirement;

(3) Calculation of the portion of federal indirect cost rate credit associated with subcontracted work performed for the Grant Recipient shall be in accordance with the Grant Recipient's established internal policy; and

(4) If the Grant Recipient's federal indirect cost rate changes less than six months following the anniversary of the Effective Date of the Grant Contract, then the Grant Recipient may use the new federal indirect cost rate for the purpose of calculating the Grant Recipient's Matching Funds credit for the entirety of the Project Year.

(c) For purposes of the certification required by subsection (a) of this section, Encumbered Funds must be spent directly on the Grant Project or spent on closely related work that supports, extends, or facilitates the Grant Project and may include:

(1) Federal funds, including, but not limited to, American Recovery and Reinvestment Act of 2009 funds, and the fair market value of drug development support provided to the recipient by the National Cancer Institute or other similar programs;

(2) State of Texas funds;

(3) funds of other states;

(4) Non-governmental funds, including private funds, foundation grants, gifts and donations;

(5) Unrecovered Indirect Costs not to exceed ten percent (10%) of the Grant Award amount, subject to the following conditions:

(A) These costs are not otherwise charged against the Grant Award as the five percent (5%) indirect funds amount allowed under §703.12(c) of this chapter (relating to Limitation on Use of Funds);

(B) The Grant Recipient must have a documented federal indirect cost rate or an indirect cost rate certified by an independent accounting firm; and

(C) The Grant Recipient is not a public or private institution of higher education as defined by §61.003 of the Texas Education Code.

(6) Funds contributed by a subcontractor or subawardee and spent on the Grant Project, so long as the subcontractor's or subawardee's portion of otherwise allowable Matching Funds for a Project Year may not exceed the percentage of the total Grant Funds paid to the subcontractor or subawardee for the same Project Year.

(d) For purposes of the certification required by subsection (a) of this section, the following items do not qualify as Encumbered Funds:

(1) In-kind costs;

(2) Volunteer services furnished to the Grant Recipient;

(3) Noncash contributions;

(4) Income earned by the Grant Recipient that is not available at the time of Grant Award;

(5) Pre-existing real estate of the Grant Recipient including building, facilities and land;

(6) Deferred giving such as a charitable remainder annuity trust, a charitable remainder unitrust, or a pooled income fund; or

(7) Other items as may be determined by the Oversight Committee.

(e) To the extent that a Grant Recipient of a multiyear Grant Award elects to certify Matching Funds on a Project Year [~~yearly~~] basis, the failure to provide certification of Encumbered Funds at the appropriate time for each Project Year may [~~shall~~] serve as grounds for suspending reimbursement or advancement of Grant Funds for project costs or terminating the Grant Contract.

(f) In no event shall Grant Award funds for a Project Year be advanced or reimbursed, as may be appropriate for the Grant Award and specified in the Grant Contract, until the certification required by subsection (a) of this section is filed and approved by the Institute.

(g) No later than 30 days following the due date of the FSR reflecting expenses incurred during the last quarter of the Grant Recipient's Project Year, the Grant Recipient shall file a form with the Institute reporting the amount of Matching Funds spent for the preceding Project Year.

(h) If the Grant Recipient failed to expend Matching Funds equal to one-half of the actual amount of Grant Award funds distributed to the Grant Recipient for the same Project Year [~~period~~], the Institute shall:

(1) Carry forward and add to the Matching Fund requirement for the next Project Year the dollar amount equal to the deficiency between the actual amount of Grant Award funds distributed and the actual Matching Funds expended, so long as the deficiency is equal to or less than twenty percent (20%) of the total Matching Funds required for the same period and the Grant Recipient has not previously had a Matching Funds deficiency for the project;

(2) Suspend distributing Grant Award funds for the project to the Grant Recipient if the deficiency between the actual amount of Grant Funds distributed and the Matching Funds expended is greater than twenty percent (20%) but less than fifty percent (50%) of the total Matching Funds required for the period.

(A) The Grant Recipient will have no less than eight months from the anniversary of the Grant Contract's effective date to demonstrate that it has expended Encumbered Funds sufficient to fulfill the Matching Funds deficiency for the project.

(B) If the Grant Recipient fails to fulfill the Matching Funds deficiency within the specified period, then the Grant Contract shall be considered in default and the Institute may proceed with terminating the Grant Award pursuant to the process established in the Grant Contract;

(3) Declare the Grant Contract in default if the deficiency between the actual amount of Grant Award funds distributed and the Matching Funds expended is greater than fifty percent (50%) of the total Matching Funds required for the period. The Institute may proceed with terminating the Grant Award pursuant to the process established in the Grant Contract; or

(4) Take appropriate action, including withholding reimbursement, requiring repayment of the deficiency, or terminating the Grant Contract if a deficiency exists between the actual amount of Grant Award funds distributed and the Matching Funds expended and it is the last year of the Grant Contract.

(i) Nothing herein shall preclude the Institute from taking action other than described in subsection (h) of this section based upon the specific reasons for the deficiency. To the extent that other action not described herein is taken by the Institute, such action shall be documented in writing and included in Grant Contract records. The options described in subsection (h)(1) and (2) of this section may be used by the Grant Recipient only one time for the particular project. A second deficiency of any amount shall be considered an event of default and the Institute may proceed with terminating the Grant Award pursuant to the process established in the Grant Contract.

(j) The Grant Recipient shall maintain adequate documentation supporting the source and use of the Matching Funds reported in the certification required by subsection (a) of this section. The Institute shall conduct an annual review of the documentation supporting the source and use of Matching Funds reported in the required certification for a risk-identified sample of Grant Recipients. Based upon the results of the sample, the Institute may elect to expand the review of supporting documentation to other Grant Recipients. Nothing herein restricts the authority of the Institute to review supporting documentation for one or more Grant Recipients or to conduct a review of Matching Funds documentation more frequently.

§703.12. Limitation on Use of Funds.

(a) A Grant Recipient may use Grant Award funds only for Cancer Research and Cancer Prevention projects consistent with the purpose of the Act, and in accordance with the Grant Contract. Grant Award funds may not be used for purposes other than those purposes for which the grant was awarded. The Institute may require a Grant Recipient to repay Grant Award funds if the Grant Recipient fails to expend the Grant Award funds in accordance with the terms and conditions of the Grant Contract and the provisions of this chapter.

[~~(b) Grant Award funds must be used for Authorized Expenses.~~]

[~~(1) Expenses that are not authorized and shall not be paid from Grant Award funds, include, but are not limited to:~~]

[~~(A) Bad debt, such as losses arising from uncollectible accounts and other claims and related costs.~~]

[~~(B) Contributions to a contingency reserve or any similar provision for unforeseen events.~~]

[~~(C) Contributions and donations made to any individual or organization.~~]

[~~(D) Costs of entertainment, amusements, social activities, and incidental costs relating thereto, including tickets to shows or sports events, meals, alcoholic beverages, lodging, rentals, transportation and gratuities.~~]

[~~(E) Costs relating to food and beverage items, unless the food item is related to the issue studied by the project that is the subject of the Grant Award.~~]

[~~(F) Fines, penalties, or other costs resulting from violations of or failure to comply with federal, state, local or Indian tribal laws and regulations.~~]

[~~(G) An honorary gift or a gratuitous payment.~~]

[~~(H) Interest and other financial costs related to borrowing and the cost of financing.~~]

[~~(I) Legislative expenses such as salaries and other expenses associated with lobbying the state or federal legislature or similar local governmental bodies, whether incurred for purposes of legislation or executive direction.~~]

[~~(J) Liability insurance coverage.~~]

[~~(K) Benefit replacement pay or legislatively-mandated pay increases for eligible general revenue-funded state employees at Grant Recipient state agencies or universities.~~]

[~~(L) Professional association fees or dues for the Grant Recipient or an individual.~~]

[~~(M) Promotional items and costs relating to items such as T-shirts, coffee mugs, buttons, pencils, and candy that advertise or promote the project or Grant Recipient.~~]

[~~(N) Patient support services costs relating to services such as personal care items and financial assistance for low-income clients.~~]

[~~(O) Fees for visa services.~~]

[~~(2) Additional guidance regarding Authorized Expenses for a specific program may be provided by the terms of the Grant Contract and by the Uniform Grant Management Standards (UGMS) adopted by the Comptroller's Office. If guidance from UGMS on a particular issue conflicts with a specific provision of the Grant Contract, Chapter 102, Texas Health and Safety Code, or the Institute's administrative rules, then the Grant Contract, statute, or Institute administrative rule shall prevail.~~]

[~~(3) The Institute is responsible for making the final determination regarding whether an expense shall be considered an Authorized Expense.~~]

(b) [~~(e)~~] A Grant Recipient of Grant Award funds for a Cancer Research or Cancer Prevention project may not spend more than five percent (5%) of the Grant Award funds for Indirect Costs.

(c) [~~(d)~~] The Institute may not award more than five percent (5%) of the total Grant Award funds for each fiscal year to be used for facility purchase, construction, remodel, or renovation purposes during any year. Any Grant Award funds that are to be expended by a Grant Recipient for facility purchase, construction, remodel, or renovations are subject to the following conditions:

(1) The use of Grant Award funds must be specifically approved by the Chief Executive Officer with notification to the Oversight Committee;

(2) Grant Award funds spent on facility purchase, construction, remodel, or renovation projects must benefit Cancer Prevention and Research;

(3) If Grant Award funds are used to build a capital improvement, then the state retains a lien or other interest in the capital improvement in proportion to the percentage of the Grant Award funds used to pay for the capital improvement. If the capital improvement is sold, then the Grant Recipient agrees to repay to the state the Grant Award funds used to pay for the capital improvement, with interest, and share with the state a proportionate amount of any profit realized from the sale.

(d) [~~(e)~~] The Institute may not award more than ten percent (10%) of the money awarded from the Cancer Prevention and Research Fund or from the proceeds of bonds issued on behalf of the Institute to be used for Cancer Prevention and Control programs during any year. Grant Awards for Cancer Prevention research projects shall not be counted toward the Grant Award amount limit for Cancer Prevention and Control Programs. For purposes of this subsection, the Institute is presumed to award the full amount of funds available. At the first regular Oversight Committee meeting of the fiscal year, the Chief Executive Officer shall report that full amount of Grant Award funds available to be awarded for the fiscal year subject to periodic updates announced at regular meetings of the Oversight Committee.

§703.13. Audits and Investigations.

(a) Upon request and with reasonable notice, an entity receiving Grant Award funds directly under the Grant Contract or indirectly through a subcontract under the Grant Contract shall allow, or shall cause the entity that is maintaining such items to allow the Institute, or auditors or investigators working on behalf of the Institute, including the State Auditor and/or the Comptroller of Public Accounts for the State of Texas, to review, inspect, audit, copy or abstract its records pertaining to the specific Grant Contract during the term of the Grant Contract and for the three year period following the end of the Grant Recipient's fiscal year during which the Grant Contract was terminated.

(b) Notwithstanding the foregoing, the [~~a~~] Grant Recipient shall submit a single audit determination form within 60 days of the anniversary date of the Grant Contract effective date. The Grant Recipient shall report whether the Grant Recipient has expended $750,000 [~~expending $500,000~~] or more in state awards during the Grant Recipient's [~~its~~] fiscal year. If the Grant Recipient has expended $750,000 or more in state awards in its fiscal year, the Grant Recipient shall obtain either an annual single independent audit, a program specific independent audit, or an agreed upon procedures engagement as defined by the American Institute of Certified Public Accountants and pursuant to guidance provided in subsection (e).

[~~(1) A single audit is required if funds from more than one state program are spent by a Grant Recipient that does not meet the definition of an institution of higher education in Texas Education Code, §61.003.~~]

(1) [~~(2)~~] The audited time period is the Grant Recipient's fiscal year.

(2) [~~(3)~~] The audit must be submitted to the Institute within 30 days of receipt by the Grant Recipient but no later than 270 days following the close of the Grant Recipient's fiscal year and shall include a corrective action plan that addresses any weaknesses, deficiencies, wrongdoings, or other concerns raised by the audit report and a summary of the action taken by the Grant Recipient to address the concerns, if any, raised by the audit report.

(A) The Grant Recipient may seek additional time to submit the required audit and corrective action plan by providing a written explanation for its failure to timely comply and providing an expected time for the submission.

(B) The Grant Recipient's request for additional time must be submitted on or before the due date of the required audit and corrective action plan. For purposes of this rule, the "due date of the required audit" is no later than the 270th day following the close of the Grant Recipient's fiscal year.

(C) Approval of the Grant Recipient's request for additional time is at the discretion of the Institute. Such approval must be granted by the Chief Executive Officer.

(c) No reimbursements or advances of Grant Award funds shall be made to the Grant Recipient if the Grant Recipient is delinquent in filing the required audit and corrective action plan. A Grant Recipient that has received approval from the Institute for additional time to file the required audit and corrective action plan may receive reimbursements or advances of Grant Award funds during the pendency of the delinquency unless the Institute's approval declines to permit reimbursements or advances of Grant Award funds until the delinquency is addressed.

(d) A Grant Recipient that is delinquent in submitting to the Institute the audit and corrective action plan required by this section is not eligible to be awarded a new Grant Award or a continuation Grant Award until the required audit and corrective action plan are submitted. A Grant Recipient that has received approval from the Institute for additional time to file the required audit and corrective action plan may remain eligible to be awarded a new Grant Award or a continuation Grant Award unless the Institute's approval declines to continue eligibility during the pendency of the delinquency.

(e) For purposes of this rule, an agreed upon procedures engagement is one in which an independent certified public accountant is hired by the Grant Recipient to issue a report of findings based on specific procedures to be performed on a subject matter.

(1) The option to perform an agreed upon procedures engagement is intended for a non-profit or for-profit Grant Recipient that is not subject to Generally Accepted Government Audit Standards (also known as the Yellow Book) published by the U.S. Government Accountability Office.

(2) The agreed upon procedures engagement will be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants.

(3) The certified public accountant is to perform procedures prescribed by the Institute and to report his or her findings attesting to whether the Grant Recipient records is in agreement with stated criteria.

(4) The agreed upon procedures apply to all current year expenditures for Grant Awards received by the Grant Recipient. Nothing herein prohibits the use of a statistical sample consistent with the American Institute of Certified Public Accountants' guidance regarding government auditing standards and Circular A-133 audits.

(5) At a minimum, the agreed upon procedures report should address:

(A) Processes and controls;

(B) The Grant Contract;

(C) Indirect Costs;

(D) Matching Funds, if appropriate;

(E) Grant Award expenditures (payroll and non-payroll related transactions);

(F) Equipment;

(G) Revenue Sharing and Program Income;

(H) Reporting; and

(I) Grant Award closeout.

(6) The certified public accountant should consider the specific Grant Mechanism and update or modify the procedures accordingly to meet the requirements of each Grant Award and the Grant Contract reviewed.

§703.14. Termination, Extension, [~~and~~] Close Out of Grant Contracts, and De-Obligation of Grant Award Funds.

(a) The termination date of a Grant Contract shall be the date stated in the Grant Contract, except:

(1) The Chief Executive Officer may elect to terminate the Grant Contract earlier because the Grant Recipient has failed to fulfill contractual obligations, including timely submission of required reports or certifications;

(2) The Institute terminates the Grant Contract because funds allocated to the Grant Award are reduced, depleted, or unavailable during the award period, and the Institute is unable to obtain additional funds for such purposes; or

(3) The Institute and the Grant Recipient mutually agree to terminate the Grant Contract earlier.

(b) If the Institute elects to terminate the Grant Contract pursuant to subsection (a)(1) or (2) of this section, then the Chief Executive Officer shall notify the Grant Recipient in writing of the intent to terminate funding at least 30 days before the intended termination date. The notice shall state the reasons for termination, and the procedure and time period for seeking reconsideration of the decision to terminate. Nothing herein restricts the Institute's ability to terminate the Grant Contract immediately or to seek additional remedies if justified by the circumstances of the event leading to early termination.

(c) The Institute may approve the Grant Recipient's written request to extend the termination date of the Grant Contract to permit the Grant Recipient additional time to complete the work of the project.

(1) A no cost extension may be granted [~~only~~] if the Grant Recipient is in good fiscal and programmatic standing. The Institute's decision to approve or deny a no cost extension request is final.

(2) The Grant Recipient may request a no cost extension no earlier than 180 days and no later than 30 days prior to the termination date of the Grant Contract.

(A) If a Grant Recipient fails to [~~does not~~] request a no cost extension within the required timeframe, the Grant Recipient may petition the Chief Executive Officer in writing to consider the no cost extension. The Grant Recipient's petition must show good cause for failing submit the request within the timeframe specified in the above subsection.

(B) Upon a finding of good cause, the Chief Executive Officer may consider [~~approve~~] the request [~~for good cause~~]. If a no cost extension request is approved under this subsection, the Chief Executive Officer must notify the Oversight Committee in writing and provide justification for the approval.

(3) The Institute may approve one or more no cost extensions. The [~~extensions; the~~] duration of each no cost extension [~~which~~] may be no longer than six months from the termination date of the Grant Contract, unless the Institute finds that special circumstances justify authorizing additional time to complete the work of the project.

(A) The Grant Recipient's first no cost extension that is less than or equal to six months will be approved so long as the Grant Recipient is in good fiscal and programmatic standing.

(B) If a grant recipient requests a second no cost extension or requests a no cost extension greater than six months, the grantee must provide good cause for approving the request.

(4) If the Institute approves the request to extend the termination date of the Grant Contract, then the termination date shall be amended to reflect the change.

(5) Nothing herein prohibits the Institute and the Grant Recipient from taking action more than 180 days prior to the termination date of the Grant contract to extend the termination date of the Grant Contract. Approval of an extension must be supported by a finding of good cause and the Grant Contract shall be amended to reflect the change.

(d) The [~~Within ninety (90) days,~~] Grant Recipient must submit a final Financial Status Report and final Grant Progress Report as well as any other required reports as specified in the Grant Contract. For purposes of this rule, the final Grant Progress Report and other required [~~these~~] reports shall be collectively referred to as "close out documents."

(1) The final Financial Status Report shall be submitted to the Institute within ninety (90) days of the end of the state fiscal quarter that includes the termination date of the Grant Contract. [~~If the Grant Recipient has submitted the final Financial Status Report on or before the 30th day following the due date specified in §703.21(b), but has not submitted other close out documents, then the final reimbursement payment shall not be made until such other close out documents have been submitted and approved by the Institute.~~] The Grant Recipient's failure to submit the Financial Status report within 30 days following the due date specified in this subsection [~~§703.21(b)~~] will waive reimbursement of project costs incurred during the reporting period. The Institute may approve additional time to submit the final Financial Status Report if the Grant Recipient can show good cause for failing to timely submit the final Financial Status Report.

(2) Close out documents must be submitted with ninety (90) days of the termination date of the Grant Contract. The final reimbursement payment shall not be made until all close out documents have been submitted and approved by the Institute. Failure to submit one or more [~~all other~~] close out documents within 180 days of the Grant Contract termination date shall result in the Grant Recipient being ineligible to receive new Grant Awards or continuation Grant Awards until such time that the close out documents are submitted unless the Institute waives the final submission of close out documents by the Grant Recipient.

(A) Approval of the Grant Recipient's request to waive the submission of close out documents is at the discretion of the Institute. Such approval must be granted by the Chief Executive Officer.

(B) The Oversight Committee shall be notified in writing of the Grant Recipient's waiver request and the Chief Executive Officer's decision to approve or reject the waiver request.

(C) Unless the Oversight Committee votes by a simple majority of members present and able to vote to overturn the Chief Executive Officer's decision regarding the waiver, the Chief Executive Officer's decision shall be considered final.

(e) The Institute may make upward or downward adjustments to the Allowable Costs requested by the Grant Recipient within ninety (90) days following the approval [~~receipt~~] of the close out reports or the final Financial Status Report, whichever is later.

(f) Nothing herein shall affect the Institute's right to disallow costs and recover Grant Award funds on the basis of a later audit or other review or the Grant Recipient's obligation to return Grant Award funds owed as a result of a later refund, correction, or other transaction.

(g) Any Grant Award funds paid to the Grant Recipient in excess of the amount to which the Grant Recipient is finally determined to be entitled under the terms of the Grant Contract constitute a debt to the state. If not paid within a reasonable period after demand, the Institute may reduce the debt owed by:

(1) Making an administrative offset against other requests for reimbursements;

(2) Withholding advance payments otherwise due to the Grant Recipient; or

(3) Other action permitted by law.

(h) Grant Award funds approved by the Oversight Committee and specified in the Grant Contract but not spent by the Grant Recipient at the time that the Grant Contract is terminated are considered de-obligated for the purposes of calculating the maximum amount of annual Grant Awards and the total amount authorized by Section 67, Article III, Texas Constitution. Such de-obligated funds are available for all purposes authorized by the statute.

§703.15. Financial Policies Applicable to Grant Awards [~~Multiyear Projects~~].

(a) The Grant Recipient is responsible for managing the day-to-day operations of the activities supported by the Grant Award and is accountable to Institute for the performance of the Grant Award, including the appropriate expenditure of Grant Award funds by all parties and all other obligations of the Grant Recipient.

(b) The Grant Recipient must maintain a sound financial management system that provides appropriate fiscal controls and accounting procedures to ensure accurate preparation of reports by the Grant Contract and adequate identification of the source and application of Grant Award funds.

(1) The Grant Recipient may use its established controls and policies, as long as the controls and policies are consistent with requirements described in the Institute's administrative rules, the Grant Contract, and other applicable standards.

(2) The Grant Recipient's system of internal controls should encompass segregation of functions, proper authorization of transactions, proper recording of transactions, limited access to assets, and monitoring of internal controls. The extent to which internal controls are established is dependent upon the nature and size of the organization involved.

(3) The Grant Recipient's accounting system must conform to Generally Accepted Accounting Principles applicable to state and federal grant funds and conform to the standards for financial management set forth in the Uniform Grant Management Standards.

(4) The Institute may review the adequacy of the financial management system of any Grant Recipient to ensure that the system is appropriate to fulfill the Institute's administrative rules, the Grant Contract, and other applicable standards.

(c) The Grant Recipient shall use cash basis accounting when reporting expenses to be reimbursed with Grant Award funds.

(1) A Grant Recipient utilizing an accrual basis of accounting in its normal operations must present expenses on a cash basis and reflect actual costs incurred during the payment period.

(2) A subcontractor is not required to record the adjustment in the general ledger; the adjustment should be documented by memo entries along with a reconciliation of the expense reported to the Institute and the expense recorded to the general ledger.

[~~(a) The Oversight Committee may approve Grant Award funds for a multiyear project. The total amount of Grant Award funds~~

~~for the project shall be specified at the time that the Grant Award recommendation is approved by the Oversight Committee.~~]

[~~(b) The Grant Contract shall include an Approved Budget that reflects the amount of the Grant Award funds to be spent for each Project Year.~~]

[~~(c) The Institute shall distribute Grant Award funds to reimburse Allowable costs as reflected in the Approved Budget and pursuant to the Grant Recipient's submission of the quarterly Financial Status Report or the request to advance Grant Award funds. Remaining Grant Award funds shall be distributed as needed in each subsequent Project Year of the Grant Contract.~~]

[~~(d) A Grant Recipient awarded a Grant Award for a multiyear project that fails to expend the total Project Year budget may carry forward the unexpended budget balance to the next Project Year. If the amount of the unexpended budget balance to carry forward exceeds ten percent (10%) of the total Grant Award amount, the Grant Recipient must provide specific justification for why the total Grant Award amount should not be reduced by the unexpended balance.~~]

§703.16. Intellectual Property Agreement.

(a) To the extent that there is a conflict between this chapter and the Grant Contract between the Institute and the Grant Recipient, the Grant Contract terms will control.

(b) The Grant Recipient may retain, assign or transfer all or a portion of any of the Intellectual Property Rights relating to the project results. Any such assignment or transfer to a third party is subject to the following requirements:

(1) The Grant Recipient shall notify the Institute of the proposed transfer or assignment;

(2) The Grant Recipient shall ensure that the assignment or transfer is subject to the licenses, interests and other rights provided to the Institute pursuant to the Grant Contract and any applicable law or regulation; and

(3) Unless the transfer is taking place pursuant to an exercise of the United States government's rights under 35 U.S.C. §203, the Institute may provide comments to the Grant Recipient related to the proposed transfer or assignment of rights, which the Grant Recipient shall consider in good faith and use reasonable efforts to account for and incorporate such comments into the actual transfer or assignment of such rights.

(c) Unless specifically authorized by the Institute, Grant Award proceeds shall not be used to pay the costs or expenses associated with the efforts to protect the Intellectual Property Rights [~~or to pay the costs or expenses associated with commercialization activities~~].

(d) As a condition of accepting Grant Award funding from the Institute, the Grant Recipient agrees to the following required commitments as defined in the Grant Contract with regard to any project results:

(1) To use commercially reasonable efforts to protect, develop, commercialize, or otherwise bring Project Results to practical application to the fullest extent feasible as determined by the Grant Recipient. The Grant Recipient is relieved of its obligations pursuant to this section so long as the Grant Recipient complies with paragraph (3) of this subsection and §703.19 of this chapter (relating to Opt-Out and Default).

(2) To share with the Institute a portion of the benefit derived from the commercial development of the Project Results, as set forth in the Grant Contract.

(3) To notify the Institute in writing prior to declining to pursue, abandoning, waiving or disclaiming some or all Intellectual Property Rights related to the Project Results. Such notification shall be made with sufficient time to provide the Institute an opportunity to license or pursue the appropriate applications and other protections for such Intellectual Property Rights to the fullest extent permitted by law.

(4) To keep the Institute promptly and reasonably informed regarding the activities undertaken by the Grant Recipient to protect and/or commercialize the Project Results and to consider in good faith Institute input, if any, regarding same. Such activities may include, but are not limited to, the following:

(A) Filing of an invention disclosure forms (including updates and revisions);

(B) Creation of commercial development plans;

(C) Application, issuance, prosecution and maintenance of patents; and

(D) Negotiation of final term sheets and License Agreements.

(5) To allow access to the books and records of the Grant Recipient for the purpose of conducting an audit during normal business hours with reasonable notice to verify amounts paid to the Institute pursuant to this chapter. Notwithstanding the time limitation provided in §703.13 of this chapter (relating to Audits and Investigations), the right to audit the books and records of the Grant Recipient to verify amounts required to be paid to the Institute shall continue for so long as the payments shall be made.

[~~(6) To report to the Institute at least annually describing commercialization activities for the Project Results in a manner and form to be prescribed by the Institute.~~]

§703.17. Revenue Sharing Standards.

(a) The Institute shall share in the financial benefit received by the Grant Recipient resulting from the patents, royalties, assignments, sales, conveyances, licenses and/or other benefits associated with the Project Results, including interest or proceeds resulting from securities and equity ownership. Such payment may include royalties, income, milestone payments, or other financial interest in an existing company or other entity.

(b) The Institute's election as to form of payment and the calculation of such payment shall be specified in the Grant Contract.

(c) Unless otherwise provided by the Grant Contract between the Institute and the Grant Recipient, payments to the Institute required by this section shall be made no less than annually pursuant to a schedule set forth in the Grant Contract and shall be accompanied by an appropriate financial statement supporting the calculation of the payment.

(d) Nothing herein shall affect or otherwise impair the application of federal laws for projects receiving some portion of funding from the U.S. Government.

(e) Unless the Grant Contract specifically states otherwise, the obligation to share revenues with the Institute is continuous so long as the product resulting from the Institute supported project enjoys government exclusivity.

§703.21. Monitoring Grant Award Performance and Expenditures.

(a) The Institute, under the direction of the Chief Compliance [~~Executive~~] Officer, shall monitor Grant Awards to ensure that Grant Recipients comply with applicable financial, administrative, and programmatic terms and conditions and exercise proper stewardship over Grant Award funds. Such terms and conditions include requirements set forth in statute, administrative rules, and the Grant Contract.

(b) Methods used by the Institute to monitor a Grant Recipient's performance and expenditures may include:

(1) Financial Status Reports Review - The Institute shall review Grant Award [~~Quarterly financial status reports shall be submitted to the Institute within 90 days of the end of the state fiscal quarter (based upon a September 1 - August 31 fiscal year). The Institute shall review~~] expenditures reported by Grant Recipients on the quarterly Financial Status Reports and supporting documents to determine whether expenses charged to the Grant Award are:

(A) Allowable, allocable, reasonable, necessary, and consistently applied regardless of the source of funds; and

(B) Adequately supported with documentation such as cost reports, receipts, third party invoices for expenses, or payroll information.

(2) Timely submission of Grant Award [~~Financial Status~~] Reports - The Institute shall monitor the submission of all required reports and implement a process to ensure that Grant Award funds are not disbursed to a Grant Recipient with one or more delinquent reports. [~~Except as provided herein, the Grant Recipient waives the right to reimbursement of project costs incurred during the reporting period if the financial status report (FSR) for that quarter is not submitted to the Institute within 30 days of the FSR due date. Waiver of reimbursement of project costs incurred during the reporting period also applies to Grant Recipients that have received advancement of Grant Award funds.~~]

[~~(A) For purposes of this rule, the "FSR due date" is 90 days following the end of the state fiscal quarter.~~]

[~~(B) The Chief Executive Officer may approve a Grant Recipient's request to defer submission of the reimbursement request for the current fiscal quarter until the next fiscal quarter if, on or before the original FSR due date, the Grant Recipient submits a written explanation for the Grant Recipient's inability to complete a timely submission of the FSR.~~]

[~~(C) A Grant Recipient may appeal the waiver of its right to reimbursement of project costs.~~]

~~*(i)* The appeal shall be in writing, provide good cause for failing to submit the FSR within 30 days of the FSR due date, and be submitted through CPRIT's Grant Management System.~~]

~~*(ii)* The Chief Executive Officer may approve the appeal for good cause. The decision by the Chief Executive Officer to approve or deny the grant recipient's appeal shall be in writing and provided through CPRIT's Grant Management System.~~]

~~*(iii)* The Chief Executive Officer's decision to approve or deny the Grant Recipient's appeal is final, unless the Grant Recipient timely seeks reconsideration of the Chief Executive Officer's decision by the Oversight Committee.~~]

~~*(iv)* The Grant Recipient may request that the Oversight Committee reconsider the Chief Executive Officer's decision regarding the Grant Recipient's appeal. The request for reconsideration shall be in writing and submitted to the Chief Executive Officer within 10 days of the date that the Chief Executive Officer notifies the Grant Recipient of the decision regarding the appeal as noted in clause (iii) of this subparagraph.~~]

~~*(v)* The Chief Executive Officer shall notify the Oversight Committee in writing of the decision to approve or deny the Grant Recipient's appeal. The notice should provide justification for the Chief Executive Officer's decision. In the event that the Grant Recipient timely seeks reconsideration of the Chief Executive Officer's decision, the Chief Executive Officer shall provide the Grant Recipient's written request to the Oversight Committee at the same time.~~]

~~*(vi)* The Grant Recipient's request for reconsideration is deemed denied unless three or more Oversight Committee members request that the Chief Executive Officer add the Grant Recipient's request for reconsideration to the agenda for action at the next regular Oversight Committee meeting. The decision made by the Oversight Committee is final.~~]

~~*(vii)* If the Grant Recipient's appeal is approved by the Chief Executive Officer or the Oversight Committee, the Grant Recipient shall report the project costs and provide supporting documentation for the costs incurred during the reporting period covered by the appeal on the next available financial status report to be filed by the Grant Recipient.~~]

~~*(viii)* Approval of the waiver appeal does not connote approval of the expenditures; the expenditures and supporting documentation shall be reviewed according to paragraph (1) of this subsection.~~]

~~*(ix)* This subsection applies to any waivers of its reimbursement decided by the Institute on or after September 1, 2015.~~]

[~~(D) Notwithstanding paragraph (2) of this subsection, in the event that the Grant Recipient and Institute execute the Grant Contract after the effective date of the Grant Contract, the Chief Program Officer may approve additional time for the Grant Recipient to prepare and submit the outstanding FSR(s). The approval shall be in writing and maintained in the Institute's electronic Grants Management System. The Chief Program Officer's approval may cover more than one FSR and more than one fiscal quarter.~~]

[~~(E) In order to receive disbursement of grant funds, the most recently due FSR must be approved by CPRIT.~~]

(3) Grant Progress Reports - The Institute shall review Grant Progress Reports to determine whether sufficient progress is made consistent with the scope of work and timeline set forth in the Grant Contract.

(A) The Grant Progress Reports shall be submitted at least annually, but may be required more frequently pursuant to Grant Contract terms or upon request and reasonable notice of the Institute.

(B) The annual Grant Progress Report shall be submitted within sixty (60) days after the anniversary of the effective date of the Grant Contract. The annual Grant Progress Report shall include at least the following information:

(i) An affirmative verification by the Grant Recipient of compliance with the terms and conditions of the Grant Contract;

(ii) A description of the Grant Recipient's progress made toward completing the scope of work specified by the Grant Contract, including information, data, and program metrics regarding the achievement of project goals and timelines;

(iii) The number of new jobs created and the number of jobs maintained for the preceding twelve month period as a result of Grant Award funds awarded to the Grant Recipient for the project;

(iv) An inventory of the equipment purchased for the project in the preceding twelve month period using Grant Award funds;

(v) A verification of the Grant Recipient's efforts to purchase from suppliers in this state more than 50 percent goods and services purchased for the project with grant funds;

(vi) A Historically Underutilized Businesses report;

(vii) Scholarly articles, presentations, and educational materials produced for the public addressing the project funded by the Institute;

(viii) The number of patents applied for or issued addressing discoveries resulting from the research project funded by the Institute;

(ix) A statement of the identities of the funding sources, including amounts and dates for all funding sources supporting the project;

(x) A verification of the amounts of Matching Funds dedicated to the research that is the subject of the Grant Award for the period covered by the annual report, which shall be submitted pursuant to the timeline in §703.11. In order to receive disbursement of grant funds, the most recently due verification of the amount of Matching Funds must be approved by CPRIT;

(xi) All financial information necessary to support the calculation of the Institute's share of revenues, if any, received by the Grant Recipient resulting from the project; and

(xii) A single audit determination form.

(C) Notwithstanding subparagraph (B) of this paragraph, in the event that the Grant Recipient and Institute execute the Grant Contract after the effective date of the Grant Contract, the Chief Program Officer may approve additional time for the Grant Recipient to prepare and submit the outstanding reports. The approval shall be in writing and maintained in the Institute's electronic Grants Management System. The Chief Program Officer's approval may cover more than one report and more than one fiscal quarter.

(D) In addition to annual Grant Progress Reports, a final Grant Progress Report shall be filed no more than ninety (90) days after the termination date of the Grant Contract. The final Grant Progress Report shall include a comprehensive description of the Grant Recipient's progress made toward completing the scope of work specified by the Grant Contract, as well as other information specified by the Institute.

(E) The Grant Progress Report will be evaluated [~~by a grant manager~~] pursuant to criteria established by the Institute. The evaluation shall be conducted under the direction of the Chief Prevention Officer, the Chief Product Development Officer, or the Chief Scientific Officer, as may be appropriate. Required financial reports associated with the Grant Progress Report will be reviewed by the Institute's financial staff. In order to receive disbursement of grant funds, the final progress report must be approved by CPRIT.

(F) If the Grant Progress Report evaluation indicates that the Grant Recipient has not demonstrated progress in accordance with the Grant Contract, then the Chief Program Officer shall notify the Chief Executive Officer and the General Counsel for further action.

(i) The Chief Program Officer shall submit written recommendations to the Chief Executive Officer and General Counsel for actions to be taken, if any, to address the issue.

(ii) The recommended action may include termination of the Grant Award pursuant to the process described in §703.14 of this chapter (relating to Termination, Extension, and Close Out of Grant Contracts).

(G) If the Grant Recipient fails to submit required financial reports associated with the Grant Progress Report, then the Institute financial staff shall notify the Chief Executive Officer and the General Counsel for further action.

(H) In order to receive disbursement of grant funds, the most recently due progress report must be approved by CPRIT.

(I) If a Grant Recipient fails to submit the Grant Progress Report within 60 days of the anniversary of the effective date of the Grant Contract, then the Institute shall not disburse any Grant Award funds as reimbursement or advancement of Grant Award funds until such time that the delinquent Grant Progress Report is approved.

(J) In addition to annual Grant Progress Reports, Product Development Grant Recipients shall submit a Grant Progress Report at the completion of specific tranches of funding specified in the Award Contract. For the purpose of this subsection, a Grant Progress Report submitted at the completion of a tranche of funding shall be known as "Tranche Grant Progress Report."

(i) The Institute may specify other required reports, if any, that are required to be submitted at the time of the Tranche Grant Progress Report.

(ii) Grant Funds for the next tranche of funding specified in the Grant Contract shall not be disbursed until the Tranche Grant Progress Report has been reviewed and approved pursuant to the process described in this section.

(4) Desk Reviews - The Institute may conduct a desk review for a Grant Award to review and compare individual source documentation and materials to summary data provided during the Financial Status Report review for compliance with financial requirements set forth in the statute, administrative rules, and the Grant Contract.

(5) Site Visits and Inspection Reviews - The Institute may conduct a scheduled site visit to a Grant Recipient's place of business to review Grant Contract compliance and Grant Award performance issues. Such site visits may be comprehensive or limited in scope.

(6) Audit Reports - The Institute shall review audit reports submitted pursuant to §703.13 of this chapter (relating to Audits and Investigations).

(A) If the audit report findings indicate action to be taken related to the Grant Award funds expended by the Grant Recipient or for the Grant Recipient's fiscal processes that may impact Grant Award expenditures, the Institute and the Grant Recipient shall develop a written plan and timeline to address identified deficiencies, including any necessary Grant Contract amendments.

(B) The written plan shall be retained by the Institute as part of the Grant Contract record.

(c) All required Grant Recipient reports and submissions described in this section shall be made via an electronic grant portal designated by the Institute, unless specifically directed to the contrary in writing by the Institute.

(d) The Institute shall document the actions taken to monitor Grant Award performance and expenditures, including the review, approvals, and necessary remedial steps, if any.

(1) To the extent that the methods described in subsection (b) of this section are applied to a sample of the Grant Recipients or Grant Awards, then the Institute shall document the Grant Contracts reviewed and the selection criteria for the sample reviewed.

(2) Records will be maintained in the electronic Grant Management System as described in §703.4 of this chapter (relating to Grants Management System).

(e) The Chief Compliance Officer shall be engaged in the Institute's Grant Award monitoring activities and shall notify the General Counsel and Oversight Committee if a Grant Recipient fails to mean-

ingfully comply with the Grant Contract reporting requirements and deadlines, including Matching Funds requirements.

(f) The Chief Executive Officer shall report to the Oversight Committee at least annually on the progress and continued merit of each Grant Program funded by the Institute. The written report shall also be included in the Annual Public Report. The report should be presented to the Oversight Committee at the first meeting following the publication of the Annual Public Report.

(g) The Institute may rely upon third parties to conduct Grant Award monitoring services independently or in conjunction with Institute staff.

§703.23. Disbursement of Grant Award Funds.

(a) The Institute disburses Grant Award funds by reimbursing the Grant Recipient for allowable costs already expended; however, the nature and circumstances of the Grant Mechanism or a particular Grant Award may justify advance payment of funds by the Institute pursuant to the Grant Contract.

(1) The Chief Executive Officer shall seek authorization from the Oversight Committee to disburse Grant Award funds by advance payment.

(A) A simple majority of Oversight Committee Members present and voting must approve the Chief Executive Officer's advance payment recommendation for the Grant Award.

(B) Unless specifically stated at the time of the Oversight Committee's vote, the Oversight Committee's approval to disburse Grant Award funds by advance payment is effective for the term of the Grant Award.

(2) Unless otherwise specified in the Grant Contract, the amount of Grant Award funds advanced in any particular tranche may not exceed the budget amount for the corresponding Project Year.

(3) The Grant Recipient receiving advance payment of Grant Award funds must maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the Grant Award funds and disbursement by the Grant Recipient.

(4) The Grant Recipient must comply with all financial reporting requirements regarding use of Grant Award funds, including timely submission of quarterly Financial Status Reports.

(5) The Grant Recipient must expend at least 90% of the Grant Award funds in a tranche before Institute will advance additional grant funds or reimburse additional costs. To the extent possible, the Institute will work with the Grant Recipient to coordinate the advancement of Grant Award fund tranches in such a way as to avoid affecting work in progress or project planning.

(6) Nothing herein creates an entitlement to advance payment of Grant Award funds; the Institute may determine in its sole discretion that circumstances justify limiting the amount of Grant Award funds eligible for advance payment, may restrict the period for the advance payment of Grant Award funds, or may revert to payment on a reimbursement-basis. Unless specifically stated in the Grant Contract, the Institute will disburse the last ten percent (10%) of the total Grant Award funds using the reimbursement method of funding.

(b) The Institute will disburse Grant Award funds for actual cash expenditures reported on the Grant Recipient's quarterly Financial Status Report.

(1) Only expenses that are allowable and supported by adequate documentation are eligible to be paid with Grant Award funds.

(2) A Grant Recipient must pay their vendors and subcontractors prior to requesting reimbursement from CPRIT.

(c) The Institute may withhold disbursing Grant Award funds if the Grant Recipient has not submitted required reports, including quarterly Financial Status Reports, Grant Progress Reports, Matching Fund Reports, audits and other financial reports. Unless otherwise specified for the particular Grant Award, Institute approval of the required report(s) is necessary for disbursement of Grant Award funds.

(d) All Grant Award funds are disbursed pursuant to a fully executed Grant Contract. Grant Award funds shall not be disbursed prior to the effective date of the Grant Contract.

§703.24. Financial Status Reports.

(a) Grant Recipients shall report expenditures to be reimbursed with Grant Award funds on the quarterly Financial Status Report form.

(1) Expenditures shall be reported by budget category consistent with the Grant Recipient's Approved Budget.

(2) All expenditures must be supported with appropriate documentation showing that the costs were incurred and paid. A Grant Recipient that is a public or private institution of higher education as defined by §61.003, Texas Education Code is not required to submit supporting documentation for an individual expense totaling less than $750 in the "supplies" or "other" budget categories.

(3) The Financial Status Report and supporting documentation must be submitted via the Grant Management System, unless the Grant Recipient is specifically directed in writing by the Institute to submit or provide it in another manner.

(4) The requirement to report and timely submit quarterly Financial Status Reports applies to all Grant Recipients, regardless of whether Grant Award funds are disbursed by reimbursement or in advance of incurring costs.

(b) Quarterly Financial Status Reports shall be submitted to the Institute within 90 days of the end of the state fiscal quarter (based upon a September 1 - August 31 fiscal year). The Institute shall review expenditures and supporting documents to determine whether expenses charged to the Grant Award are:

(1) Allowable, allocable, reasonable, necessary, and consistently applied regardless of the source of funds; and

(2) Adequately supported with documentation such as cost reports, receipts, third party invoices for expenses, or payroll information.

(c) Except as provided herein, the Grant Recipient waives the right to reimbursement of project costs incurred during the reporting period if the Financial Status Report for that quarter is not submitted to the Institute within 30 days of the Financial Status Report due date. Waiver of reimbursement of project costs incurred during the reporting period also applies to Grant Recipients that have received advancement of Grant Award funds.

(1) For purposes of this rule, the "Financial Status Report due date" is 90 days following the end of the state fiscal quarter.

(2) The Chief Executive Officer may approve a Grant Recipient's request to defer submission of the reimbursement request for the current fiscal quarter until the next fiscal quarter if, on or before the original Financial Status Report due date, the Grant Recipient submits a written explanation for the Grant Recipient's inability to complete a timely submission of the Financial Status Report.

(3) A Grant Recipient may appeal the waiver of its right to reimbursement of project costs.

(A) The appeal shall be in writing, provide good cause for failing to submit the Financial Status Report within 30 days of the Financial Status Report due date, and be submitted via the Grant Management System.

(B) The Chief Executive Officer may approve the appeal for good cause. The decision by the Chief Executive Officer to approve or deny the grant recipient's appeal shall be in writing and available to the Grant Recipient via the Grant Management System.

(C) The Chief Executive Officer's decision to approve or deny the Grant Recipient's appeal is final, unless the Grant Recipient timely seeks reconsideration of the Chief Executive Officer's decision by the Oversight Committee.

(D) The Grant Recipient may request that the Oversight Committee reconsider the Chief Executive Officer's decision regarding the Grant Recipient's appeal. The request for reconsideration shall be in writing and submitted to the Chief Executive Officer within 10 days of the date that the Chief Executive Officer notifies the Grant Recipient of the decision regarding the appeal as noted in subparagraph (C) of this paragraph.

(E) The Chief Executive Officer shall notify the Oversight Committee in writing of the decision to approve or deny the Grant Recipient's appeal. The notice should provide justification for the Chief Executive Officer's decision. In the event that the Grant Recipient timely seeks reconsideration of the Chief Executive Officer's decision, the Chief Executive Officer shall provide the Grant Recipient's written request to the Oversight Committee at the same time.

(F) The Grant Recipient's request for reconsideration is deemed denied unless three or more Oversight Committee members request that the Chief Executive Officer add the Grant Recipient's request for reconsideration to the agenda for action at the next regular Oversight Committee meeting. The decision made by the Oversight Committee is final.

(G) If the Grant Recipient's appeal is approved by the Chief Executive Officer or the Oversight Committee, the Grant Recipient shall report the project costs and provide supporting documentation for the costs incurred during the reporting period covered by the appeal on the next available financial status report to be filed by the Grant Recipient.

(H) Approval of the waiver appeal does not connote approval of the expenditures; the expenditures and supporting documentation shall be reviewed according to subsection (b) of this section.

(I) This subsection applies to any waivers of the Grant Recipient's reimbursement decided by the Institute on or after September 1, 2015.

(4) Notwithstanding subsection (c) of this section, in the event that the Grant Recipient and Institute execute the Grant Contract after the effective date of the Grant Contract, the Chief Program Officer may approve additional time for the Grant Recipient to prepare and submit the outstanding Financial Status Report(s). The approval shall be in writing and maintained in the Grants Management System. The Chief Program Officer's approval may cover more than one Financial Status Report and more than one fiscal quarter.

(5) In order to receive disbursement of grant funds, the most recently due Financial Status Report must be approved by the Institute.

§703.25. Grant Award Budget.

(a) The Grant Contract shall include an Approved Budget that reflects the amount of the Grant Award funds to be spent for each Project Year.

(b) All expenses charged to a Grant Award must be budgeted and reported in the appropriate budget category.

(c) Actual expenditures under each category should not exceed budgeted amounts authorized by the Grant Contract as reflected on the Approved Budget for each Grant Award.

(d) Recipients may make transfers between or among lines within budget categories listed on the Approved Budget so long as the transfer fits within the scope of the Grant Contract and the total Approved Budget; is beneficial to the achievement of project objectives; and is an efficient, effective use of Grant Award funds.

(e) All budget changes or transfers require Institute approval, except that the Grant Recipient may make budget changes or transfers without prior approval from the Institute for expenses not specified in the equipment category if:

(1) The total dollar amount of all changes of any single line item (individually and in the aggregate) within budget categories other than equipment is not more than 10% of the amount in that line item;

(2) The transfer will not increase or decrease the total grant budget; and

(3) The transfer will not materially change the nature, performance level, or scope of the project.

(f) A Grant Recipient awarded a Grant Award for a multiyear project that fails to expend the total Project Year budget may carry forward the unexpended budget balance to the next Project Year.

(1) If the amount of the unexpended budget balance in a Project Year exceeds ten percent (10%) of the total Grant Award amount, the Institute must approve the carry forward.

(2) For a budget carry forward requiring Institute approval, the Grant Recipient must provide justification for why the total Grant Award amount should not be reduced by the unexpended balance.

§703.26. Allowable Costs.

(a) A cost is an Allowable Cost and may be charged to the Grant Award if it is reasonable, allocable, and adequately documented.

(1) A cost is reasonable if the cost does not exceed that which would be incurred by a prudent individual or organization under the circumstances prevailing at the time the decision was made to incur the cost; and is necessary for the performance of the Grant Award defined in the Scope of Work in the Grant Contract.

(2) A cost is allocable if the cost:

(A) Benefits the Grant Award either directly or indirectly, subject to Indirect Cost limits stated in the Grant Contract;

(B) Is assigned the Grant Award in accordance with the relative benefit received;

(C) Is allowed or not prohibited by state laws, administrative rules, contractual terms, or applicable regulations;

(D) Is not included as a cost or used to meet Matching Fund requirements for any other Grant Award in either the current or a prior period; and

(E) Conforms to any limitations or exclusions set forth in the applicable cost principles, administrative rules, state laws, and terms of the Grant Contract.

(3) A cost is adequately documented if the cost is supported by the organization's accounting records and documented consistent with §703.24.

(b) Grant Award funds must be used for Allowable Costs as provided by the terms of the Grant Contract, Chapter 102, *Texas Health and Safety Code,* the Institute's administrative rules, and the Uniform Grant Management Standards (UGMS) adopted by the Comptroller's Office. If guidance from the Uniform Grant Management Standards on a particular issue conflicts with a specific provision of the Grant Contract, Chapter 102, *Texas Health and Safety Code* or the Institute's administrative rules, then the Grant Contract, statute, or Institute administrative rule shall prevail.

(c) An otherwise Allowable Cost will not be eligible for reimbursement if the Grant Recipient incurred the expense outside of the Grant Contract term, unless the Grant Recipient has received written approval from Institute's Chief Executive Officer to receive reimbursement for expenses incurred prior to the effective date of the Grant Contract.

(d) An otherwise Allowable Cost will not be eligible for reimbursement if the benefit from the cost of goods or services charged to the Grant Award is not realized within the applicable term of the Grant Award. The Grant Award should not be charged for the cost of goods or services that benefit another Grant Award or benefit a period prior to the Grant Contract effective date or after the termination of the Grant Contract.

(e) Grant Award funds shall not be used to reimburse unallowable expenses, including, but not limited to:

(1) Bad debt, such as losses arising from uncollectible accounts and other claims and related costs.

(2) Contributions to a contingency reserve or any similar provision for unforeseen events.

(3) Contributions and donations made to any individual or organization.

(4) Costs of entertainment, amusements, social activities, and incidental costs relating thereto, including tickets to shows or sports events, meals, alcoholic beverages, lodging, rentals, transportation and gratuities.

(5) Costs relating to food and beverage items, unless the food item is related to the issue studied by the project that is the subject of the Grant Award.

(6) Fines, penalties, or other costs resulting from violations of or failure to comply with federal, state, local or Indian tribal laws and regulations.

(7) An honorary gift or a gratuitous payment.

(8) Interest and other financial costs related to borrowing and the cost of financing.

(9) Legislative expenses such as salaries and other expenses associated with lobbying the state or federal legislature or similar local governmental bodies, whether incurred for purposes of legislation or executive direction.

(10) Liability insurance coverage.

(11) Benefit replacement pay or legislatively-mandated pay increases for eligible general revenue-funded state employees at Grant Recipient state agencies or universities.

(12) Professional association fees or dues for the Grant Recipient or an individual.

(13) Promotional items and costs relating to items such as T-shirts, coffee mugs, buttons, pencils, and candy that advertise or promote the project or Grant Recipient.

(14) Fees for visa services.

(f) The Institute is responsible for making the final determination regarding whether an expense shall be considered an Allowable Cost.

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

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

TRD-201604315
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Earliest possible date of adoption: October 2, 2016
For further information, please call: (512) 463-3190

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.3

The Texas Board of Criminal Justice proposes amendments to §151.3, concerning Operating Procedures for the Texas Board of Criminal Justice. The amendments are proposed in conjunction with a proposed rule review of §151.3 as published in other sections of the *Texas Register.* The proposed amendments are necessary to provide clarification of Open Meetings requirements and update formatting.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to provide clarification of Open Meetings requirements.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013.

Cross Reference to Statutes: None.

§151.3. Texas Board of Criminal Justice Operating Procedures.

(a) General. This section establishes operating procedures for the Texas Board of Criminal Justice (TBCJ) to conduct business.

(b) Organization.

(1) The TBCJ is a nine member body appointed by the governor to oversee the Texas Department of Criminal Justice (TDCJ). The TBCJ chairman is designated by and serves at the request of the governor pursuant to Texas Government Code §492.005.

(2) The TBCJ shall elect a vice-chairman and a secretary each odd-numbered year. The vice-chairman shall preside over meetings in the chairman's absence, and either the chairman or the secretary shall execute any necessary documents.

(3) The chairman, on behalf of the TBCJ, is empowered to appoint members of the TBCJ to be members or chairs of standing or limited-purpose committees, or to serve as liaisons to the TBCJ on particular subject areas or divisions within the TDCJ's jurisdiction, or both. The purpose of [~~for~~] a committee, if appointed, is to have certain members become particularly familiar with various issues and to facilitate discussion and recommend potential strategies as appropriate.

(4) The TBCJ chairman may appoint non-members to sit on a committee in an advisory capacity; however, advisory members are non-voting members and cannot be reimbursed for expenses incurred in this capacity.

(c) Meetings.

(1) The TBCJ shall attempt to hold a regular meeting at least every other month of the year, but shall meet at least once each quarter of the calendar year pursuant to Texas Government Code §492.006. Special called meetings can be held at the discretion of the TBCJ chairman.

(2) TBCJ meetings shall be held in Austin or Huntsville, Texas. If the TBCJ uses video conference technology to convene a meeting, at least one conference site must be located in Huntsville or Austin. To convene a video conference meeting, a quorum of the TBCJ must be present at one of the video conference sites. The other members may convene using the technology from remote sites.

(3) The agenda and date for the TBCJ meetings shall be set by the TBCJ chairman in consultation with the TDCJ executive director.

(4) The agenda for committee meetings shall be set by the TBCJ chairman in consultation with the committee's chairman and the TDCJ executive director. If the TBCJ committee uses video conference technology to convene a meeting, at least one conference site must be located in Huntsville or Austin. To convene a video conference meeting, [~~at least~~] a quorum of the committee must be present at one of the video conference sites [~~shall convene in one location~~]. The other member(s) may convene using the technology from remote sites.

(5) A majority of the TBCJ, or of a committee of the TBCJ, constitutes a quorum for the convening of and transaction of business at any meeting. A quorum of a committee with two members consists of both members.

(6) A quorum of a committee does not include its advisory member.

(7) Meetings of the TBCJ and its committees shall be conducted according to standard parliamentary procedures.

(8) [~~Meetings of the~~] TBCJ meetings [~~and its committees~~] are governed by the *Texas Open Meetings Act,* [~~(~~]Texas Government Code §§551.001 - .146 [~~Chapter 551)~~].

(9) The TDCJ executive director shall ensure members are provided the materials necessary to conduct the business of the TBCJ and its committees well in advance of the meetings.

(10) The TDCJ executive director shall ensure the minutes of each meeting are prepared, retained, and filed with the Legislative Reference Library, and made available to the public. The minutes shall state the subject matter of each deliberation and shall indicate each vote, order, decision, or other action taken by the TBCJ.

(11) Requests by the public to make presentations or comments to the TBCJ are governed by 37 Texas Administrative Code §151.4, pursuant to Texas Government Code §§492.007 and [§]551.042.

(12) The TBCJ shall approve meeting minutes for any committees deleted, renamed, or for which their limited-purpose has concluded.

(13) Prior to each regularly scheduled meeting, the TBCJ shall offer the opportunity for:

(A) The presiding officer of the Board of Pardons and Paroles or a designee of the presiding officer to present any item [~~items~~] relating to the operation of the parole system and other matters of mutual interest determined by the presiding officer to require the TBCJ's consideration, pursuant to Texas Government Code §492.006;

(B) The chairman of the Judicial Advisory Council (JAC) to the [~~TBCJ and the~~] Community Justice Assistance Division and the TBCJ to present any item [~~items~~] relating to the operation of the community justice system and other matters of mutual interest determined by the JAC chairman to require the TBCJ's consideration, pursuant to Texas Government Code §492.006;

(C) The TDCJ executive director to present any item [~~items~~] relating to the TDCJ as determined by the executive director or the TBCJ chairman;

(D) The TBCJ chairman to present any item [~~items~~] relating to the TBCJ or the TDCJ as determined by the TBCJ chairman in consultation with the TDCJ executive director;

(E) The chairman or designee of the Correctional Managed Health Care Committee (CMHCC) to present on the CMHCC's policy decisions, the financial status of the correctional health care system, and corrective actions taken by or required of the TDCJ or the health care providers; and

(F) The chairman of the Advisory Committee on Offenders with Medical or Mental Impairments (ACOOMMI) or a designee of the ACOOMMI chairman to present any item [~~items~~] related to offenders with medical or mental impairments.

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 August 22, 2016.

TRD-201604283
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: October 2, 2016
For further information, please call: (936) 437-6700

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37 TAC §151.52

The Texas Board of Criminal Justice proposes amendments to §151.52, concerning the Sick Leave Pool. The amendments are proposed in conjunction with a proposed rule review of §151.52 as published in other sections of the *Texas Register.* The proposed amendments are necessary to clarify the intent of the rule and update formatting.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to provide clarification of sick leave pool requirements.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §§492.013, 661.001 - .008.

Cross Reference to Statutes: None.

§151.52. Sick Leave Pool.

(a) Definitions. Sick Leave Pool Administrator is the Human Resources Division director [~~for the Human Resources Division~~] or designee.

(b) Procedures.

(1) All contributions to the Texas Department of Criminal Justice (TDCJ) sick leave pool are voluntary. Employees who contribute accrued sick leave hours to the TDCJ sick leave pool may not designate the contributed hours for use by a specific employee. An employee who contributes accrued sick leave hours to the sick leave pool may not withdraw the contributed hours of sick leave. There is no limitation for frequency of donations.

(2) An employee may only [~~not~~] withdraw time from the sick leave pool [~~except~~] in the case of catastrophic injury or illness [~~or injury~~] of the employee or a member of the employee's immediate family. The sick leave pool administrator shall determine the amount of time that an employee may withdraw from the sick leave pool. Any sick leave pool time granted qualifies as medical or parental leave. [~~An employee absent on time withdrawn from the sick leave pool shall be treated for all purposes as if the employee were absent on earned sick leave.~~]

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-201604284
Sharon Howell
General Counsel
Texas Department of Criminal Justice
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For further information, please call: (936) 437-6700

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

SUBCHAPTER G. CERTIFICATES OF CONVENIENCE AND NECESSITY

16 TAC §24.120

The Public Utility Commission of Texas withdraws the proposed amendment of §24.120, which appeared in the August 5, 2016, issue of the *Texas Register* (41 TexReg 5667).

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

TRD-201604227
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: August 18, 2016
For further information, please call: (512) 936-7223

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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES AND INSTRUCTORS FOR QUALIFYING EDUCATION

22 TAC §535.65

The Texas Real Estate Commission withdraws the proposed amended §535.65 which appeared in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3600).

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

TRD-201604239
Kerri Lewis
General Counsel
Texas Real Estate Commission
Effective date: August 18, 2016
For further information, please call: (512) 936-3092

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SUBCHAPTER G. REQUIREMENTS FOR CONTINUING EDUCATION PROVIDERS, COURSES AND INSTRUCTORS

22 TAC §535.72

The Texas Real Estate Commission withdraws the proposed amended §535.72 which appeared in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3600).

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

TRD-201604240
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Effective date: August 18, 2016
For further information, please call: (512) 936-3092

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §215.1, §215.2

The Texas Department of Motor Vehicles withdraws the proposed amended §215.1 and §215.2 which appeared in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1376).

Filed with the Office of the Secretary of State on August 15, 2016.

TRD-201604162
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: August 15, 2016
For further information, please call: (512) 465-5665

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43 TAC §§215.3 - 215.6

The Texas Department of Motor Vehicles withdraws the proposed repeal of §§215.3 - 215.6 which appeared in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1376).

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TRD-201604163
David D. Duncan
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Effective date: August 15, 2016
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SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE

43 TAC §§215.21 - 215.24, 215.27, 215.29, 215.30, 215.32, 215.34 - 215.49, 215.55, 215.56, 215.58

The Texas Department of Motor Vehicles withdraws the proposed amended §§215.21 - 215.24, 215.27, 215.29, 215.30, 215.32, 215.34 - 215.49, 215.55, 215.56 and 215.58 which appeared in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1376).

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TRD-201604164
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Effective date: August 15, 2016
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43 TAC §§215.25, 215.26, 215.28, 215.31, 215.33, 215.50 - 215.54, 215.57

The Texas Department of Motor Vehicles withdraws the proposed repeal of §§215.25, 215.26, 215.28, 215.31, 215.33, 215.50 - 215.54 and 215.57 which appeared in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1376).

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TRD-201604165
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Effective date: August 15, 2016
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SUBCHAPTER C. LICENSES, GENERALLY

43 TAC §§215.81 - 215.85, 215.87 - 215.89

The Texas Department of Motor Vehicles withdraws the proposed amended §§215.81 - 215.85 and 215.87 - 215.89 which appeared in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1376).

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TRD-201604166
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43 TAC §215.86

The Texas Department of Motor Vehicles withdraws the proposed repeal of §215.86 which appeared in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1376).

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TRD-201604167
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General Counsel
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Effective date: August 15, 2016
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SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS

43 TAC §§215.101, 215.103 - 215.106, 215.108 - 215.119

The Texas Department of Motor Vehicles withdraws the proposed amended §§215.101, 215.103 - 215.106 and 215.108 - 215.119 which appeared in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1376).

Filed with the Office of the Secretary of State on August 15, 2016.

TRD-201604168
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: August 15, 2016
For further information, please call: (512) 465-5665

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43 TAC §215.107

The Texas Department of Motor Vehicles withdraws the proposed repeal of §215.107 which appeared in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1376).

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TRD-201604169
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: August 15, 2016
For further information, please call: (512) 465-5665

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SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

43 TAC §§215.131 - 215.133, 215.135, 215.137 - 215.141, 215.144 - 215.160

The Texas Department of Motor Vehicles withdraws the proposal to §§215.131 - 215.133, 215.135, 215.137 - 215.141 and 215.144 - 215.160 which appeared in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1376).

Filed with the Office of the Secretary of State on August 15, 2016.

TRD-201604170
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: August 15, 2016
For further information, please call: (512) 465-5665

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43 TAC §§215.136, 215.142, 215.143

The Texas Department of Motor Vehicles withdraws the proposed repeal of §§215.136, 215.142 and 215.143 which appeared in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1376).

Filed with the Office of the Secretary of State on August 15, 2016.

TRD-201604171
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: August 15, 2016
For further information, please call: (512) 465-5665

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SUBCHAPTER F. VEHICLE LESSORS AND VEHICLE LEASE FACILITATORS

43 TAC §§215.171, 215.173 - 215.181

The Texas Department of Motor Vehicles withdraws the proposed amended §§215.171 and 215.173 - 215.181 which appeared in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1376).

Filed with the Office of the Secretary of State on August 15, 2016.

TRD-201604172
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: August 15, 2016
For further information, please call: (512) 465-5665

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SUBCHAPTER F. LESSORS AND LEASE FACILITATORS

43 TAC §215.172

The Texas Department of Motor Vehicles withdraws the proposed repeal of §215.172 which appeared in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1376).

Filed with the Office of the Secretary of State on August 15, 2016.

TRD-201604173
David D. Duncan
General Counsel
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Effective date: August 15, 2016
For further information, please call: (512) 465-5665

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SUBCHAPTER G. WARRANTY PERFORMANCE OBLIGATIONS

43 TAC §§215.201 - 215.210

The Texas Department of Motor Vehicles withdraws the proposed amended §§215.201 - 215.210 which appeared in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1376).

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SUBCHAPTER H. ADVERTISING

43 TAC §§215.241 - 215.261, 215.263 - 215.271

The Texas Department of Motor Vehicles withdraws the proposed amended §§215.241 - 215.261 and 215.263 - 215.271, which appeared in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1376).

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43 TAC §215.262

The Texas Department of Motor Vehicles withdraws the proposed repeal of §215.262 which appeared in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1376).

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SUBCHAPTER I. PRACTICE AND PROCEDURE FOR HEARINGS CONDUCTED BY THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

43 TAC §§215.301 - 215.303, 215.305 - 215.308, 215.310, 215.311, 215.314 - 215.317

The Texas Department of Motor Vehicles withdraws the proposed amended §§215.301 - 215.303, 215.305 - 215.308, 215.310, 215.311 and 215.314 - 215.317 which appeared in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1376).

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TRD-201604177
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43 TAC §§215.309, 215.312, 215.313

The Texas Department of Motor Vehicles withdraws the proposed repeal of §§215.309, 215.312 and 215.313 which appeared in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1376).

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TRD-201604178
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Effective date: August 15, 2016
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SUBCHAPTER J. ADMINISTRATIVE SANCTIONS

43 TAC §§215.500 - 215.503

The Texas Department of Motor Vehicles withdraws the proposed amended §§215.500 - 215.503 which appeared in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1376).

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TRD-201604179
David D. Duncan
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Effective date: August 15, 2016
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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 40. FINANCIAL DISCLOSURE FOR PUBLIC OFFICERS

1 TAC §40.11

The Texas Ethics Commission (the commission) adopts new Texas Ethics Commission Rules §40.11, regarding the disclosure of income received from publicly traded corporations on a personal financial statement, without changes as published in the July 1, 2016, issue of the *Texas Register* (41 TexReg 4737) and will not be republished.

Section 572.023(b)(4) of the Government Code requires a personal financial statement (PFS) to include the "identification of each source" of income in excess of $500 derived from interest, dividends, royalties, and rents. The law also requires the category of the amount of income to be disclosed. The form used for the PFS currently requires the source of that income to be disclosed by the source's full name and address.

The basis for the rule is to enhance the potential for individual participation in electoral and governmental processes by easing the burdens of disclosure without reducing the value of disclosure because publicly traded corporations would remain easily identifiable on the PFS. Under the rule, if a filer receives income over $500 from a publicly held corporation in the form of interest, dividends, royalties, or rents, the corporation will be identified only by its full name, and no address will be required.

No comments were received regarding the new rule.

The new rule §40.11 is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The new rule §40.11 affects §572.023 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.

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

TRD-201604258
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Effective date: September 7, 2016
Proposal publication date: July 1, 2016
For further information, please call: (512) 463-5800

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PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 175. COLLECTION IMPROVEMENT PROGRAM

The Texas Judicial Council (the Council) adopts the repeal of current Chapter 175 of Title 1 of the Texas Administrative Code (1 TAC §§175.1 - 175.7) and adopts new Chapter 175 consisting of §§175.1 - 175.6 concerning the Collection Improvement Program (the Program). The new rules are adopted with changes to the proposed text as published in the July 1, 2016, issue of the *Texas Register* (41 TexReg 4745). The changes in the adopted chapter respond to public comments and will be republished. The repeals are adopted without changes and will not be republished.

The purpose of the Council's actions is to: 1) revise the current Program components and requirements that the Office of Court Administration is required to develop pursuant to Art. 103.0033 of the Code of Criminal Procedure to ensure that compliance with the Program does not result in an undue hardship on defendants and defendant's dependents, and 2) clarify that the Program is not intended to apply to defendants whose court costs, fees, and fines have been waived by the court. The effective date of the new Chapter 175 is January 1, 2017.

Summary of Comments

The Council received a total of 143 written comments from district and statutory county court judges, justices of the peace, municipal court judges, local collections program staff, and community supervision and corrections departments. The Council also received comments from the Probation Advisory Committee, Texas Municipal Courts Association, Texas Appleseed, Texas Legal Services Center, Texas Fair Defense Project, and American Civil Liberties Union of Texas. No oral comments were received. All of the comments are available on the Council's website at http://www.txcourts.gov/media/1435718/cip-comments.pdf.

Six commenters, including Texas Appleseed, Texas Legal Services Center, Texas Fair Defense Project, and American Civil Liberties Union of Texas, expressed approval of the proposed rules. Several commenters objected to any change to the current rules arguing that change was unnecessary. These commenters did not provide any recommendations or suggested changes to the proposed rules. Most of the comments from those who opposed the proposed rules that listed specific concerns primarily focused on the six key issues discussed below.

1. Workload Increase and Associated Costs

Comments: Many commenters expressed concern that the proposed rules will result in a workload increase for the courts and for local programs that will ultimately require adding staff.

Response: These concerns appear to be based on a misunderstanding of the proposed §175.3(a)(6)(A) requirement that local program staff refer a case back to the court if the payment ability information they collect demonstrates that a defendant is unable to pay any portion of the court costs, fees, and fines without undue hardship to the defendant or the defendant's dependents. This section was intended to codify the local program staff's ability to flag cases when it is evident from the payment ability information a defendant has submitted that the defendant cannot pay any part of the court costs, fees, and fines, or that the defendant can pay some but perhaps not all of them within a reasonable time. This would allow the court the opportunity to consider whether alternative enforcement options are available or whether the amounts should be reduced. In most cases, it would only require the court's review of a proposed payment plan or approval of suggested alternative enforcement options.

The Council has amended §175.3(a)(6)(A) to clarify that when local program staff have received information that a defendant is unable to pay court costs, fees, and fines without undue hardship to the defendant or the defendant's dependents, local program staff are required to inform the court but the defendant is not required to appear before the court.

Comments: Several commenters objected to the new requirement in §175.3(a)(3)(A) that staff obtain statements from defendants who have judge set payment plans stating that the defendant has the ability to pay the court costs, fees, and fines under the payment plan terms ordered by the judge without undue hardship to the defendant or the defendant's dependents. If the defendant is unable to make the statement, the new rules would require local program staff to obtain payment ability information and determine whether the defendant's information needs to be reviewed by the judge.

Response: Under the current rules, local program staff are only required to obtain contact information from defendants who have payment plans set by the judge. Based on the assumption that a court will have considered a defendant's payment ability information prior to referring the defendant to the local program, the Council has eliminated the proposed provision in the adopted rule and the provisions currently in place for judge-set payment plans will remain in place.

2. Presumption of Inability to Pay/Waiver of Court Costs, Fines and Fees

Comments: Many commenters objected to §175.3(a)(6)(B) which lists instances in which a defendant is presumed to be unable to pay court costs, fees, and fines without undue hardship to the defendant or the defendant's dependents. Examples of those instances are if a defendant is required to attend school under the Education Code, if the defendant's household income does not exceed 125% of the federal poverty guidelines, or if the defendant receives assistance under certain federal programs.

Response: Based on the comments, it appears that the commenters believe that the list of instances in which a defendant is presumed to be unable to pay court costs, fees, and fines is an irrebuttable presumption when in fact it is only intended to be a trigger for the purpose of determining whether local program staff need to inform the judge of the defendant's payment ability information. It was not intended to be an irrebuttable presumption nor was it intended to mandate that a court find that the defendant is unable to pay solely because the defendant meets the criteria. Whether a defendant is in fact unable to pay court costs, fees, and fines is a decision to be made by a judge.

To avoid confusion, the Council has changed this provision in the adopted rules to clarify that the criteria are intended to assist local program staff in identifying which cases require additional judicial review and that they do not establish an irrebuttable presumption regarding a defendant's ability to pay.

Comments: Many commenters also objected to §175.3(a)(6)(B) based on a misunderstanding that when a defendant falls under one of the categories that raises the presumption that the defendant is unable to pay court costs, fees, and fines without undue hardship to the defendant or defendant's dependents that this would result in the waiver of all court costs.

Response: The commenters misunderstand the proposed rule. The rule only requires that a defendant's case be brought to the attention of the judge so that the judge can determine if a waiver or reduction of financial obligations or conversion of the financial obligations to a non-monetary option is appropriate.

To avoid confusion, the Council has revised this provision in the proposed rule to clarify that the fact that a person meets the criteria requiring the local program staff to provide the judge information regarding the defendant's ability to pay does not mean that the defendant's court costs, fees, and fines are automatically waived or that they must be waived.

3. Cap on Monthly Payment Amounts, Time Limitations

Comments: Many commenters objected to the language in §175.3(a)(7)(C)(ii) which stated that monthly payments generally should not exceed 20% of a defendant's discretionary income.

Response: The statement that payments generally should not exceed 20% of a defendant's discretionary income was intended as a guideline and best practice; it was not a requirement. The Council has removed this provision from the proposed rules since it is not mandatory. However, the Council is of the opinion that monthly payments at or below 20% of a defendant's discretionary income result in more compliance than payments that exceed this amount because defendants are more likely to comply when the payment terms are reasonable. Payments that exceed 20% of a defendant's discretionary income may result in an increase in non-compliance if they place an undue hardship on defendants and their dependents.

Comments: Several commenters suggested that the rules set time limits so that court involvement does not last indefinitely.

Response: If information is provided to the judge by local program staff regarding the defendant's ability to pay that would indicate the amount needs to be reduced in order to keep the payment plan term within a reasonable time, the judge may make this change. Any attempt to impose this requirement in the rules would interfere with a judge's discretion. For this reason, the Council declines to prescribe time limitations on payment plans in the adopted rules.

4. Definition of Discretionary Income and Household Income

Comments: Many commenters also objected to the definition of discretionary income and household income (§175.2(d) and (e)). Household income is defined as the defendant's income and the defendant's spouse's income. The commenters want the rules to also include as part of household income the income from any other person living in a household.

Response: The term "discretionary income" is only used in the recommended limitation of payment amounts to 20% of a defendant's household income. With the deletion of the 20% of discre-

tionary income limit on payments, the definition of discretionary income is no longer necessary and has been deleted from the adopted rules.

The Council disagrees with commenters' suggestions regarding the definition of household income. Persons other than a spouse who reside in a household are not legally obligated to pay a defendant's courts costs, fines and fees. Even if one were to assume another member of the defendant's household is liable for the defendant's court costs, fines, and fees, local program staff would then be required to collect from all of those individuals' payment ability information including their debt, monthly expenses, etc. For this reason, the Council did not make any changes to the definition of household income in the proposed rules.

5. Applicability of Rule

Comments: Some commenters expressed concern that their jurisdictions are too small to be covered by the rules. Others stated that the rules should apply to every jurisdiction, not only the ones required to participate under Art. 103.0033 of the Code of Criminal Procedure.

Response: In an effort to streamline the rules, the Council removed the language in the current rules that duplicated the statutory language regarding the applicability of the statute and rules. This was a cleanup provision. It was not intended to expand the coverage of the rules to jurisdictions that are not already covered by Art. 103.0033. In order to avoid confusion, the Council has added language to the rule to clarify that the revisions to the rule do not expand the program to jurisdictions not already covered under the rules and Art. 103.0033. The Council cannot expand the coverage of the rules to all jurisdictions as suggested by some of the commenters. This would require a change to Art. 103.0033 of the Code of Criminal Procedure. Such a change is solely within the authority of the Texas Legislature.

Comments: Several commenters expressed concern that the proposed rules would apply to the collection of community supervision (probation) fees assessed when a defendant is placed on community supervision.

Response: Neither the current rules nor the proposed rules apply to probation fees. The Council has added language to the adopted rules that clarifies this.

6. Reduction in Revenue Collected

Comments: Some commenters expressed concern that the new rules would result in the reduction of revenue to the jurisdictions that are subject to the rules.

Response: Most of the concerns raised by the commenters are based on a misunderstanding that the proposed rules automatically require the waiver of costs, fines and fees when a defendant is found to be unable to pay without undue hardship to the defendant and the defendant's dependents. The subsection that provided that monthly payments generally should not exceed 20% of a defendant's monthly discretionary income also contributed to this perception. The removal of the language with the suggested cap on monthly payments of 20% of a defendant's discretionary income and the clarification of the presumption of inability to pay provisions in the proposed rule address these concerns.

The Council disagrees with commenters' assertions that the proposed rules will result in a significant decrease in revenue. The courts' role is to ensure that orders entered by the court are appropriately enforced, including those assessing court costs, fees, and fines. While enforcement of orders assessing court costs, fees and fines will result in increased revenue to state and local governments, the Council is mindful that the courts' role in assessing court costs, fees, and fines, is not to ensure revenue streams for state or local government. As noted by the National Center for State Courts in its clarification regarding CourTools Measure 7:

The responsibility of the courts in general, and individual judges in particular, is to ensure that any fees and fines arising out of a criminal case are reasonable and take into account a defendant's ability to pay. Compliance with legal and financial obligations has two dimensions. First, it requires a court, including its judicial officers and staff, to follow applicable constitutional provisions, statutes, case law and appellate court policies and procedures that apply to collecting monetary penalties, as well as consciously employing recognized best practices in doing so. These best practices include making a determination of an offender's ability to pay, supported by findings of fact. (http://www.courtools.org/~/media/Microsites/Files/CourTools/M7%20Clarification%20v4.ashx)

The proposed rules were drafted to ensure the enforcement of a defendant's compliance with the payment of court costs, fees, and fines while simultaneously ensuring that local programs engage the judiciary in situations in which a defendant may not have the ability to pay the assessed court costs, fees, and fines without undue hardship. They were also drafted to ensure that the procedures used to manage these cases, from the imposition of legal financial obligations, to notice practices, through ultimate disposition, are consistent among all local programs and that the practices of local programs do not inadvertently result in the removal of the courts' role in the determination of a defendant's ability to pay when involvement by the court is necessary.

Other Comments

The Council also received comments regarding the following:

Workgroup Composition

Comments: A few commenters objected to the fact the workgroup that was convened by the Office of Court Administration to discuss revisions to the current rules did not include district and statutory county court judges. The commenters believe that the workgroup focused on concerns related to justice and municipal courts at the expense of the needs and concerns of district and statutory county courts.

Response: Though the workgroup did not include district and statutory county court judges it did include district clerks who are responsible for collecting court costs, fees, and fines for these courts and a district/statutory county court administrator. Additionally, most of the objections raised by these commenters focus on the mistaken belief that the rules will require that the defendant be brought back to court in order to determine inability to pay. As discussed in number 1 above, the adopted rules have been amended to clarify that this will not be necessary.

Lack of Defendants' Accountability for Their Crimes, No Consequences for Poor Defendants' Actions, Separate System for Defendants' Who Are Unable to Pay

Comments: Many commenters expressed concern about the rules establishing a system in which defendants who are unable to pay court costs, fees, and fines would be able to commit crimes without fear of repercussion because there would be no consequences for their actions and that this would lead to an increase in crime. They also expressed concern that the rules

would result in a dual system in which defendants are treated differently based on their income.

Response: The changes to the rules do not provide an automatic waiver of court costs, fees, and fines; further they make explicit that courts should make available alternative options in all cases, as appropriate. As stated above, the proposed changes to the rules are designed to ensure that local programs engage the judiciary in situations in which a defendant may not have the ability to pay the assessed court costs, fees, and fines without undue hardship. They were also amended to help ensure that the procedures used to manage cases, from the imposition of legal financial obligations, to notice practices, through ultimate disposition, are consistent among all local programs and that the practices of local programs do not inadvertently result in the removal of the courts' role in the determination of a defendant's ability to pay when involvement by the court is necessary. In some instances, courts may waive a defendant's obligations or impose alternative compliance options; but this would be because it was necessary under the law and within a court's discretion, not because of the requirements in the proposed rules.

Referral to Court After Court Has Already Reviewed Case

Comments: Several commenters were concerned that if local program staff referred a defendant's case to the court for review and the court did not make any changes to the assessment they would have to return the case to the judge again after they reviewed their payment ability information for the second time.

Response: The adopted rules have been changed to clarify that if a judge has reviewed the case once, the local program staff do not have to refer the defendant's payment ability information to the court for another review unless the defendant provides additional information that has not already been provided to the judge.

Employer Contact Information

Comments: Several commenters objected to the removal of employer contact information from the list of payment ability information that must be collected.

Response: The employer contact information served no purpose other than for local program staff to call and confirm that the defendant was employed. This information is not necessary to set a payment plan and calls could be construed as intimidation. The Council declines to change this provision in the adopted rules.

Payment Ability Information

Comment: One commenter expressed confusion regarding the last sentence in the definition of payment ability information (§175.2(j)). The sentence read as follows: "The payment ability information provided by the defendant to local program staff is presumed to be current unless the defendant notifies the court or local program staff that resources or circumstances have changed and a review is requested."

Response: The Council agrees with commenter and does not see the need for this sentence. A defendant is always able to provide additional information and the information provided originally will be considered to be correct unless other information is provided by defendant. The sentence has been deleted from the adopted rules.

Audit Standards Name Change

Comment: One commenter objected to the proposed change to the title of §175.5, Audit Standards, to Compliance Review Standards.

Response: The proposed change is not substantive, but it does more accurately reflect the audit process described in Art. 103.0033. Therefore, the Council declines to change this provision in the adopted rules.

Judicial Discretion Language

Comment: One commenter provided suggested language that more accurately expresses the judicial discretion exercised by the judge in proposed §175.3(a)(6)(E).

Response: The Council agreed with the suggestion and the adopted rule incorporates this recommendation.

Comment: Several commenters suggested that the language in §175.1(c) of the proposed rule regarding a judge's discretion to waive or to reduce court costs, fees, and fines after the assessment date implied that judges did not have this authority at the time of sentencing.

Response: This was not the intent of the proposed language. The Council agrees with the recommendation and the adopted rule does not include the language "after the assessment date" in §175.1(d).

Definition of Undue Hardship

Comments: Several commenters expressed concern with the fact that "undue hardship" is not defined.

Response: The Council is aware that this is a subjective term and that its definition may depend on the jurisdiction's cost of living and other local factors. For this reason, the Council did not define undue hardship but instead provided guidelines that alert programs to defendants who will likely have an inability to pay without undue hardship to themselves and their defendants so that the judge can review and determine if any changes are necessary.

Availability of Non-Monetary Options

Comments: Several commenters expressed concern about the lack of non-monetary options, such as community service, available in their jurisdictions.

Response: The adopted rules include language that non-monetary option information only has to be collected if any are available.

Additional Reporting to OCA

Comments: Several commenters suggested adding additional reports that local program staff must provide to OCA in addition to those already required and the proposed additional report. One commenter also suggested the reports be submitted quarterly instead of monthly.

Response: The Council does not believe additional reports are necessary at this time and declines to change the reporting due dates or to add additional reports.

No Change Necessary to Current Rule

Comment: A few commenters indicated that they did not believe the rule should be changed.

Response: The Council determined that the Collections Improvement Program rules needed to be amended in order to promote local program practices that fully align with existing

statutes and constitutional provisions relating to a defendant's compliance with legal financial obligations.

Clarification of Cases Subject to the Rules

Comment: Four commenters noted that the language in §175.1(f) listing the types of cases the rules do not apply to is inconsistent with the list of "eligible case" that are subject to review in a compliance review under §175.5. Specifically, cases in which a defendant is incarcerated are not excluded from the CIP rules under §175.1(f) but are not eligible cases for compliance review under §175.5(b).

Response: The Council agrees with commenters and has incorporated the suggestion into the adopted rule.

Additional Information Provided to Defendants Regarding Compliance Options and Review of All Defendants' Payment Ability Information

Comment: Four commenters also suggested that the rules provide that the payment ability information of all defendants be reviewed. They also suggested that local program staff use understandable language on forms so that defendants could understand that they are being asked if they have the ability to pay. They also expressed concern that sometimes defendants' circumstances change and they may be unable to pay at some point after they have agreed to a payment plan. The commenters recommend requiring local program staff to inform defendants how they can seek relief if their circumstances change and to also provide this information in past due notices.

Response: The Council does not believe that payment ability information for all defendants needs to be reviewed by local program staff and it is imperative that judges have the discretion to set the plans that they have determined are appropriate. Based on the assumption that a court will have considered a defendant's payment ability information prior to referring the defendant to the local program, the Council declines to make this change in the adopted rules. Regarding the use of understandable forms, the Council has instructed the Office of Court Administration to provide model forms that can be used by local programs that will be easy to understand. The best practices will also provide that local program staff inform defendants that they should always contact local program staff to discuss changes in circumstances that may require the revision of their payment plans and the rules contemplate that revised payment plans may often result after a defendant has been contacted for failure to pay. The rules provide that the phone contact, written notice, and final notices sent to a defendant after a missed payment provide instructions about what to do if the defendant is unable to make payments.

Additional Item for List of Criteria That Trigger Referral of Defendant's Payment Ability Information to Judge

Comments: Four commenters suggested adding Telephone Lifeline program assistance to the list of criteria that would trigger the requirement that a defendant's payment ability information be referred to the court for review.

Response: The Council believes that the list in the adopted rules covers many who are likely already served by this program. Further, local program staff may still refer others for review even if they do not meet the criteria listed in the rule. The Council has instructed Office of Court Administration staff to provide materials to local program staff informing them of additional types of programs, such as the Telephone Lifeline program, that local programs should be aware may be indicate a need for court review of the defendant's payment ability information.

Comments in Support of Proposed Rules

A few commenters agreed with the elimination of mandatory time payment requirements. One commenter indicated she approved of the proposed changes to the rules.

Texas Appleseed, Texas Legal Services Center, Texas Fair Defense Project, and American Civil Liberties Union of Texas expressed support for the proposed rules and provided additional recommendations that are addressed in the comments discussion.

The Municipal Court Judges Association initially objected to the rules, but after reviewing the suggested changes to the proposed rules that were presented to the Council for final approval, the Association indicated they supported the revised rules.

The Justices of the Peace and Constables Association indicated they also are in favor of the proposed rules.

Other Changes in Adopted Rules

The following changes have been included in the adopted rules based on recommendations and concerns raised by Office of Court Administration staff.

Defendants Whose Costs, Fees, and Fines Have Been Waived

Though the program's provisions have never applied to indigent defendants, this was not specifically mentioned in the rule. The language in the proposed rule stating that the rules do not apply to defendants who are unable to pay any portion of the costs, fees, and fines without undue hardship to the defendant and the defendant's dependents created confusion because many individuals believed this meant that if a person could only pay a portion of the assessed costs, their case was no longer in the program. The adopted rule clarifies that the rules do not apply to defendants whose court costs, fees and fines have been waived.

Standard Payment Plan

In an effort to allow local program staff to focus on defendants who need assistance with payment plans and information regarding possible non-monetary compliance options while also reducing the amount of time and effort needed to complete paperwork in order to obtain a payment plan, the adopted rule adds a new §175.3(a)(7)(A) that allows judges to set standard payment plans that local programs can offer to defendants who have the ability to pay but need additional time to do so. If a defendant chooses one of these options, the defendant does not need to provide payment ability information. These defendants will only need to provide contact information like defendants who have judge-set plans. Before accepting a standard payment plan, the defendant must acknowledge that the defendant: 1) understands the payment plan terms, 2) has the ability to successfully meet the payment plan terms, and 3) declines the opportunity for local program staff to review defendant's payment ability information to consider lower monthly amounts or a longer payment plan term. The Council has instructed the Office of Court Administration to provide a model acknowledgement form that can be used by local programs that will be easy for defendants to understand.

Written Notice

The adopted rule clarifies that written notice is not required if the defendant is successfully contacted by telephone after a missed payment and the defendant has either made a payment or made other payment arrangements.

Postcard Regarding Application and Contact Information

The adopted rule includes a provision for local program staff to send notices to defendants who are ordered to report to the local program, but fail to do so, instructing them to call and make arrangement to submit payment and contact information. The rules currently require that an entire application and contact information sheet be sent. The use of a notice should result in printing and postage savings.

Correct name for reporting web based system

The adopted rule also corrects the name of the reporting system currently in use by OCA.

1 TAC §§175.1 - 175.6

Statutory Authority

New Chapter 175 is adopted under §71.019 of the Texas Government Code, which authorizes the Council to adopt rules expedient for the administration of its functions. The statutory provision for the rules is Article 103.0033 of the Code of Criminal Procedure.

No other statutes, articles, or codes are affected by the new rules.

§175.1. Purpose and Scope.

(a) The purpose of this chapter is to provide notice to counties and municipalities that are subject to Article 103.0033 of the Code of Criminal Procedure of the scope and components of the Collection Improvement Program (CIP) model developed by the Office of Court Administration pursuant to Article 103.0033 and the standards that will be used to determine whether a county or municipality is complying with the CIP requirements.

(b) Article 103.0033 and this chapter apply to counties with a population of 50,000 or greater and cities with a population of 100,000 or greater based on the last decennial census. Counties that have been granted a waiver under §175.6(b) of this chapter are not required to comply with the requirements in this chapter.

(c) The CIP is designed to improve the enforcement of a defendant's compliance with the payment of costs, fees, and fines that have been ordered by a court, without imposing an undue hardship on the defendant or the defendant's dependents. The CIP components should not be interpreted to conflict with or undermine the provision to defendants of full procedural and substantive rights under the constitution and laws of this state and of the United States.

(d) The CIP does not alter a judge's legal authority or discretion to design payment plans of any amount or length of time; to convert costs, fees, and fines into community service or other non-monetary compliance options as prescribed by law; to waive costs, fees, and fines; or to reduce the total amount a defendant owes at any time; or to adjudicate a case for non-compliance at any time.

(e) The CIP applies to criminal cases in which the defendant is ordered to pay costs, fees, and fines under a payment plan.

(f) The CIP does not apply to cases in which: 1) the court has waived all court costs, fees, and fines; 2) the court authorizes discharge of the costs, fees, and fines through non-monetary compliance options; 3) the defendant has been placed on deferred disposition or has elected to take a driving safety course; or 4) the defendant is incarcerated, unless the defendant is released and payment is requested. The CIP does not apply to the collection of community supervision fees assessed under Sec. 42A.652 of the Code of Criminal Procedure.

(g) Although cases in which the court has ordered a defendant to satisfy his or her obligation regarding costs, fees, and fines through community service or other non-monetary compliance options are not subject to the CIP requirements, a judge may use local program staff to assist the court with monitoring a defendant's compliance with these court orders.

§175.2. Definitions.

(a) "Assessment date" is the date on which a defendant is ordered or otherwise obligated to pay costs, fees, and fines. When a defendant remits partial payment of a citation without appearing in person, the assessment date is the date the partial payment is received.

(b) "Collection Improvement Program" or "CIP" means the program described in this subchapter.

(c) "Contact information" means the defendant's home address and home or primary contact telephone number, and email address, if any; at least two personal contacts and their telephone number, mailing address or email address; and the date the information is obtained.

(d) "Household income" means the defendant's income and the defendant's spouse's income that is available to the defendant.

(e) "Jurisdiction" means a county or municipality that is subject to this chapter.

(f) "Local program" means a program implemented by a jurisdiction pursuant to Art. 103.0033 of the Code of Criminal Procedure.

(g) "Non-monetary compliance option" means an alternative method of satisfying the assessment of costs, fees, and fines other than through the payment of money. This includes those methods provided in Arts. 43.09 and 45.049 of the Code of Criminal Procedure, and any other alternative within the judge's discretion.

(h) "OCA" means the Office of Court Administration of the Texas Judicial System.

(i) "Payment ability information" means the defendant's household income, expenses, account balances in financial institutions, debt balances and payment amounts, number of dependents, and any other information local program staff require to establish a payment plan that the defendant can successfully make without undue hardship to the defendant or the defendant's dependents.

(j) "Payment plan" means a schedule of one or more payment(s) to be made at designated interval(s) by the defendant who does not pay all costs, fees, and fines at the time they are assessed and payment is requested. A judge's order that payment of costs, fees, and fines is due at a future date (an extension) constitutes a payment plan regardless of whether the order requires one payment in full or several payments at designated intervals.

(k) "Spouse" means the person to whom the defendant is married, including a person who is a party to an informal marriage.

§175.3. Collection Improvement Program Components.

(a) Components for Local Program Operations.

(1) Dedicated Local Program Staff. Each program must designate at least one employee whose job description contains an essential job function of CIP program activities. The local program activities may be assigned to one individual employee or distributed among two or more employees. The local program activities need not require 40 hours per week of an employee's time, but must be a priority.

(2) Payment Plan Compliance Monitoring. Local program staff must monitor the defendants' compliance with the terms of their payment plans and document the ongoing monitoring by either an updated payment due list or a manual or electronic tickler system.

(3) Application or Contact Information.

(A) Payment Plans Set by Judge Prior to Referral to the Local Program and Standard Payment Plans Accepted by the Defendant. If the judge has established a payment plan for the defendant prior to referring the case to the local program or the defendant has agreed to a standard payment plan under paragraph (7)(A) of this subsection, local program staff must obtain contact information from the defendant. Contact information documentation must be signed and dated and obtained within one month of the assessment date.

(B) Other Cases. For all other cases, the local program must collect from the defendant a signed and dated application for a payment plan that includes both contact information and payment ability information. The required information must be obtained within one month of the assessment date.

(4) Verification of Contact Information. Within five days of receiving the contact information, local program staff must verify both the home and primary contact telephone number. Verification may be conducted by reviewing written proof of the contact information, by telephoning the personal contacts, or by using a verification service. Verification must be documented by identifying the person conducting it and the date of the verification.

(5) Defendant Interviews.

(A) Within 14 days of receiving an application, local program staff must conduct an in-person or telephone interview with the defendant to review payment ability information. Interviews must be documented by indicating the interviewer and date of the interview.

(B) Within 14 days of receiving a case in which the judge has set a payment plan before referring the case to the program or the defendant has agreed to a standard payment plan under paragraph (7)(A) of this subsection, local program staff must conduct an in-person or telephone interview with the defendant to review the terms of the defendant's payment plan. Interviews must be documented by indicating the interviewer and date of the interview.

(6) Court Review of the Defendant's Ability to Pay Information.

(A) Court Review. Local program staff must provide the court the defendant's payment ability information collected under paragraph (3)(B) of this subsection for the court to review and consider if non-monetary compliance options or waiver or partial waiver of costs, fees or fines are appropriate when the defendant meets one or more of the following criteria:

(i) the defendant is required to attend school pursuant to the compulsory school attendance law in Sec. 25.085 of the Texas Education Code;

(ii) the defendant's household income does not exceed 125 percent of the applicable income level established by the federal poverty guidelines; or

(iii) the defendant receives assistance under the following:

(I) a food stamp program or the financial assistance program established under Chapter 31, Human Resources Code;

(II) the federal special supplemental nutrition program for women, infants, and children authorized by 42 U.S.C. Section 1786;

(III) the medical assistance program under Chapter 32, Human Resources Code; or

(IV) the child health plan program under Chapter 62, Health and Safety Code.

(B) Other Cases. Local program staff must also provide for the court's review the payment ability information of a defendant that does not meet the criteria listed in subparagraph (A) of this paragraph if local program staff receive information that has not already been considered by the court indicating that the payment of the assessed court costs, fees, and fines would cause undue hardship to the defendant or the defendant's dependents. Local program staff may also provide for the court's review the payment ability information of a defendant that local program staff determine should be reviewed by the court..

(C) Information Regarding Non-Monetary Compliance Options. When local program staff provide a defendant's payment ability information for the court's review under subparagraph (A) of this paragraph, local program staff should collect and provide to the court information regarding non-monetary compliance options that may be available, if any, that may enable the defendant to discharge all or part of the defendant's costs, fees, and fines.

(D) Judicial Discretion. Judges retain discretion regarding the determination of whether to waive or reduce costs, fees, and fines for any defendant; to impose non-monetary compliance options to satisfy costs, fees or fines; or the assessment of costs, fees or fines, sentencing, or other disposition decisions. Once a judge reviews a defendant's payment ability information in a case provided for review under subparagraph (A) or (B) of this paragraph, the local program is not required to provide the judge the defendant's payment ability information again unless the defendant provides additional payment ability information that was not previously provided to the judge.

(7) Payment Plans.

(A) Standard Payment Plan. A judge may adopt standard payment plans that include a payment range and time range based on amounts owed that can be made available to defendants when they are referred to the local program. Prior to agreeing to a standard payment plan the defendant must agree in writing that the defendant: 1) understands the payment plan terms, 2) believes that the defendant has the ability to successfully meet the payment plan terms, and 3) declines the opportunity for local program staff to review the defendant's payment ability information to consider lower monthly payments or a longer term than those provided in the standard payment plan.

(B) Other Payment Plans. If a defendant declines a jurisdiction's standard payment plan or the jurisdiction has not adopted a standard payment plan, local program staff must review the payment ability information provided by the defendant and establish appropriate payment terms based on the defendant's ability to pay that will not cause undue hardship to the defendant or the defendant's dependents.

(C) Payment Plan Elements. Payment plans should include the payment amount, the designated interval, and the number of payments that the defendant will make to pay the defendant's court-ordered costs, fees, and fines.

(D) Documentation. Payment plans must be documented by notation in the judgment or court order, on a docket sheet, by written or electronic record, or by other means enabling later review.

(8) Telephone Contact for Past-Due Payments. Within one month of a missed payment, a telephone call must be made to the defendant who has not been in contact with local program staff. In every telephone contact for past due payment, local program staff must provide the defendant with instructions about what to do if the defendant is unable to make payments. This telephone contact must also include information about how the defendant may request a hearing for the

judge to consider the defendant's ability to pay and any non-monetary compliance options available for the defendant to satisfy the judgment. Telephone calls may be made by an automated system, but an electronic report or manual documentation of the telephone contact must be available on request.

(9) Written Notice for Past-Due Payments. Within one month of a missed payment, a written notice must be sent to the defendant who has not been in contact with local program staff. Written notice may be made by regular or certified mail, e-mail, text message or other electronic means. Every written notice for past due payment must provide the defendant with instructions about what to do if the defendant is unable to make payments. The written notice must also include information about how the defendant may request a hearing for the judge to consider the defendant's ability to pay and any non-monetary compliance options available for the defendant to satisfy the judgment. Written notice may be sent by an automated system, but an electronic report or manual documentation of the written notice must be available on request. Notice under this paragraph is not required if local program staff make contact with the defendant under paragraph (8) of this subsection and the defendant makes payment or other payment arrangements.

(10) Final Contact Attempt. Local program staff must send a final written notice by regular or certified mail to the defendant within one month of the written notice described in paragraph (9) of this subsection prior to reporting the case to the court as non-compliant. The written notice must include the same information required in paragraph (9) of this subsection and include reasonable steps the defendant can take to avoid the defendant's case being reported to the court as non-compliant. The written notice must also notify the defendant of the defendant's right to avoid jail time for nonpayment if the defendant is unable to pay the amount owed without undue hardship to the defendant and the defendant's dependents. An electronic report or manual documentation of the written notice must be available on request. The local program should not report the case back to the court as non-compliant until at least one month after the final contact attempt to provide the defendant time to discuss with local program staff new payment plan terms or alternative non-monetary compliance options, if any are available, for the court to consider. This paragraph does not interfere or alter the judge's authority to adjudicate a case for non-compliance at any time.

(11) Delinquent Cases. Each local program must have a component designed to improve collection of balances more than 60 days past due.

(12) Proper Reporting. The local program must report its collection activity data to OCA at least annually in a format approved by OCA, as described in §175.4.

(b) Exceptions to Defendant Communications Rules. Exceptions to the defendant communications rules described in this subsection are limited to those cases in which timely access to the defendant in order to obtain the required application or contact information is not possible, and efforts to obtain an application or contact information are documented, as provided in paragraphs (1) and (2) of this subsection.

(1) Attempt to Obtain Application or Contact Information. An attempt to obtain an application or contact information described in subsection (a)(3) of this section is made by taking one of the following actions within one week of the assessment date: 1) mailing a notice requesting the defendant contact local program staff to make arrangements to complete an application and provide contact information; 2) mailing an application or contact information form; or 3) obtaining the information via the telephone. An electronic report or manual documentation of the attempt must be available on request. Should the defendant fail to contact local program staff or return a completed application or contact information form and the post office not return the notice or application or contact information form as undeliverable, the local program must make a second attempt to contact the defendant with any existing available information within one month of the first attempt. An electronic report or manual documentation of the second attempt must be made available on request.

(2) Application or Contact Information Is Obtained. Should a completed application or contact information form be returned to the local program by the defendant as the result of an attempt described in paragraph (1) of this subsection, it will be considered timely and all other communication timing requirements described in subsection (a)(4) and (5) of this section are based on the date the local program receives the application or contact information form.

(c) Computation of Time. In computing any period of time under these rules, when the last day of the period falls on a Saturday, Sunday, legal holiday, or other day on which the office is not open for business, then the period runs until the end of the next day on which the office is open for business.

§175.4. Content and Form of Local Government Reports.

(a) General Scope. Article 103.0033(i) of the Code of Criminal Procedure requires that each local program submit a written report to OCA at least annually that includes updated information regarding the local program, with the content and form to be determined by OCA. Reporting under Art. 103.0033 of the Code of Criminal Procedure and this subchapter is not the same as reporting of judicial statistics under Sec. 71.035 of the Government Code and different rules for reporting and waiver apply.

(b) Reporting Format and Account Setup. OCA has implemented a web-based online Court Collection Reporting System for local programs or jurisdictions to enter information into the system. For good cause shown by a jurisdiction, OCA may grant a temporary waiver from timely online reporting. Local program participants or jurisdictions must provide OCA with information for the online reporting system to enable OCA to establish the local program reporting system account. The information must include the local program name, program start date, start-up costs, the type of collection and case management software programs used by the local program, the entity to which the local program reports (e.g., judge, district clerk's office, sheriff, etc.), the name and title of the person who manages the daily operations of the local program, the mail and e-mail addresses and telephone and fax numbers of the local program, the courts serviced by the local program, and contact information for the local program staff with access to the system so user identifications and passwords can be assigned.

(c) Content and Timing of Reports.

(1) Annual Report. By the 60th day following the fiscal year end, each local program or jurisdiction must report the following information:

(A) Number of full-time and part-time local program employees;

(B) Total local program expenditures;

(C) Salary expenditures for the local program;

(D) Fringe benefit expenditures for the local program;

(E) Areas other than court collections for which the local program provides services;

(F) Local and contract jail statistics and average cost per day to house a defendant; and

(G) A compilation of 12 months of the monthly reporting information described in paragraph (2) of this subsection, if not reported each month as requested.

(2) Monthly Reports. By the 20th day of the following month, each local program or jurisdiction is requested to provide the following information regarding the previous month's local program activities:

(A) Number of cases in which costs, fees, and fines were assessed;

(B) Number of cases in which local program staff provided the court a defendant's ability to pay information in a case under §175.3(a)(6) for review of the defendant's ability to pay;

(C) For assessed court costs and fees: the dollar amount assessed and collected; the dollar amount of credit given for jail time served; the dollar amount of credit given for community service performed or other non-monetary compliance options; the dollar amount waived because of the defendant's inability to pay, and the dollar amount waived for reasons other than the defendant's inability to pay;

(D) For fines: the dollar amount assessed, collected, or waived; the dollar amount of credit given for jail time served; and the dollar amount of credit given for community service performed or other non-monetary compliance options; and

(E) Aging information consisting of the time span from date of assessment through the date of payment, in 30-day increments up to 120 days, and for more than 120 days.

§175.5. Compliance Review Standards.

(a) Statutory Basis. In accordance with Art. 103.0033(j) of the Code of Criminal Procedure, OCA must periodically review local jurisdictions' compliance with the components described in §175.3(a).

(b) Cases Eligible for Compliance Review. For purposes of this section, "eligible case" means a criminal case in which a judgment has been entered by a trial court. The term does not include cases in which:

(1) the court has waived all court costs, fees, and fines;

(2) the court authorizes discharge of the costs, fees, and fines through non-monetary compliance options;

(3) the defendant has been placed on deferred disposition or has elected to take a driving safety course; or

(4) the defendant is incarcerated, unless the defendant is released and payment is requested.

(c) Compliance Review Methods. OCA must use random selection to generate an adequate sample of eligible cases to be reviewed, and must use the same sampling methodology as used for local programs with similar automation capabilities.

(d) Compliance Review Standards. OCA must use the following standards in the compliance review:

(1) Standards for Components in §175.3(a)(1), (2), (11), and (12). A county is in compliance with these components when either 90% of all courts in the county, or all courts in the county except one court, have satisfied all four requirements. Partial percentages are rounded in favor of the county. A municipality must satisfy all four requirements in order to be in compliance.

(2) Standards for Components in §175.3(a)(3) - (10). A jurisdiction is in substantial compliance with a component when at least 80% of the eligible cases at that stage of collection have satisfied the requirements of the component. A jurisdiction is in partial compliance with a component when at least 50% of the eligible cases at that stage of collection have satisfied the requirements of the component. In order for a jurisdiction to be in compliance with these components, the jurisdiction cannot be in less than partial compliance with any component, may be in partial compliance with a maximum of one component, and must be in substantial compliance with all of the other applicable components.

§175.6. Waivers.

(a) Statutory Basis. Article 103.0033 of the Code of Criminal Procedure provides that OCA may determine that it is not cost-effective to implement a local program in a county or municipality and grant a waiver to the requesting entity.

(b) Criteria for Granting Waivers. OCA will grant a blanket waiver from implementation when the requesting entity demonstrates that:

(1) The estimated costs of implementing the local program are greater than the estimated additional revenue that would be generated by implementing the local program, and a compelling reason exists for submitting the waiver request after the entity's implementation deadline. The requesting jurisdiction and CIP staff must each submit documentation supporting the cost and revenue projections to the Administrative Director of OCA for determination; or

(2) The county contains within its borders a correctional facility operated by or under contract with the Texas Department of Criminal Justice; and has a population of 50,000 or more only because the inmate population of all correctional facilities is included in that population.

(c) Temporary Waivers. OCA will consider a request to grant a temporary waiver for good cause that could not have been reasonably anticipated. Such temporary waivers may be granted after a compliance review to allow a local program to correct deficiencies discovered during the compliance review.

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 August 22, 2016.

TRD-201604292
Maria Elena Ramon
General Counsel
Texas Judicial Council
Effective date: January 1, 2017
Proposal publication date: July 1, 2016
For further information, please call: (512) 463-1682

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SUBCHAPTER A. GENERAL COLLECTION IMPROVEMENT PROGRAM PROVISIONS

1 TAC §§175.1 - 175.5

Statutory Authority

The repeals are adopted under §71.019 of the Texas Government Code, which authorizes the Council to adopt rules expedient for the administration of its functions. The statutory provision for the repeals is Article 103.0033 of the Code of Criminal Procedure.

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

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 B. IMPLEMENTATION SCHEDULE AND WAIVERS

1 TAC §175.6, §175.7

Statutory Authority

The repeals are adopted under §71.019 of the Texas Government Code, which authorizes the Council to adopt rules expedient for the administration of its functions. The statutory provision for the repeals is Article 103.0033 of the Code of Criminal Procedure.

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

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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TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 11. MISCELLANEOUS

SUBCHAPTER A. GENERAL

7 TAC §11.37

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the amendment to §11.37, concerning the form of consumer complaint notices without changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4542). The amended rule will not be republished. The amendment allows consumer complaint notices to be in a form that is substantially similar to the current required notice.

Currently, §11.37(b) provides a form consumer complaint notice that must be duplicated exactly when the notice is required to be communicated to consumers. The amendment to §11.37(b) states that this consumer complaint notice must only substantially conform to the form complaint notice that is currently provided by §11.37(b). This allows an entity that is required to communicate the notice to make non-substantive changes to the notice, as might be necessary by the context or formatting in which it is being provided.

Comments supporting the proposed amendment were received from the Independent Bankers Association of Texas (IBAT).

The amendment is adopted pursuant to Finance Code, §11.003 which provides that the commission may adopt rules necessary and reasonable to implement Chapter 11 of the Finance Code.

Finance Code §11.307 is affected by the amended section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-201604261
Catherine Reyer
General Counsel
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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

SUBCHAPTER A. RULES FOR REGULATED LENDERS

The Finance Commission of Texas (commission) adopts amendments to §§83.102, 83.301, 83.302, 83.304, 83.306, 83.310, 83.403, and 83.828; adopts new §83.303 and §83.404; and adopts the repeal of §§83.303, 83.404, and 83.405 in 7 TAC, Chapter 83, Subchapter A, concerning Rules for Regulated Lenders.

The commission adopts the amendments to §§83.102, 83.301, 83.302, 83.304, 83.306, 83.310, 83.403, and 83.828; and the repeals of §§83.303, 83.404, and 83.405 without changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4543).

The commission adopts new §83.303 and §83.404 with changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4543). The changes are a result of technical corrections to citations.

The commission received no written comments on the proposal.

In general, the purpose of the rule changes in 7 TAC, Chapter 83, Subchapter A is to update rules regarding the licensing of regulated lenders, and to make technical corrections. The adopted rule changes relate to the following issues: contact information, transfers, criminal history review, definitions, and recordkeeping.

Additionally, certain sections are being repealed in order to replace them with new, reorganized rules.

The agency circulated an early draft of proposed changes to interested stakeholders. The agency then held a stakeholders meeting where attendees provided oral precomments. In addition, the agency received one informal written precomment. Certain concepts recommended by the precommenter were incorporated into the proposal, and the agency appreciates the thoughtful input provided by stakeholders.

The individual purposes of the adopted changes to each section are provided in the following paragraphs.

In §83.102(3), the definition of "amount financed" has been replaced with a reference to Regulation Z, 12 C.F.R. §1026.18(b). The rule previously contained a specific definition of "amount financed" that applies only to rule provisions on computing earnings, deferments, maximum charges, and refunds of unearned interest. The current rules on these issues do not use the term "amount financed," so the specific definition is unnecessary. However, other rules throughout Chapter 83 use the term "amount financed" to refer to the amount calculated under Regulation Z. For this reason, the amendment replaces the former definition with a reference to Regulation Z.

An adopted change to §83.301(2)(A) amends the definition of "principal party" for sole proprietorships. The amendment removes the statement that proprietors include spouses with a community property interest. In addition, an amendment to §83.302(1)(B)(i) removes the requirement to disclose community property interests and documentation regarding separate property status, and replaces it with a requirement to disclose the names of the spouses of principal parties if requested. The agency currently spends considerable time requesting information from license applicants to determine the status of spouses' property interests, and explaining these concepts to applicants. These amendments help streamline the licensing process and reduce regulatory burden. The amendments also make the application process simpler and more straightforward for applicants. In specific cases where the spouse is a principal party, the OCCC would be able to request additional information about the spouse under current §83.302(1)(E) - (F).

Section 83.303 is being repealed and replaced with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. Section 83.303 describes what constitutes a transfer of ownership requiring the filing of a transfer application. The adopted new rule largely maintains the requirements under the current rule, including the requirements for filing a license transfer application. In addition to the license transfer application allowed under the current rule, the new rule allows an alternative method for a transfer of ownership: a new license application on transfer of ownership. The new rule describes what the application has to include, the timing requirements, and which parties are responsible at different points in the transfer process. Subsection (a) describes the purpose of the new section. Subsection (b) defines terms used throughout the subsection. In particular, subsection (b)(3) defines the phrase "transfer of ownership," listing different types of changes in acquisition or control of the licensed entity. The precommenter recommended that this definition specify that a transfer of ownership does not include a relocation of regulated transactions from one licensed location to another. Relocations of regulated transactions are governed by current §83.308(c), which requires licensees to notify debtors that the transactions have been relocated. In response to this recommendation, §83.303(b)(3) as adopted states that a transfer of ownership does not include a relocation of regulated transactions from one licensed location to another licensed location.

Section 83.303(c) specifies that a license may not be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §342.163.

Since the proposal, a change has been made to §83.303(c) in order to provide the correct citation to the Texas Finance Code relating to the transfer or assignment of a license.

Section 83.303(d) provides a timing requirement, stating that a complete license transfer application or new license application on transfer of ownership must be filed no later than 30 days after the transfer of ownership. Subsection (e) outlines the requirements for the license transfer application or new license application on transfer of ownership. These requirements include complete documentation of the transfer of ownership, as well as a complete license application for transferees that do not hold an existing regulated lender license. Subsection (e)(5) explains that the application may include a request for permission to operate.

Subsection (f) provides that the OCCC may issue a permission to operate to the transferee. A permission to operate is a temporary authorization from the OCCC allowing a transferee to operate while final approval is pending for an application. Subsection (g) specifies the transferee's authority to engage in business if the transferee has filed a complete application including a request for permission to operate. It also requires the transferee to immediately cease doing business if the OCCC denies the request for permission to operate or denies the application.

Subsection (h) describes the situations where the transferor is responsible for business activity at the licensed location, situations where the transferee is responsible, and situations where both parties are responsible. In this subsection, the precommenter made the following recommendations. First, the precommenter recommended against using the phrase "joint and several responsibility," because the precommenter believes that this phrase could lead to confusion. Second, the precommenter recommended against drafting the subsection's paragraphs so that they overlap with each other. Third, the precommenter recommended that this subsection consist of two paragraphs (one for the transferor's responsibility and one for the transferee's responsibility), for the sake of clarity. In response to these recommendations, the three paragraphs in subsection (h) apply to three distinct periods of time: (1) the period before the transferee begins conducting business (when the transferor is responsible), (2) the period after the transferee begins conducting business and before final approval of the application (when the transferor and transferee are each responsible), and (3) the period after final approval (when the transferee is responsible). For the second period, subsection (h)(2) specifies that the transferor and transferee are each responsible. The agency believes that it is appropriate for the rule to specify that the transferor and transferee are each responsible during this period, which includes any activity performed by the transferee under a permission to operate. In this way, the rule helps ensure that licensees are aware of their responsibilities. The new rule's statement that the transferor is responsible for acts performed during a permission to operate is consistent with the former rule at §83.303(d), which stated: "The transferor must accept full responsibility to any customer and to the OCCC for the licensed business for any acts of the transferee in connection with the operation of the lending business." The permission to operate is a temporary authorization allowing a transferee to operate under a transferor's license while the transferee's application is pending. The OCCC allows

the permission-to-operate procedure in order to accommodate transferees that wish to begin doing business after a routine transfer of ownership but before approval of a license application. The alternative would be to prohibit the transferee from engaging in business until after the license application is approved. If a transferor wishes to protect itself from responsibility for the transferee's acts, then the transferor can delay the transfer of ownership until the transferee's application is approved. Alternatively, the transferor can enter an indemnification agreement with the transferee, under which the transferee must reimburse the transferor for losses resulting from the transferee's acts.

In §83.304, concerning Change in Form or Proportionate Ownership, conforming changes have been made corresponding to adopted new §83.303. Throughout subsections (b) and (c), references have been added to the new license application on transfer of ownership.

Adopted amendments to §83.306 clarify the circumstances in which a licensee must notify the OCCC of changes to information in the original license application. The amendments specify that the requirement to provide updated information within 10 days applies before a license application is approved. New §83.306(b) provides that a licensee must notify the OCCC within 30 days if the information relates to the names of principal parties, criminal history, regulatory actions, or court judgments. New §83.306(c) specifies that each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, and that it is a best practice for licensees to regularly review contact information.

An adopted amendment to §83.310(c) provides that a license applicant must pay a fee to a party designated by the Texas Department of Public Safety (DPS) for processing fingerprints, replacing a statement that the fee will be paid to the OCCC. This amendment conforms the rule to the method by which applicants currently provide fingerprint information through DPS's Fingerprint Applicant Services of Texas (FAST) program. Additional amendments to §83.310(d) conform the rule to new §83.303 and add numbered paragraphs for clarity.

Adopted amendments to §83.403 clarify the agency's procedure for providing delinquency notices to licensees that have failed to pay an annual assessment fee. The amendments specify that notice of delinquency is considered to be given when the OCCC sends the notice by mail to the address on file with the OCCC as a master file address, or by e-mail to the address on file with the OCCC (if the licensee has provided an e-mail address).

Adopted new §83.404 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of a regulated lender license. This section replaces former §83.404 and §83.405, which are being repealed. Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose. Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the licensed occupation of regulated lender. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a regulated lender, including the reasons the crimes relate to the occupation, as provided by Texas Occupations Code, §53.025(a). Subsection (c)(2) contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a licensee, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or licensee unfit, as provided by Texas Occupations Code, §53.023. Subsection (d) describes the OCCC's authority to deny a license application if it does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §342.104(a). Subsection (e) explains that the OCCC will revoke a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

§83.404(f) identifies other grounds for denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

Since the proposal, a change has been made to §83.404(f)(2) in order to provide a more complete citation to the Texas Code of Criminal Procedure. As the cited provision is being relocated, the revision includes citations for both the current location and the location effective on January 1, 2017.

An adopted amendment to the recordkeeping rule in §83.828(10)(A) lists documentation and disclosures required under the Department of Defense's Military Lending Act Rule, 32 C.F.R. pt. 232. The Department of Defense's recently adopted amendments to the rule have a required compliance date of October 3, 2016. Under the amended Military Lending Act Rule, lenders will generally be required to provide model disclosures to covered military borrowers. 32 C.F.R. §232.6. The amended rule also specifies documentation that lenders can obtain in order to determine whether a consumer is a covered military borrower. 32 C.F.R. §232.5. The adopted amendments to §83.828(10)(A) specify that licensees are required to maintain these documents and disclosures in the individual borrower's loan file. This file must be maintained for four years from the date of the loan, or two years from the date of the final account entry, whichever is later, under current §83.828(14). However, licensees may keep the documents for a longer period of time if they choose. Additionally, an amendments to the recordkeeping rule in §83.828(10)(C) update a reference to the Texas Department of Public Safety "Driver's Crash Report" form and correct a typographical error.

DIVISION 1. GENERAL PROVISIONS

7 TAC §83.102

The rule changes are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

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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DIVISION 3. APPLICATION PROCEDURES

7 TAC §§83.301 - 83.304, 83.306, 83.310

The rule changes are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

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

(a) Purpose. This section describes the license application requirements when a licensed entity transfers its license or ownership of the entity. If a transfer of ownership occurs, the transferee must submit either a license transfer application or a new license application on transfer of ownership under this section.

(b) Definitions. The following words and terms, when used in this section, will have the following meanings:

(1) License transfer--A sale, assignment, or transfer of a regulated loan license.

(2) Permission to operate--A temporary authorization from the OCCC, allowing a transferee to operate under a transferor's license while final approval is pending for a license transfer application or a new license application on transfer of ownership.

(3) Transfer of ownership--Any purchase or acquisition of control of a licensed entity (including acquisition by gift, devise, or descent), or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs. The term does not include a change in proportionate ownership as defined in §83.304 of this title (relating to Change in Form or Proportionate Ownership) or a relocation of regulated transactions from one licensed location to another licensed location, as described by §83.308(c) of this title (relating to Relocation). Transfer of ownership includes the following:

(A) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

(B) any purchase or acquisition of control of a licensed general partnership, in which a partner relinquishes that owner's entire interest or a new general partner obtains an ownership interest;

(C) any change in ownership of a licensed limited partnership interest in which:

(i) a limited partner owning 10% or more relinquishes that owner's entire interest;

(ii) a new limited partner obtains an ownership interest of 10% or more;

(iii) a general partner relinquishes that owner's entire interest; or

(iv) a new general partner obtains an ownership interest (transfer of ownership occurs regardless of the percentage of ownership exchanged of the general partner);

(D) any change in ownership of a licensed corporation in which:

(i) a new stockholder obtains 10% or more of the outstanding voting stock in a privately held corporation;

(ii) an existing stockholder owning 10% or more relinquishes that owner's entire interest in a privately held corporation;

(iii) any purchase or acquisition of control of 51% or more of a company that is the parent or controlling stockholder of a licensed privately held corporation occurs; or

(iv) any stock ownership changes that result in a change of control (i.e., 51% or more) for a licensed publicly held corporation occur;

(E) any change in the membership interest of a licensed limited liability company:

(i) in which a new member obtains an ownership interest of 10% or more;

(ii) in which an existing member owning 10% or more relinquishes that member's entire interest; or

(iii) in which a purchase or acquisition of control of 51% or more of any company that is the parent or controlling member of a licensed limited liability company occurs;

(F) any transfer of a substantial portion of the assets of a licensed entity under which a new entity controls business at a licensed location; and

(G) any other purchase or acquisition of control of a licensed entity, or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs.

(4) Transferee--The entity that controls business at a licensed location after a transfer of ownership.

(5) Transferor--The licensed entity that controls business at a licensed location before a transfer of ownership.

(c) License transfer approval. No regulated loan license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §342.163. A license transfer is approved when the OCCC issues its final written approval of a license transfer application.

(d) Timing. No later than 30 days after the event of a transfer of ownership, the transferee must file a complete license transfer application or new license application on transfer of ownership in accordance with subsection (e). A transferee may file an application before this date.

(e) Application requirements.

(1) Generally. This subsection describes the application requirements for a license transfer application or a new license application on transfer of ownership. A transferee must submit the application in a format prescribed by the OCCC. The OCCC may accept prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. The transferee must pay appropriate fees in connection with the application.

(2) Documentation of transfer of ownership. The application must include documentation evidencing the transfer of ownership. The documentation should include one or more of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the purchase agreement or other evidence relating to the acquisition of the equity interest of a licensee that has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(3) Application information for new licensee. If the transferee does not hold a regulated loan license at the time of the application, then the application must include the information required for new license applications under §83.302 of this title (relating to Filing of New Application). The instructions in §83.302 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a regulated loan license at the time of the application, then the application must include amendments to the transferee's original license application describing the information that is unique to the transfer event, including disclosure questions, owners and principal parties, and a new financial statement, as provided in §83.302 of this title. The instructions in §83.302 of this title apply to these filings. The responsible person at the new location must file a personal affidavit, personal questionnaire, and employment history, if not previously filed. Other information required by §83.302 of this title need not be filed if the information on file with the OCCC is current and valid.

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

(A) a statement by the transferor granting authority to the transferee to operate under the transferor's license while final approval of the application is pending;

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

(C) if the application is a new license application on transfer of ownership, an acknowledgement that the transferor will immediately surrender or inactivate its license if the OCCC approves the application.

(f) Permission to operate. If the application described by subsection (e) includes a request for permission to operate and all required information, and the transferee has paid all fees required for the application, then the OCCC may issue a permission to operate to the transferee. A request for permission to operate may be denied even if the application contains all of the required information. The denial of a request for permission to operate does not create a right to a hearing. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license. Two companies may not simultaneously operate under a single license. A permission to operate terminates if the OCCC denies an application described by subsection (e).

(g) Transferee's authority to engage in business. If a transferee has filed a complete application including a request for permission to operate as described by subsection (e), by the deadline described by subsection (d), then the transferee may engage in business as a regulated lender. However, the transferee must immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. If the OCCC denies the application, then the transferee has a right to a hearing on the denial, as provided by §83.307(d) of this title (relating to Processing of Application).

(h) Responsibility.

(1) Responsibility of transferor. Before the transferee begins performing regulated lender activity under a license, the transferor is responsible to any consumer and to the OCCC for all regulated lender activity performed under the license.

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

(3) Responsibility of transferee. After the OCCC's final approval of an application described by subsection (e), the transferee is responsible to any consumer and to the OCCC for all regulated lender activity performed under the license. The transferee is responsible for any transactions that it purchases from the transferor. In addition, if the transferee receives a license transfer, then the transferee's responsibility includes all activity performed under the license before the license transfer.

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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7 TAC §83.303

The repeal is adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adopted repeal are contained in Texas Finance Code, Chapter 342.

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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DIVISION 4. LICENSE

7 TAC §83.403, §83.404

The rule changes are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

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

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §83.310 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

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

(1) information about arrests, charges, indictments, and convictions of the applicant and its principal parties;

(2) reliable documents or testimony necessary to make a determination under subsection (c), including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

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

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 342, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating, acquiring, or servicing loans under Texas Finance Code, Chapter 342 involves or may involve making representations to consumers regarding the terms of the loan, receiving money from consumers, remitting money to third parties, maintaining accounts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, collecting due amounts in a legal manner, and foreclosing on real property in compliance with state and federal law. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

(A) theft;

(B) assault;

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

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

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

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

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

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

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; and

(F) evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation from one or more of the following:

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

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

(iii) other persons in contact with the convicted person.

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §342.104(a)(1). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) - (3) of this section in its review of character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

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

(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42.12, §3g (effective through December 31, 2016), art. 42A.054 (effective January 1, 2017), or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3)-(4);

(3) errors or incomplete information in the license application;

(4) a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §342.156(3); and

(5) any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §342.104(a)(1) and §342.156.

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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7 TAC §83.404, §83.405

The repeals are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adopted repeals are contained in Texas Finance Code, Chapter 342.

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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DIVISION 10. DUTIES AND AUTHORITY OF AUTHORIZED LENDERS

7 TAC §83.828

The rule changes are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

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CHAPTER 87. TAX REFUND ANTICIPATION LOANS

The Finance Commission of Texas (commission) adopts amendments and a new rule in 7 TAC Chapter 87, concerning Tax Refund Anticipation Loans. The commission adopts amendments to §§87.102 - 87.105 and 87.107; and adopts new §87.201.

The commission adopts the amendments and new rule without changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4551).

The commission received no written comments on the proposal.

In general, the purpose of the revisions to these rules for tax refund anticipation loan facilitators is to implement changes resulting from the commission's review of Chapter 87 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC Chapter 87 was published in the *Texas Register* on May 6, 2016 (41 TexReg 3317). The agency did not receive any comments on the notice of intention to review.

The agency circulated an early draft of proposed changes to interested stakeholders and then held a stakeholders meeting, including online participation. The agency believes that early participation by stakeholders in the rulemaking process results in more informed and balanced proposals.

The rule changes clarify the term of registration, require that registrants maintain current contact information, implement a statutory late filing fee, and add a required notice that registrants must provide to consumers explaining how they can file a complaint with the agency.

The individual purposes of the amendments to each rule and of the new rule are provided in the following paragraphs.

Adopted amendments to §87.102(a) remove unnecessary language and add a reference to the agency's name and acronym, Office of Consumer Credit Commissioner (OCCC). The agency believes that the use of "OCCC" provides better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically.

Corresponding changes to further the use of this terminology are included throughout Chapter 87. The following provisions contain adopted amendments to replace the use of "commissioner" or "commissioner's" with a reference to the OCCC: §87.103(a)(1) and §87.104.

Adopted new §87.103(b) explains that an applicant may apply for a registration for the current year or a registration for the following year. Subsection (b) also specifies the effective period of a registration. Although the existing rules in Chapter 87 specify requirements for renewing a registration, they did not specify when the registration is effective or when it expires. Subsection (b) conforms to the agency's current practices and is intended to provide clarity on the effective period of registration.

Adopted new §87.103(c) explains that applicants and registrants must keep their contact information up-to-date. This provision is intended to ensure that the agency can contact registrants, so that the agency can carry out its responsibility to monitor facilitators and ensure compliance, as provided by Texas Finance Code, §352.005.

Adopted amendments to §87.105(a) - (c) amend the text to provide clarity and consistency. In particular, an amendment to subsection (c) replaces the term "Annual Assessments" with "Renewals," to ensure consistency with other rules in Chapter 87.

Adopted new §87.105(d) specifies that a facilitator must pay a $250 late filing fee if the facilitator: 1) obtains a new registration after engaging in business as a facilitator (i.e., engages in unregistered activity), or 2) renews a registration for the current year after January 30. This requirement is based on Texas Finance Code, §349.302, which provides a late filing fee of $250 for obtaining a late registration with the OCCC. Subsection (d) is intended to provide clarity regarding the amount of the late filing fee and the situations where it is required.

Adopted amendments to §87.107(a) conform to other amendments in the adoption. The former December 1 renewal deadline is replaced with a requirement to pay any late filing fee required by §87.105(d). This means that if a facilitator renews a registration for the current year after January 30, the facilitator must pay a $250 late filing fee in order to renew. The amendments to subsection (a) are intended to clarify renewal requirements and ensure consistency with Texas Finance Code, §349.302.

Adopted new §87.107(b) specifies that a facilitator may not renew a registration that has been expired for more than one year, and that if a registration has been expired for more than one year, the facilitator must apply for a new registration. This provision is intended to clarify renewal requirements and ensure consistency with other amendments to the rules.

Adopted new §87.201 requires facilitators to provide a notice explaining how consumers can file a complaint with the OCCC. Subsection (a) describes the content of the OCCC notice, which includes the facilitator's contact information and the OCCC's contact information. Subsection (b) explains that the OCCC notice must be provided on either the privacy notice or the written disclosure of fees required under Texas Finance Code, §352.004. This requirement is based on Texas Finance Code, §11.307(b), which provides that the commission shall adopt rules requiring regulated entities to include complaint notices on legally required privacy notices. Because refund anticipation loan facilitators perform tax preparation services, they are required to provide privacy notices to consumers under federal law, as provided by Regulation P, 12 C.F.R. §§1016.3(l)(3)(ii)(H), 1016.3(s)(1), 1016.4(a).

The OCCC believes that new §87.201 is necessary so that consumers and creditors will have the most current contact information for the OCCC, as well as readily available information for consumers explaining how they can file a complaint with the OCCC. Registrants are afforded multiple ways to comply with the new rule: 1) add the OCCC notice to the current federal privacy notice in the box for "Other important information"; 2) add the OCCC notice to the registrant's existing disclosure form under Texas Finance Code, §352.004; or 3) provide the OCCC notice on a new page that is part of one of these two forms.

As stated in the proposal, the OCCC wishes to help registrants minimize potential costs with a delayed implementation date of January 1, 2017, for new §87.201. Accordingly, the agency will allow registrants to continue the use of current forms through December 31, 2016. Starting January 1, 2017, registrants must comply with new §87.201 by adding the OCCC notice to either their existing privacy notice or existing written disclosure provided to consumers.

The delayed implementation date applies only to new §87.201. Thus, the amendments to §§87.102 - 87.105 and 87.107 will be implemented immediately upon the effective date of these rules, which is anticipated to be on or around September 8, 2016.

SUBCHAPTER A. REGISTRATION PROCEDURES

7 TAC §§87.102 - 87.105, 87.107

The rule changes are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code. The rule changes are also adopted under Texas Finance Code, §352.003, which authorizes the commission to prescribe procedures for the registration of tax refund anticipation loan facilitators. New §87.201 is adopted under Texas Finance Code, §11.307(b), which provides that the commission shall adopt rules requiring regulated entities to include complaint notices on legally required privacy notices.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 11 and 352.

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 B. DISCLOSURES

7 TAC §87.201

The rule changes are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code. The rule changes are also adopted under Texas Finance Code, §352.003, which authorizes the commission to prescribe procedures for the registration of tax refund anticipation loan facilitators. New §87.201 is adopted under Texas Finance Code, §11.307(b), which provides that the commission shall adopt rules requiring regulated entities to include complaint notices on legally required privacy notices.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 11 and 352.

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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For further information, please call: (512) 936-7621

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS

SUBCHAPTER KK. COMMISSIONER'S RULES CONCERNING COMPLIANCE INVESTIGATIONS IN CONNECTION WITH STATE-FUNDED EDUCATION PROGRAM GRANTS

19 TAC §102.1401

The Texas Education Agency (TEA) adopts new §102.1401, concerning educational programs. The new section is adopted without changes to the proposed text as published in the July 1, 2016 issue of the *Texas Register* (41 TexReg 4754) and will not be republished. The adopted new section establishes provisions for TEA compliance investigations in connection with state education grant programs.

REASONED JUSTIFICATION. TEA currently lacks an explicit rule framework for state education grant compliance investigations, corrective actions, and sanctions. Given sufficient statutory authority to adopt rules in this area and in order to ensure fiscal responsibility in connection with state grant funds and appropriate implementation of state grant program requirements, the TEA adopts new 19 TAC §102.1401, Compliance Investigations. The new section outlines the framework for compliance investigations, corrective actions, and sanctions the TEA may initiate for recipients of state education program grant funds to ensure taxpayer dollars are being spent appropriately and prevent fraud, waste, and abuse.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began July 1, 2016, and ended August 1, 2016. Following is a summary of public comments received and corresponding agency responses regarding the proposed new 19 TAC Chapter 102, Educational Programs, Subchapter KK, Commissioner's Rules Concerning Compliance Investigations in Connection with State-Funded Education Program Grants, §102.1401, Compliance Investigations.

Comment. Disability Rights Texas (DRTx) commented that students with disabilities, their parents, and educators will benefit from the adopted rule provision that permits a person or entity to file a complaint seeking to initiate a compliance investigation.

Agency Response. The agency agrees.

Comment. DRTx commented in connection with the potential benefit to students with disabilities, their parents, and educators that (1) the rule should clarify that a final compliance investigation report must be made available to the public by the state education grant recipient in the interests of transparency and public accountability; and (2) an explicit provision of the rule that requires notice and posting of the final report would assist in deterring noncompliance and promoting the satisfaction of corrective action plans.

Agency Response. The agency disagrees that the rule should explicitly require that a state education grant recipient must make a final compliance investigation report publicly available, as the Public Information Act already requires the same. The agency disagrees that an explicit provision should be added to the rule that would require notice and posting a final report by state edu-

cation grant recipients. The agency has determined that the rule provisions are sufficient to deter noncompliance and encourage satisfaction of corrective action plans.

Comment. DRTx commented that the commissioner should only be able to waive an Out-of-Compliance Status in writing with a stated basis for the waiver.

Agency Response. The agency disagrees that the commissioner's waiver authority should be constrained by rule in such a manner because it is unnecessary to effectuate the purpose of the rule and is contrary to the general proposition that the commissioner may waive provisions of the Texas Education Code (TEC).

Comment. DRTx sought clarification on whether the definition of a state education program would include programs in TEC, Title 2, Subchapter F, Chapter 29, Subchapter A, including §29.013 (Noneducational Community-Based Support Services for Certain Students with Disabilities); §29.018 (Special Education Grant); and §29.022 (Video Surveillance of Special Education Settings), per TEC, §42.2528 (Excess Funds for Video Surveillance of Special Education Settings).

Agency Response. The comment falls outside the scope of the rule comment process due to the fact that the comment seeks a legal interpretation of the scope of the rule.

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code (TEC), §7.028(a)(2), which authorizes the agency to monitor compliance with state grant requirements, and §39.056(a), which authorizes the commissioner to direct the agency to conduct monitoring reviews and random on-site visits of a school district or charter school as authorized by TEC, §7.028.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §7.028(a)(2) and §39.056(a).

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 August 22, 2016.

TRD-201604316
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTABILITY

19 TAC §109.1001

The Texas Education Agency adopts an amendment to §109.1001, concerning the financial accountability rating system. The amendment is adopted with changes to the proposed text as published in the June 24, 2016 issue of the *Texas Register* (41 TexReg 4580). The section establishes provisions that detail the purpose, ratings, types of ratings, criteria, reporting, and sanctions for the financial accountability rating system. The adopted amendment clarifies the financial accountability rating indicators used to determine each school district's rating for the 2015-2016 rating year and subsequent years and describes a new "No Rating" category for certain school districts that receive territory from an annexation order under the Texas Education Code (TEC), §13.054, or consolidation under the TEC, Chapter 41, Subchapter H.

REASONED JUSTIFICATION. Chapter 109, Budgeting, Accounting, and Auditing, Subchapter AA, Commissioner's Rules Concerning Financial Accountability, establishes provisions that detail the purpose, ratings, types of ratings, criteria, reporting, and sanctions for the financial accountability rating system, in accordance with Senate Bill 218, 77th Texas Legislature, 2001, and House Bill (HB) 3, 81st Texas Legislature, 2009. HB 5, Section 49, 83rd Texas Legislature, Regular Session, 2013, amended the TEC, §39.082, requiring that the commissioner of education include in the financial accountability rating system processes for anticipating the future financial solvency of each school district and open-enrollment charter school, including analysis of district and school revenues and expenditures for preceding school years. The TEC, §39.082, also requires the commissioner to adopt rules by which to measure the financial management performance and future financial solvency of a district or an open-enrollment charter school and sets forth specific requirements relating to indicators adopted by the commissioner and the assignment of ratings.

Section 109.1001 includes the financial accountability rating system and rating worksheets that explain the indicators that the Texas Education Agency will analyze to assign financial accountability ratings for school districts and open-enrollment charter schools. The rule also specifies the minimum financial accountability rating information that a school district and an open-enrollment charter school is to report to parents and taxpayers in the district.

The adopted amendment clarifies the financial accountability rating indicators used to determine each school district's rating for the 2015-2016 rating year and subsequent years by revising the ratings worksheet calculations in Figure: 19 TAC §109.1001(e)(2) and Figure: 19 TAC §109.1001(e)(3). The adopted worksheets, dated August 2016, differ from the current worksheets, dated August 2015, as follows.

Indicator 5 was revised to show the operation of adding variable F for pension expense and net pension liability (NPL) instead of subtracting the variable from the calculation.

Indicators 6, 9, and 10 were revised to remove the pension expense and NPL variables from the calculation since the amounts for pension expense and NPL are not applicable to the indicator calculations.

Indicator 10 was revised to add variable E (function code 81 - capital outlay) in order to make the indicator more uniform for all districts.

Both figures, as well as subsection (h), were modified to include a new category for "No Rating" for the 2016-2017 rating year and subsequent years. The rating allows a school district that receives territory from an annexation or consolidation order by the commissioner due to closure or action under the TEC, Chapter 41, to not receive a financial accountability rating for two consec-

utive rating years after the annexation/consolidation with another school district.

The figures were modified at adoption to correct a typographical error in Indicator 5. The worksheets as proposed inadvertently showed variable F being subtracted rather than added.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began June 24, 2016, and ended July 25, 2016. Following is a summary of public comments received and corresponding agency responses regarding the proposed amendment to 19 TAC Chapter 109, Budgeting, Accounting, and Auditing, Subchapter AA, Commissioner's Rules Concerning Financial Accountability, §109.1001, Financial Accountability Ratings.

Comment. An administrator from Texas City Independent School District asked how long a district would receive "No Rating" under TEC, §13.054.

Agency Response. The agency provides the following clarification. A school district that is receiving territory due to an annexation order by the commissioner under the TEC, §13.054, or consolidation under the TEC, Chapter 41, Subchapter H, will not receive a rating for two consecutive years beginning with the rating year that is based on financial data from the fiscal year in which the order of annexation becomes effective.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §39.082, which requires the commissioner to develop and implement a financial accountability rating system for school districts and open-enrollment charter schools. The section establishes certain requirements, including procedures, to enable the commissioner and administrators to provide meaningful financial oversight and improvement along with transparency to the public. The section provides additional requirements and rulemaking authority for the commissioner. The amendment is also proposed under the TEC, §39.085, which provides the commissioner rulemaking authority for the implementation and administration of the financial accountability subchapter of the TEC, Chapter 39.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §39.082 and §39.085.

§109.1001. Financial Accountability Ratings.

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

(1) Annual Financial Report (AFR)--The audited annual report required by the Texas Education Code (TEC), §44.008, that is due to the Texas Education Agency (TEA) by no later than 150 days after the close of a school district's or an open-enrollment charter school's fiscal year.

(2) Debt--An amount of money owed to a person, bank, company, or other organization.

(3) Electronic submission--The TEA electronic data feed format required for use by school districts, open-enrollment charter schools, and regional education service centers (ESCs).

(4) Financial Integrity Rating System of Texas (FIRST)--The financial accountability rating system administered by the TEA in accordance with the TEC, §39.082 and §39.085. The system provides additional transparency to public education finance and meaningful financial oversight and improvement for school districts (School FIRST) and open-enrollment charter schools (Charter FIRST).

(5) Fiscal year--The fiscal year of a school district or an open-enrollment charter school, which begins on July 1 or September 1 of each year, as determined by the board of trustees of the district or the governing body of the charter holder in accordance with the TEC, §44.0011.

(6) Foundation School Program (FSP)--The program established under the TEC, Chapters 41, 42, and 46, or any successor program of state-appropriated funding for school districts in this state.

(7) Public Education Information Management System (PEIMS)--The system that school districts and open-enrollment charter schools use to load, validate, and submit their data to the TEA.

(8) Summary of Finances (SOF) report--The document of record for FSP allocations. An SOF report is produced for each school district and open-enrollment charter school by the TEA division responsible for state funding that describes the school district's or open-enrollment charter school's funding elements and FSP state aid.

(9) Warrant hold--The process by which state payments issued to payees indebted to the state, or payees with a tax delinquency, are held by the Texas Comptroller of Public Accounts until the debt is satisfied in accordance with the Texas Government Code, §403.055.

(b) The TEA will assign a financial accountability rating to each school district and open-enrollment charter school as required by the TEC, §39.082.

(c) The commissioner of education will evaluate the rating system every three years as required by the TEC, §39.082, and may modify the system in order to improve the effectiveness of the rating system. If the rating system has been modified, the TEA will communicate changes to ratings criteria and their effective dates to school districts and open-enrollment charter schools.

(d) The TEA will use the following sources of data in calculating the financial accountability indicators for school districts and open-enrollment charter schools:

(1) AFR. For each school district and open-enrollment charter school, the TEA will use audited financial data in the district's or charter's AFR. The AFR, submitted as an electronic submission through the TEA website, must include data required in the Financial Accountability System Resource Guide (FASRG) adopted under §109.41 of this title (relating to Financial Accountability System Resource Guide);

(2) PEIMS. The TEA will use PEIMS data submitted by the school district or open-enrollment charter school in the calculation of the financial accountability indicators.

(3) Warrant holds. The TEA will use warrant holds as reported by the Texas Comptroller of Public Accounts in the calculation of the financial accountability indicators.

(4) FSP. The TEA will use the average daily attendance (ADA) information used for FSP funding purposes for the school district or open-enrollment charter school in the calculation of the financial accountability indicators.

(e) The TEA will base the financial accountability rating of a school district on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) The financial accountability rating indicators for rating year 2014-2015 are based on fiscal year 2014 financial data and are

provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated August 2015 for rating year 2014-2015."
Figure: 19 TAC §109.1001(e)(1) (No change.)

(2) The financial accountability rating indicators for rating year 2015-2016 are based on fiscal year 2015 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated August 2015 for rating year 2015-2016."
Figure: 19 TAC §109.1001(e)(2)

(3) The financial accountability rating indicators for rating year 2016-2017 are based on fiscal year 2016 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated August 2015 for rating year 2016-2017." The financial accountability rating indicators for rating years after 2016-2017 will use the same calculation and scoring method provided in the figure in this paragraph.
Figure: 19 TAC §109.1001(e)(3)

(4) The specific calculations and scoring methods used in the financial accountability rating worksheets for school districts for rating years prior to 2014-2015 remain in effect for all purposes with respect to those rating years.

(f) The TEA will base the financial accountability rating of an open-enrollment charter school on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) The financial accountability rating indicators for rating year 2014-2015 are based on fiscal year 2014 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated August 2015 for rating year 2014-2015."
Figure: 19 TAC §109.1001(f)(1) (No change.)

(2) The financial accountability rating indicators for rating year 2015-2016 are based on fiscal year 2015 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated August 2015 for rating year 2015-2016."
Figure: 19 TAC §109.1001(f)(2) (No change.)

(3) The financial accountability rating indicators for rating year 2016-2017 are based on fiscal year 2016 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated August 2015 for rating year 2016-2017." The financial accountability rating indicators for rating years after 2016-2017 will use the same calculation and scoring method provided in the figure in this paragraph.
Figure: 19 TAC §109.1001(f)(3) (No change.)

(4) The specific calculations and scoring methods used in the financial accountability rating worksheets for open-enrollment charter schools for rating years prior to 2014-2015 remain in effect for all purposes with respect to those rating years.

(g) The types of financial accountability ratings that school districts or open-enrollment charter schools may receive for the rating year 2014-2015 are as follows.

(1) P for pass. This rating applies only to the financial accountability rating for rating year 2014-2015 based on fiscal year 2014 financial data. In accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive a P rating if it scores within the applicable range established by the commissioner for a P rating.

(2) F for substandard achievement. This rating applies to the financial accountability rating for rating year 2014-2015 based on fiscal year 2014 financial data. In accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive an F rating if it scores within the applicable range established by the commissioner for an F rating.

(h) The types of financial accountability ratings that school districts or open-enrollment charter schools may receive for the rating year 2015-2016 and all subsequent rating years are as follows.

(1) A for superior achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive an A rating if it scores within the applicable range established by the commissioner for an A rating.

(2) B for above standard achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive a B rating if it scores within the applicable range established by the commissioner for a B rating.

(3) C for standard achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive a C rating if it scores within the applicable range established by the commissioner for a C rating.

(4) F for substandard achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive an F rating if it scores within the applicable range established by the commissioner for an F rating.

(5) No Rating. Beginning with the financial accountability rating for rating year 2016-2017 and all subsequent rating years, in accordance with the procedures established in this section, a school district receiving territory due to an annexation order by the commissioner under the TEC, §13.054, or consolidation under the TEC, Chapter 41, Subchapter H, will not receive a rating for two consecutive rating years beginning with the rating year that is based on financial data from the fiscal year in which the order of annexation becomes effective. After the second rating year, the receiving district will be subject to the financial accountability rating system established by the commissioner in this section.

(i) The commissioner may lower a financial accountability rating based on the findings of an action conducted under the TEC, Chapter 39.

(j) A financial accountability rating remains in effect until replaced by a subsequent financial accountability rating.

(k) The TEA will issue a preliminary financial accountability rating to a school district or an open-enrollment charter school on or before August 8 of each year. The TEA will base the financial accountability rating for a rating year on the data from the fiscal year preceding the rating year.

(1) The TEA will not delay the issuance of the preliminary or final rating if a school district or an open-enrollment charter school fails to meet the statutory deadline under the TEC, §44.008, for submitting the AFR. Instead, the school district or open-enrollment charter school will receive an F rating for substandard achievement.

(2) If the TEA receives an appeal of a preliminary rating, described by subsection (l) of this section, the TEA will issue a final

rating to the school district or open-enrollment charter school no later than 60 days after receiving the appeal.

(3) If the TEA does not receive an appeal of a preliminary rating, described by subsection (l) of this section, the preliminary rating automatically becomes a final rating 31 days after issuance of the preliminary rating.

(l) A school district or an open-enrollment charter school may appeal its preliminary financial accountability rating through the following appeals process.

(1) The TEA division responsible for financial accountability must receive a written appeal no later than 30 days after the TEA's release of the preliminary rating. The appeal must include adequate evidence and additional information that supports the school district's or open-enrollment charter school's position. Appeals received 31 days or more after TEA issues a preliminary rating will not be considered.

(2) A data error attributable to the TEA is a basis for an appeal. If a preliminary rating contains a data error attributable to the TEA, a school district or an open-enrollment charter school may submit a written appeal requesting a review of the preliminary rating.

(3) A school district or an open-enrollment charter school may appeal any adverse issue it identifies in the preliminary rating. However, the financial accountability rating system is required to apply the rules uniformly. Therefore, an error by a school district or an open-enrollment charter school in recording data or submitting data through the TEA data collection and reporting system is not a valid basis for appealing a preliminary rating and unlikely to negate concerns raised by the indicator. The appeals process is not a permissible method to correct data that were inaccurately reported by the school district or open-enrollment charter school after those data were certified as accurate. A request for exception to the rules for a school district or an open-enrollment charter school is disfavored and likely to be denied.

(4) The TEA will only consider appeals that would result in a change of the preliminary rating.

(5) The TEA division responsible for financial accountability will select an external review panel to independently oversee the appeals process.

(6) The TEA division responsible for financial accountability will submit the information provided by the school district or open-enrollment charter school to the external review panel members for review.

(7) Each external review panel member will examine the appeal and supporting documentation and will submit his or her recommendation to the TEA division responsible for financial accountability.

(8) The TEA division responsible for financial accountability will compile the recommendations and forward them to the commissioner.

(9) The commissioner will make a final ratings decision.

(m) A final rating issued by the TEA under this section may not be appealed under the TEC, §7.057, or any other law or rule.

(n) A financial accountability rating by a voluntary association is a local option of the school district or open-enrollment charter school, but it does not substitute for a financial accountability rating by the TEA.

(o) Each school district and open-enrollment charter school is required to report information and financial accountability ratings to parents, taxpayers, and other stakeholders by implementing the following reporting procedures.

(1) Each school district and open-enrollment charter school must prepare and distribute an annual financial management report in accordance with this subsection.

(2) Each school district and open-enrollment charter school must provide the public with an opportunity to comment on the report at a public hearing.

(3) The school district's or open-enrollment charter school's annual financial management report must include:

(A) a description of its financial management performance based on a comparison, provided by the TEA, of its performance on the indicators established by the commissioner and reflected in this section. The report will contain information that discloses:

(i) state-established standards; and

(ii) the school district's or open-enrollment charter school's financial management performance under each indicator for the current and previous year's financial accountability ratings;

(B) any descriptive information required by the commissioner, including:

(i) a copy of the superintendent's current employment contract or other written documentation of employment if no contract exists. This must disclose all compensation and benefits paid to the superintendent. The school district or open-enrollment charter school may publish the superintendent's employment contract on its website instead of publishing it in the annual financial management report;

(ii) a summary schedule for the fiscal year (12-month period) of expenditures paid on behalf of the superintendent and each board member and total reimbursements received by the superintendent and each board member. This includes transactions on the school district's or open-enrollment charter school's credit card(s), debit card(s), stored-value card(s), and any other similar instrument(s) to cover expenses incurred by the superintendent and each board member. The summary schedule must separately report reimbursements for meals, lodging, transportation, motor fuel, and other items. The summary schedule of total reimbursements should not include reimbursements for supplies and materials that were purchased for the operation of the school district or open-enrollment charter school;

(iii) a summary schedule for the fiscal year of the dollar amount of compensation and fees received by the superintendent from an outside school district or open-enrollment charter school or any other outside entity in exchange for professional consulting or other personal services. The schedule must separately report the amount received from each entity;

(iv) a summary schedule for the fiscal year of the total dollar amount of gifts that had a total economic value of $250 or more received by the executive officers and board members. This reporting requirement applies only to gifts received by the school district's or open-enrollment charter school's (or charter holder's) executive officers and board members (and their immediate family as described by Government Code, Chapter 573, Subchapter B, Relationships by Consanguinity or by Affinity) from an outside entity that received payments from the school district or open-enrollment charter school (or charter holder) in the prior fiscal year and to gifts from competing vendors that were not awarded contracts in the prior fiscal year. This reporting requirement does not apply to reimbursement by an outside entity for travel-related expenses when the purpose of the travel was to investigate matters directly related to an executive officer's or board member's duties or to investigate matters related to attendance at education-related conferences and seminars with the primary pur-

pose of providing continuing education (this exclusion does not apply to trips for entertainment purposes or pleasure trips). This reporting requirement excludes an individual gift or a series of gifts from a single outside entity that had a total economic value of less than $250 per executive officer or board member; and

(v) a summary schedule for the fiscal year of the dollar amount received by board members for the total amount of business transactions with the school district or open-enrollment charter school (or charter holder). This reporting requirement is not to duplicate the items disclosed in the summary schedule of reimbursements received by board members; and

(C) any other information the board of trustees of the school district or open-enrollment charter school determines to be useful.

(4) The board of trustees of each school district or open-enrollment charter school must hold a public hearing on the annual financial management report within two months after receiving a final financial accountability rating. The public hearing must be held at a location in the district's or open-enrollment charter school's facilities. The board must give notice of the hearing to owners of real estate property in the geographic boundaries of the school district or open-enrollment charter school and to parents of school district or open-enrollment charter school students. In addition to other notice required by law, the board must provide notice of the hearing:

(A) to a newspaper of general circulation in the geographic boundaries of the school district or each campus of an open-enrollment charter school once a week for two weeks prior to holding the public meeting, providing the time and place of the hearing. The first notice in the newspaper may not be more than 30 days prior to the public meeting or less than 14 days prior to the public meeting. If no newspaper is published in the county in which the district's central administration office is located or within the geographic boundaries of an open-enrollment charter school's campus, then the board must publish the notice in the county nearest to the county seat of the county in which the district's central administration office is located or in which the campus of the open-enrollment charter school is located; and

(B) through electronic mail to the mass communication media serving the school district or open-enrollment charter school, including, but not limited to, radio and television.

(5) At the hearing, the school district or open-enrollment charter school must provide the annual financial management report to the attending parents and taxpayers.

(6) The school district or open-enrollment charter school must retain the annual financial management report for at least three years after the public hearing and make it available to parents and taxpayers upon request.

(7) Each school district or open-enrollment charter school that received an F rating must file a corrective action plan with the TEA, prepared in accordance with instructions from the commissioner, within one month after the school district's or open-enrollment charter school's public hearing. The commissioner may require certain information in the corrective action plan to address the factor(s) that may have contributed to a school district's or an open-enrollment charter school's F rating.

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 August 22, 2016.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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Proposal publication date: June 24, 2016
For further information, please call: (512) 475-1497

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PART 8. WINDHAM SCHOOL DISTRICT

CHAPTER 300. GENERAL PROVISIONS

19 TAC §300.1

The Windham School District Board of Trustees adopts amendments to §300.1, concerning Public Presentations and Comments to the Windham School District Board of Trustees, without changes to the proposed text as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4918).

The adopted amendments are necessary to conform the rule to legislation from the 84th legislative session that prohibits the possession of firearms by anyone other than law enforcement at an open meeting.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.007, §492.013, Chapter 551; Texas Penal Code §30.06, §30.07.

Cross Reference to Statutes: None.

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 August 22, 2016.

TRD-201604286
Michael Mondville
General Counsel
Windham School District
Effective date: September 11, 2016
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For further information, please call: (936) 291-5300

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

Introduction. The Texas Board of Architectural Examiners (Board) adopts amendments to §1.174, concerning Complaint Process; §1.177, concerning Administrative Penalty Schedule; and §1.232, concerning Board Responsibilities. The amendments are adopted without changes to the proposed text published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4920).

Reasoned Justification. The amendments to §1.174 update the Board's requirements relating to the issuance of warnings in disciplinary matters. The adopted rule clarifies that a warning is available only if the violation in question is the sole violation of the Board's laws and rules, and the Respondent has not previously been subject to a Board warning or order. The purpose of these amendments is to provide greater clarity of the longstanding practice of the Board, and to give the executive director more definite guidance in the issuance of warnings.

Additionally, adopted subsection (j)(4) identifies the specific violations of the Board's laws and rules that may be resolved with a warning. Previously, the rule stated that a warning could be issued if the guidelines in §1.232 recommended an administrative penalty or reprimand as an appropriate sanction. This language created some confusion about whether the rule could be interpreted to mean that a warning was available if the guidelines recommended an administrative penalty but not a reprimand, or the guidelines recommended other penalties in addition to an administrative penalty or reprimand. This was not the interpretation of the Board, and the rule change will eliminate this issue by specifically identifying violations of the Board's rules that are appropriate for the issuance of a warning. The adopted rule will provide more definite guidance for the executive director and aligns with current Board practices in issuing warnings.

Additionally, the adopted rule clarifies that the issuance of a warning is at the sole discretion of the executive director and is not an available sanction following a contested case under the Administrative Procedure Act. This is consistent with current Board practice and the Board's interpretation of the previous rule.

Additionally, former §1.174(j)(1) has been repealed. This subsection required the Board, prior to approval of a proposed settlement agreement, to notify a complainant of the terms of any agreement, and the date, time, and location of the meeting during which the Board would consider the agreement. The previous rule implemented procedures that were more strenuous than the statutory requirement under Tex. Occ. Code §1051.253, which requires the Board to provide all complainants with a quarterly status update of the Board's investigation until disposition of the complaint. The repealed rule is unnecessary to protect the complainant's role in the investigative process, in that, in addition to quarterly status updates, each complainant is given an opportunity to provide documentary evidence and testimony regarding any alleged violation, and under §1.174(m), any complainant may file a request for reconsideration of any dismissed complaint. Furthermore, in situations where a complainant sought to provide testimony on a proposed settlement, application of the repealed rule could have led to the Board's inappropriate consideration of evidence outside of the administrative record, if the settlement was rejected by the Board and the case referred to SOAH for formal adjudication. The determination of the appropriate sanction in a disciplinary action is a matter of law that is wholly within the purview of the Board, and any marginal benefit of complainant testimony during the consideration of a proposed settlement is outweighed by the danger presented by potential violations of the Administrative Procedure Act, as described.

The adopted amendments to §1.177 revise the Board's rule relating to the imposition of administrative penalties. First, the adopted rule alters the Board's process for imposing a minor, moderate, or major penalty. Previously, the rule directed the Board to identify a given violation as minor, moderate, or major based upon an analysis of three factors: seriousness of misconduct, economic harm, and sanction history. The consideration of "seriousness of misconduct" under the previous rule was heavily dependent on proving the state of mind of the Respondent. The determination of negligence, gross negligence, or recklessness is subjective, and could result in an unpredictable battle of experts at hearing. Uncertainty regarding penalty recommendations following a hearing inhibits informed consideration of proposed settlement by staff, the Board, and Respondents. Furthermore, the precedence placed on disciplinary history and economic harm in recommending a sanction level under the previous rule could have resulted in an otherwise serious violation being considered minor if the Respondent did not have disciplinary history or the Board lacked evidence on economic harm, which is often the case. In light of these concerns, paragraph (1) of the adopted rule repeals the three-factor analysis, and instead specifically states that particular violations of the Board's laws and rules are appropriate for minor, moderate, or major penalties, as identified. The Board has determined that the adopted rule will result in more predictable determinations of penalty amounts, and that these determinations will be more consistent with the Board's understanding of the severity of any given violation.

Additionally, the adopted rule increases the maximum penalties for minor and moderate penalties from $500 to $1,000, and $2,000 to $3,000, respectively. This allows the Board greater flexibility in determining the appropriate administrative penalty, and, along with the maximum penalty of $5,000 for major violations, results in a more even distribution of minor, moderate, and major penalties within the $0 -$5,000 administrative penalty range established under Tex. Occ. Code §1051.452(a).

Additionally, the adopted rule directs the Board to consider the factors in Board Rules 1.141(c) and/or 1.165(f) in determining the specific amount of an administrative penalty within the minor, moderate, or major penalty range, or in determining the appropriate administrative penalty for a violation of the Board's laws or rules that has not been specifically defined as a minor, moderate, or major violation. The adopted rule enables the Board to impose an increased administrative penalty if the Respondent has previously been found to have violated the Board's laws or rules, or if the Respondent has committed multiple violations of the Board's laws or rules, and to consider each sheet of architectural plans issued in violation of the Board's laws as a separate violation. Finally, the adopted rule clarifies the Board's authority to impose administrative penalties in addition to other sanctions, such as revocation, suspension, or a refusal to renew a registration. These amendments provide greater notice to the public of the Board's processes in determining administrative penalties, allows case-by-case analysis of relevant facts to determine appropriate administrative penalties in disciplinary matters, and provides greater guidance to the Board that will promote more predictable and consistent determinations of administrative penalty amounts.

The adopted amendments to §1.232 revise the Board's guidelines that are used to identify the range of sanctions, in addition to administrative penalties, that are appropriate for certain violations of the Board's laws and rules. These sanctions include suspension, probated suspension, revocation, denial of registration, denial of reapplication, and probationary initial registration. The adopted amendments eliminate a reprimand as a potential ground for discipline. This amendment updates the Board rules to become more consistent with current Board practices, given that a reprimand has not been imposed since 2004.

Additionally, the adopted amendments include the addition of statutory and rule violations that were not previously included in the guidelines. This will allow the guidelines to be more comprehensive, and result in greater predictability in the imposition of disciplinary action.

Additionally, the adopted amendments delete procedural information relating to filing of exceptions and replies to exceptions. The former rule provided twenty days to file exceptions and fifteen days to file replies. This differs from the rule at the State Office of Administrative Hearings (1 TAC §155.507), which allows 15 days for each. In order to simplify the Board's regulations and procedures, the rule has been deleted, and the Board will rely upon SOAH's rule.

Additionally, the adopted rule implements Government Code §2001.141, which requires a final decision or order to include a ruling on each proposed finding of fact or conclusion of law submitted by a party under an agency rule. This rule change will allow the Board or Respondent to submit particular issues to a SOAH judge, thereby providing focus on matters that are most relevant to any given case.

Finally, the adopted amendment clarifies the Board's authority to impose administrative penalties in addition to other sanctions, such as revocation, suspension, or a refusal to renew a registration, and to impose a more severe sanction for a Respondent who has previous disciplinary history with the Board.This allows the Board greater flexibility in making determinations relating to sanctions, and is consistent with historical Board practices.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rule.

SUBCHAPTER I. DISCIPLINARY ACTION

22 TAC §1.174, §1.177

Statutory Authority.

The amendments are adopteded under the Occupations Code §§1051.202, 1051.252, 1051.401, 1051.451, 1051.452, 1051.501, 1051.751, and 1051.752.

Section 1051.202 provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapters 1051, 1052, and 1053 of the Texas Occupations Code.

Section 1051.252 requires the board to adopt rules to establish a comprehensive procedure for receiving and adjudicating complaints from consumers and service recipients, including procedures regarding sanctions.

Section 1051.401 requires the Board to establish procedures by which a decision to suspend or revoke or a refusal to renew a certificate of registration is made by the board.

Section 1051.451 authorizes the Board to impose an administrative penalty on a person who engages in conduct for which the person is subject to disciplinary action under Chapters 1051, 1052, or 1053, regardless of whether the person holds a certificate of registration.

Section 1051.452 requires the Board to adopt an administrative penalty schedule for violations of Board laws and rules to ensure that the amounts of penalties imposed are appropriate to the violation.

Section 1051.501 grants the board general enforcement authority to ensure that enforcement action is taken against a person who violates Chapters 1051, 1052, or 1053.

Section 1051.751, authorizes the Board to revoke, suspend, or refuse to renew a certificate of registration; reprimand a certificate holder; or impose an administrative penalty on a person following a determination that a ground for discipline exists under §1051.752. Additionally, the Board is authorized to place a registrant on probated suspension, which could include regular reports to the Board, practice limitations, or remedial education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

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 August 22, 2016.

TRD-201604296
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Effective date: September 11, 2016
Proposal publication date: July 8, 2016
For further information, please call: (512) 305-8519

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SUBCHAPTER L. HEARINGS--CONTESTED CASES

22 TAC §1.232

Statutory Authority.

The amendments are adopted under the Occupations Code §§1051.202, 1051.252, 1051.401, 1051.451, 1051.452, 1051.501, 1051.751, and 1051.752.

Section 1051.202 provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapters 1051, 1052, and 1053 of the Texas Occupations Code.

Section 1051.252 requires the board to adopt rules to establish a comprehensive procedure for receiving and adjudicating complaints from consumers and service recipients, including procedures regarding sanctions.

Section 1051.401 requires the Board to establish procedures by which a decision to suspend or revoke or a refusal to renew a certificate of registration is made by the board.

Section 1051.451 authorizes the Board to impose an administrative penalty on a person who engages in conduct for which the person is subject to disciplinary action under Chapters 1051, 1052, or 1053, regardless of whether the person holds a certificate of registration.

Section 1051.452 requires the Board to adopt an administrative penalty schedule for violations of Board laws and rules to ensure that the amounts of penalties imposed are appropriate to the violation.

Section 1051.501 grants the board general enforcement authority to ensure that enforcement action is taken against a person who violates Chapters 1051, 1052, or 1053.

Section 1051.751, authorizes the Board to revoke, suspend, or refuse to renew a certificate of registration; reprimand a certificate holder; or impose an administrative penalty on a person following a determination that a ground for discipline exists under §1051.752. Additionally, the Board is authorized to place a

registrant on probated suspension, which could include regular reports to the Board, practice limitations, or remedial education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

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 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 100. GENERAL PROVISIONS

22 TAC §100.6

The State Board of Dental Examiners (Board) adopts new rule §100.6, relating to executive committees. The rule is adopted without changes to the proposed text as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4935).

This rule explains the processes and procedures for the establishment of executive committees of the board.

The board received no written comments regarding this rule.

The new rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this new rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201604219
Kelly Parker
Executive Director
State Board of Dental Examiners
Effective date: September 6, 2016
Proposal publication date: July 8, 2016
For further information, please call: (512) 475-0977

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22 TAC §100.7

The State Board of Dental Examiners (Board) adopts new rule §100.7, relating to standing committees. The rule is adopted without changes to the proposed text as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4936).

This rule explains the processes and procedures for the establishment of standing committees of the board.

The board received no written comments regarding this rule.

The new rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this new rule.

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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Kelly Parker
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 475-0977

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22 TAC §100.8

The State Board of Dental Examiners (Board) adopts new rule §100.8, relating to ad hoc committees. The rule is adopted without changes to the proposed text as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4936).

This rule explains the processes and procedures for the establishment of ad hoc committees of the board.

The board received no written comments regarding this rule.

The new rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this new rule.

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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Kelly Parker
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State Board of Dental Examiners
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Proposal publication date: July 8, 2016
For further information, please call: (512) 475-0977

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22 TAC §100.9

The State Board of Dental Examiners (Board) adopts new rule §100.9 relating to advisory committees and workgroups established by the board. The rule is adopted with nonsubstantive changes to the proposed text as published in the July 8, 2016,

issue of the *Texas Register* (41 TexReg 4936). The section title was reworded from "Advisory Committees and Workgroups Established the Board" to "Advisory Committees and Workgroups Established by the Board." The section is republished below.

This rule explains the processes and procedures for the establishment of advisory committees and workgroups established by the board

The board received no written comments regarding this rule.

The new rules is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this new rule.

§100.9. Advisory Committees and Workgroups Established by the Board.

(a) In addition to any specific statutory authority to establish particular advisory committees, the board may authorize advisory committees from outside the board's membership to advise the board on rulemaking, pursuant to §2001.031 of the Texas Government Code and subject to chapter 2110 of the Texas Government Code, State Agency Advisory Committees.

(b) Creation and dissolution. The board, in a regularly scheduled meeting, may vote to establish advisory committees and workgroups from outside the board's membership to address specific subjects, purposes, or ends. Unless continued by a vote of the board, advisory committees and workgroups outside the board's membership are abolished the sooner of one year from the date of creation or when the specific subject, purpose, or end for which the advisory committee or workgroup was established, have been served.

(c) Chair. Each advisory committee or workgroup shall select from among its members a chairperson who shall preside over the advisory committee or workgroup and shall report to the board or agency as needed.

(d) Membership. The presiding officer shall determine the method by which members are designated to the advisory committee or workgroup. The membership of an advisory committee must provide a balanced representation between members of the dental industry and consumers of the dental industry. Advisory committee and workgroup members shall serve terms as determined by the board.

(e) Board member liaisons. The presiding officer may appoint board member or board members to serve as a liaison(s) to an advisory committee or workgroup and report to the board the recommendations of the advisory committee or workgroup for consideration by the board. The role of a board member liaison is limited to clarifying the board's charge and intent to the advisory committee or workgroup.

(f) Agency staff liaisons. The executive director of the agency may assign agency staff to assist the advisory committee and workgroup.

(g) Meetings and participation. All meetings shall be open to the public and noticed on the Secretary of State's website to allow the public an opportunity to participate.

(h) Purpose. The board rule establishing the advisory committee or workgroup shall state the purpose and tasks of the committee and describe the manner in which the committee will report to the board.

(i) Committee actions. The actions of advisory committees are recommendations only.

(j) The following is an advisory committee and workgroup established by the board or established by statute: Dental Hygiene Advisory Committee, established by Subchapter B of Chapter 262 of the Texas Occupations 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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Kelly Parker
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 475-0977

22 TAC §100.11

The State Board of Dental Examiners (Board) adopts new rule §100.11, relating to stakeholder meetings convened by the staff. The rule is adopted without changes to the proposed text as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4939).

This rule explains the processes and procedures for stakeholder meetings convened by staff.

The board received no written comments regarding this rule.

This new rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this new rule.

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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Kelly Parker
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State Board of Dental Examiners
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For further information, please call: (512) 475-0977

CHAPTER 107. DENTAL BOARD PROCEDURES

SUBCHAPTER B. PROCEDURES FOR INVESTIGATING COMPLAINTS

22 TAC §§107.100 - 107.108, 107.110

The Texas State Board of Dental Examiners adopts the repeal of rules §§107.100 - 108 and 107.110, relating to complaint procedures. The repeal of this rule is adopted without changes to

the proposed text as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4939).

The repeal of §§107.100 - 108 and 107.110 is necessary because the Board proposed re-organization of the chapter. The rules will be replaced with new rules that seek to better explain the board's process for receiving and investigating complaints.

The Board received no written comments regarding the proposed repeal.

The repeal of §§107.100 - 108 and 107.110 is adopted under Texas Occupations Code §254.001(a). The Board interprets §254.001(a) to give the Board authority to adopt rules necessary to perform its duties and ensure compliance with state law relating to the practice of dentistry to protect the public health and safety. No other statutes, articles, or codes are affected by the repeal of this rule.

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 August 17, 2016.

TRD-201604216
Kelly Parker
Executive Director
State Board of Dental Examiners
Effective date: September 6, 2016
Proposal publication date: July 8, 2016
For further information, please call: (512) 475-0977

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22 TAC §§107.100 - 107.109

The State Board of Dental Examiners (Board) adopts new §§107.100 - 107.109, relating to complaint procedures. The rules are adopted without changes to the proposed text as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4940).

These rules explain the processes and procedures for investigating complaints.

The board received one written comment regarding adopted new rule §107.102:

The Texas Dental Association (TDA) submitted a written comment relating to the closure of a complaint that is submitted to the board without the name and contact information of the complainant. TDA noted that it supports the board's acceptance and investigation of anonymous complaints where there is sufficient information to investigate the complaint.

The board agrees with TDA's position that all jurisdictional anonymous complaints should be investigated but disagrees that the rule should explicitly mention anonymous complaints. The board anticipates no change to the agency's investigation of anonymous complaints as a result of the adoption of this rule. Currently, a complaint is closed in the preliminary inquiry period if the agency cannot identify probable cause to proceed with the investigation. The rule change merely provides notice to the public that a lack of information in a complaint may result in an inability for the agency to identify probable cause to proceed from a preliminary inquiry/investigation to the commencement of an official complaint/official investigation. This reflects the current process, and the rule change introduces no additional discretion on the part of agency staff to dispose of anonymous complaints.

The board received one written comment regarding adopted new rule §107.103:

The Texas Dental Association (TDA) submitted a written comment expressing two concerns regarding the proposed rule: whether the agency would continue to investigate and prosecute allegations related to the unlicensed practice of dentistry, and whether the preliminary investigation would be conducted by a license dentist or a licensed dental hygienist.

In response to the first inquiry, the board believes that the proposed rule more adequately expresses the board's authority to investigate and prosecute allegations of the unlicensed practice of dentistry, as well as other violations of the Dental Practice Act committed by non-dentists. The new rule captures the fact that the board should investigation any violation of the subtitle or board rules. Unlicensed practice of dentistry is a violation of the Dental Practice Act and the board intends no change to its investigation and prosecution of unlicensed practice of dentistry.

In response to the second inquiry, the board disagrees with TDA's recommended language. The new rule contemplates no change from the current rules and practices of the agency.

These new rules are adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety. Texas Occupations Code §255 requires the board to adopt rules related to complaint investigation and disposition.

No statutes are affected by these new rules.

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 August 17, 2016.

TRD-201604218
Kelly Parker
Executive Director
State Board of Dental Examiners
Effective date: September 6, 2016
Proposal publication date: July 8, 2016
For further information, please call: (512) 475-0977

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PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 133. LICENSING

The Texas Board of Professional Engineers (Board) adopts amendments to §133.27, concerning Application for Temporary License for Engineers Currently Licensed Outside the United States; §133.41, concerning Supplementary Experience Record; and §133.43, concerning Experience Evaluation, without changes to the proposed text as published in the June 17, 2016, issue of the *Texas Register* (41 TexReg 4378) and will not be republished.

The adopted rule changes to §133.27 implement a licensing agreement between the Texas Board of Professional Engineers

and the Republic of Korea. South Korea (The Republic of Korea) has been added to the existing rule for Temporary Licenses that currently addresses Australia, Canada and Mexico. The agreement was signed on March 10, 2016.

The adopted rule changes to §133.41 and §133.43 implement process changes related to enhancing engagement of Engineers in Training. These changes allow a person to demonstrate enhanced competence and readiness for licensure on the license application by including information on the Supplementary Experience Record regarding additional training and participation in professional organizations.

The Board received no comments for or against the proposed rule changes. No changes were made to the rules as proposed.

SUBCHAPTER C. PROFESSIONAL ENGINEER LICENSE APPLICATION REQUIREMENTS

22 TAC §133.27

The amendment is adopted pursuant to Texas Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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 August 22, 2016.

TRD-201604312
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: September 11, 2016
Proposal publication date: June 17, 2016
For further information, please call: (512) 440-7723

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SUBCHAPTER E. EXPERIENCE

22 TAC §133.41, §133.43

The amendments are adopted pursuant to Texas Occupations Code §1001.202, which authorizes the Board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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 August 22, 2016.

TRD-201604313
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: September 11, 2016
Proposal publication date: June 17, 2016
For further information, please call: (512) 440-7723

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PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §273.4

The Texas Optometry Board adopts amendments to §273.4 without changes to the proposed section as published in the June 17, 2016, issue of the *Texas Register* (41 TexReg 4380).

The amendments set fees for license renewal of active Optometric Glaucoma Specialists. The addition to the fee will fund the agency's contribution to the costs of the Prescription Monitoring Program as set out in Senate Bill 195, Regular Session, 84th Legislature.

No comments were received.

The amendment is adopted under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.152, and Senate Bill 195, Regular Session, 84th Legislature. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §351.152 as authorizing the agency to set license renewal fees, and Senate Bill 195, Regular Session, 84th Legislature, as authorizing the agency to increase renewal fees to fund the Prescription Monitoring Program.

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 August 17, 2016.

TRD-201604199
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: September 6, 2016
Proposal publication date: June 17, 2016
For further information, please call: (512) 305-8500

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PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.8

The Texas State Board of Pharmacy adopts amendments to §281.8, concerning Grounds for Discipline for a Pharmacy

License. The amendments are adopted without changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4588).

The amendments implement provisions of SB 460 which amends the Texas Pharmacy Act to include waiving, discounting, reducing, or offering to waive, discount, or reduce a patient copayment or deductible for a compounded drug.

The Alliance of Independent Pharmacists of Texas (AIP) expressed concern about pharmacies complying with the subjective nature of the rule. AIP suggested that the board provide additional guidance for documenting financial hardships. The Board disagrees with the comment and the amendments comply with what is already in law. Richie Ray commented in support of the rule.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations 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.

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

TRD-201604293
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Effective date: September 11, 2016
Proposal publication date: June 24, 2016
For further information, please call: (512) 305-8028

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SUBCHAPTER B. GENERAL PROCEDURES IN A CONTESTED CASE

22 TAC §281.31

The Texas State Board of Pharmacy adopts amendments to §281.31, concerning Burden of Proof. The amendments are adopted without changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4590).

The amendments clarify the rules for show cause order hearings.

Richie Ray commented in support of the rule.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations 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.

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

TRD-201604295
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Effective date: September 11, 2016
Proposal publication date: June 24, 2016
For further information, please call: (512) 305-8028

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SUBCHAPTER C. DISCIPLINARY GUIDELINES

22 TAC §281.66

The Texas State Board of Pharmacy adopts amendments to §281.66, concerning Application for Reissuance or Removal of Restrictions of a License or Registration. The amendments are adopted without changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4590).

The amendments correct grammar in the rule.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations 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.

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

TRD-201604297
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Effective date: September 11, 2016
Proposal publication date: June 24, 2016
For further information, please call: (512) 305-8028

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CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.12

The Texas State Board of Pharmacy adopts amendments to §283.12, concerning Licenses for Military Service Members, Military Veterans, and Military Spouses. The amendments are adopted without changes to the proposed text as published in

the June 24, 2016, issue of the *Texas Register* (41 TexReg 4591).

The amendments eliminate the provisions allowing individuals who are unable to obtain a social security number, to provide an individual taxpayer identification number in lieu of a social security number because a social security number is required in order to process criminal background checks.

Richie Ray commented in support of the rule.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations 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.

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

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Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Effective date: September 11, 2016
Proposal publication date: June 24, 2016
For further information, please call: (512) 305-8028

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CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.1

The Texas State Board of Pharmacy adopts amendments to §291.1, concerning Pharmacy License Application. The amendments are adopted without changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4593).

The amendments eliminate the provisions allowing individuals who are unable to obtain a social security number to provide an individual taxpayer identification number in lieu of a social security number, because a social security number is required in order to process criminal background checks.

Richie Ray commented in support of the rule.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations 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 B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.33

The Texas State Board of Pharmacy adopts amendments to §291.33, concerning Operational Standards. The amendments are adopted with changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4596).

The amendments require pharmacies that ship prescription medications to ensure the medication is maintained at an appropriate temperature range to maintain the integrity of the medication throughout the delivery process.

The Coalition for Nurses in Advanced Practice provided grammatical corrections. The Board agrees with the changes and made the changes suggested.

Richie Ray suggested that since the time frame for filing a change of name application was eliminated in §291.33, the time frame should be updated in §291.3. The Board agrees with the suggestion and will update §291.3 at a future time.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.33. Operational Standards.

(a) Licensing requirements.

(1) A Class A pharmacy shall register annually or biennially with the board on a pharmacy license application provided by the board, following the procedures as specified in §291.1 of this title (relating to Pharmacy License Application).

(2) A Class A pharmacy which changes ownership shall notify the board within ten days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(3) A Class A pharmacy which changes location and/or name shall notify the board as specified in §291.3 of this title.

(4) A Class A pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writ-

ing of the names of the new managing officers within ten days of the change, following the procedures as specified in §291.3 of this title.

(5) A Class A pharmacy shall notify the board in writing within ten days of closing, following the procedures as specified in §291.5 of this title (relating to Closing a Pharmacy).

(6) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(7) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance and renewal of a license and the issuance of an amended license.

(8) A Class A pharmacy, licensed under the provisions of the Act, §560.051(a)(1), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(2) concerning Nuclear Pharmacy (Class B), is not required to secure a license for such other type of pharmacy; provided, however, such licensee is required to comply with the provisions of Subchapter C of this chapter (relating to Nuclear Pharmacy (Class B)), to the extent such sections are applicable to the operation of the pharmacy.

(9) A Class A pharmacy engaged in the compounding of non-sterile preparations shall comply with the provisions of §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations).

(10) A Class A pharmacy shall not compound sterile preparations.

(11) A Class A pharmacy engaged in the provision of remote pharmacy services, including storage and dispensing of prescription drugs, shall comply with the provisions of §291.121 of this title (relating to Remote Pharmacy Services).

(12) Class A pharmacy engaged in centralized prescription dispensing and/or prescription drug or medication order processing shall comply with the provisions of §291.123 of this title (relating to Centralized Prescription Drug or Medication Order Processing) and/or §291.125 of this title (relating to Centralized Prescription Dispensing).

(b) Environment.

(1) General requirements.

(A) The pharmacy shall be arranged in an orderly fashion and kept clean. All required equipment shall be clean and in good operating condition.

(B) A Class A pharmacy shall have a sink with hot and cold running water within the pharmacy, exclusive of restroom facilities, available to all pharmacy personnel and maintained in a sanitary condition.

(C) A Class A pharmacy which serves the general public shall contain an area which is suitable for confidential patient counseling.

(i) Such counseling area shall be:

(I) easily accessible to both patient and pharmacists and not allow patient access to prescription drugs; and

(II) designed to maintain the confidentiality and privacy of the pharmacist/patient communication.

(ii) In determining whether the area is suitable for confidential patient counseling and designed to maintain the confidentiality and privacy of the pharmacist/patient communication, the board may consider factors such as the following:

(I) the proximity of the counseling area to the check-out or cash register area;

(II) the volume of pedestrian traffic in and around the counseling area;

(III) the presence of walls or other barriers between the counseling area and other areas of the pharmacy; and

(IV) any evidence of confidential information being overheard by persons other than the patient or patient's agent or the pharmacist or agents of the pharmacist.

(D) The pharmacy shall be properly lighted and ventilated.

(E) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs. The temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration.

(F) Animals, including birds and reptiles, shall not be kept within the pharmacy and in immediately adjacent areas under the control of the pharmacy. This provision does not apply to fish in aquariums, service animals accompanying disabled persons, or animals for sale to the general public in a separate area that is inspected by local health jurisdictions.

(G) If the pharmacy has flammable materials, the pharmacy shall have a designated area for the storage of flammable materials. Such area shall meet the requirements set by local and state fire laws.

(2) Security.

(A) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of prescription drugs, and records for such drugs.

(B) The prescription department shall be locked by key, combination or other mechanical or electronic means to prohibit unauthorized access when a pharmacist is not on-site except as provided in subparagraphs (C) and (D) of this paragraph and paragraph (3) of this subsection. The following is applicable:

(i) If the prescription department is closed at any time when the rest of the facility is open, the prescription department must be physically or electronically secured. The security may be accomplished by means such as floor to ceiling walls; walls, partitions, or barriers at least 9 feet 6 inches high; electronically monitored motion detectors; pull down sliders; or other systems or technologies that will secure the pharmacy from unauthorized entrance when the pharmacy is closed. Pharmacies licensed prior to June 1, 2009, shall be exempt from this provision unless the pharmacy changes location. Change of location shall include the relocation of the pharmacy within the licensed address. A pharmacy licensed prior to June 1, 2009 that files a change of ownership but does not change location shall be exempt from the provisions.

(ii) The pharmacy's key, combination, or other mechanical or electronic means of locking the pharmacy may not be duplicated without the authorization of the pharmacist-in-charge or owner.

(iii) At a minimum, the pharmacy must have a basic alarm system with off-site monitoring and perimeter and motion sensors. The pharmacy may have additional security by video surveillance camera systems.

(C) Prior to authorizing individuals to enter the prescription department, the pharmacist-in-charge or owner may des-

ignate persons who may enter the prescription department to perform functions, other than dispensing functions or prescription processing, documented by the pharmacist-in-charge including access to the prescription department by other pharmacists, pharmacy personnel and other individuals. The pharmacy must maintain written documentation of authorized individuals other than individuals employed by the pharmacy who accessed the prescription department when a pharmacist is not on-site.

(D) Only persons designated either by name or by title including such titles as "relief" or "floater" pharmacist, in writing by the pharmacist-in-charge may unlock the prescription department except in emergency situations. An additional key to or instructions on accessing the prescription department may be maintained in a secure location outside the prescription department for use during an emergency or as designated by the pharmacist-in-charge.

(E) Written policies and procedures for the pharmacy's security shall be developed and implemented by the pharmacist-in-charge and/or the owner of the pharmacy. Such policies and procedures may include quarterly audits of controlled substances commonly abused or diverted; perpetual inventories for the comparison of the receipt, dispensing, and distribution of controlled substances; monthly reports from the pharmacy's wholesaler(s) of controlled substances purchased by the pharmacy; opening and closing procedures; product storage and placement; and central management oversight.

(3) Temporary absence of pharmacist.

(A) On-site supervision by pharmacist.

(i) If a pharmacy is staffed by only one pharmacist, the pharmacist may leave the prescription department for short periods of time without closing the prescription department and removing pharmacy technicians, pharmacy technician trainees, and other pharmacy personnel from the prescription department provided the following conditions are met:

(I) at least one pharmacy technician remains in the prescription department;

(II) the pharmacist remains on-site at the licensed location of the pharmacy and is immediately available;

(III) the pharmacist reasonably believes that the security of the prescription department will be maintained in his or her absence. If in the professional judgment of the pharmacist, the pharmacist determines that the prescription department should close during his or her absence, then the pharmacist shall close the prescription department and remove the pharmacy technicians, pharmacy technician trainees, and other pharmacy personnel from the prescription department during his or her absence; and

(IV) a notice is posted which includes the following information:

(-a-) the pharmacist is on a break and the time the pharmacist will return; and

(-b-) pharmacy technicians may begin the processing of prescription drug orders or refills brought in during the pharmacist's absence, but the prescription or refill may not be delivered to the patient or the patient's agent until the pharmacist verifies the accuracy of the prescription.

(ii) During the time a pharmacist is absent from the prescription department, only pharmacy technicians who have completed the pharmacy's training program may perform the following duties, provided a pharmacist verifies the accuracy of all acts, tasks, and functions performed by the pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent:

(I) initiating and receiving refill authorization requests;

(II) entering prescription data into a data processing system;

(III) taking a stock bottle from the shelf for a prescription;

(IV) preparing and packaging prescription drug orders (e.g., counting tablets/capsules, measuring liquids, or placing them in the prescription container);

(V) affixing prescription labels and auxiliary labels to the prescription container; and

(VI) prepackaging and labeling prepackaged drugs.

(iii) Upon return to the prescription department, the pharmacist shall:

(I) conduct a drug regimen review as specified in subsection (c)(2) of this section; and

(II) verify the accuracy of all acts, tasks, and functions performed by the pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent.

(iv) An agent of the pharmacist may deliver a previously verified prescription to the patient or his or her agent provided a record of the delivery is maintained containing the following information:

(I) date of the delivery;

(II) unique identification number of the prescription drug order;

(III) patient's name;

(IV) patient's phone number or the phone number of the person picking up the prescription; and

(V) signature of the person picking up the prescription.

(v) Any prescription delivered to a patient when a pharmacist is not in the prescription department must meet the requirements for a prescription delivered to a patient as described in subsection (c)(1)(F) of this section.

(vi) During the times a pharmacist is absent from the prescription department a pharmacist intern shall be considered a registered pharmacy technician and may perform only the duties of a registered pharmacy technician.

(vii) In pharmacies with two or more pharmacists on duty, the pharmacists shall stagger their breaks and meal periods so that the prescription department is not left without a pharmacist on duty.

(B) Pharmacist is off-site.

(i) The prescription department must be secured with procedures for entry during the time that a pharmacy is not under the continuous on-site supervision of a pharmacist and the pharmacy is not open for pharmacy services.

(ii) Pharmacy technicians and pharmacy technician trainees may not perform any duties of a pharmacy technician or pharmacy technician trainee during the time that the pharmacist is off-site.

(iii) A pharmacy may use an automated storage and distribution device as specified in subsection (i) of this section for

pick-up of a previously verified prescription by a patient or patient's agent, provided the following conditions are met:

(I) a notice is posted which includes the following information:

(-a-) the pharmacist is off-site and not present in the pharmacy;

(-b-) no new prescriptions may be prepared at the pharmacy but previously verified prescriptions may be delivered to the patient or the patient's agent; and

(-c-) the date/time when the pharmacist will return;

(II) the pharmacy must maintain documentation of the absences of the pharmacist(s); and

(III) the prescription department is locked and secured to prohibit unauthorized entry.

(iv) An agent of the pharmacist may deliver a previously verified prescription to a patient or patient's agent during short periods of time when a pharmacist is off-site, provided the following conditions are met:

(I) short periods of time may not exceed two consecutive hours in a 24 hour period;

(II) a notice is posted which includes the following information:

(-a-) the pharmacist is off-site and not present in the pharmacy;

(-b-) no new prescriptions may be prepared at the pharmacy but previously verified prescriptions may be delivered to the patient or the patient's agent; and

(-c-) the date/time when the pharmacist will return;

(III) the pharmacy must maintain documentation of the absences of the pharmacist(s); and

(IV) the prescription department is locked and secured to prohibit unauthorized entry.

(v) During the time a pharmacist is absent from the prescription department and is off-site, a record of prescriptions delivered must be maintained and contain the following information:

(I) date and time of the delivery;

(II) unique identification number of the prescription drug order;

(III) patient's name;

(IV) patient's phone number or the phone number of the person picking up the prescription; and

(V) signature of the person picking up the prescription.

(vi) Any prescription delivered to a patient when a pharmacist is not on-site at the pharmacy must meet the requirements for a prescription delivered to a patient as described in subsection (c)(1)(F) of this section.

(c) Prescription dispensing and delivery.

(1) Patient counseling and provision of drug information.

(A) To optimize drug therapy, a pharmacist shall communicate to the patient or the patient's agent, information about the prescription drug or device which in the exercise of the pharmacist's professional judgment the pharmacist deems significant, such as the following:

(i) name and description of the drug or device;

(ii) dosage form, dosage, route of administration, and duration of drug therapy;

(iii) special directions and precautions for preparation, administration, and use by the patient;

(iv) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(v) techniques for self-monitoring of drug therapy;

(vi) proper storage;

(vii) refill information; and

(viii) action to be taken in the event of a missed dose.

(B) Such communication shall be:

(i) provided to new and existing patients of a pharmacy with each new prescription drug order. A new prescription drug order is one that has not been dispensed by the pharmacy to the patient in the same dosage and strength within the last year;

(ii) provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent;

(iii) communicated orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits such oral communication;

(iv) documented by recording the initials or identification code of the pharmacist providing the counseling in the prescription dispensing record as follows:

(I) on the original hard-copy prescription, provided the counseling pharmacist clearly records his or her initials on the prescription for the purpose of identifying who provided the counseling;

(II) in the pharmacy's data processing system;

(III) in an electronic logbook; or

(IV) in a hard-copy log; and

(v) reinforced with written information relevant to the prescription and provided to the patient or patient's agent. The following is applicable concerning this written information.

(I) Written information must be in plain language designed for the patient and printed in an easily readable font comparable to but no smaller than ten-point Times Roman. This information may be provided to the patient in an electronic format, such as by e-mail, if the patient or patient's agent requests the information in an electronic format and the pharmacy documents the request.

(II) When a compounded preparation is dispensed, information shall be provided for the major active ingredient(s), if available.

(III) For new drug entities, if no written information is initially available, the pharmacist is not required to provide information until such information is available, provided:

(-a-) the pharmacist informs the patient or the patient's agent that the product is a new drug entity and written information is not available;

(-b-) the pharmacist documents the fact that no written information was provided; and

(-c-) if the prescription is refilled after written information is available, such information is provided to the patient or patient's agent.

(IV) The written information accompanying the prescription or the prescription label shall contain the statement "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement.

(C) Only a pharmacist may verbally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs. Non-pharmacist personnel may not ask questions of a patient or patient's agent which are intended to screen and/or limit interaction with the pharmacist.

(D) Nothing in this subparagraph shall be construed as requiring a pharmacist to provide consultation when a patient or patient's agent refuses such consultation. The pharmacist shall document such refusal for consultation.

(E) In addition to the requirements of subparagraphs (A) - (D) of this paragraph, if a prescription drug order is delivered to the patient at the pharmacy, the following is applicable.

(i) So that a patient will have access to information concerning his or her prescription, a prescription may not be delivered to a patient unless a pharmacist is in the pharmacy, except as provided in subsection (b)(3) of this section.

(ii) Any prescription delivered to a patient when a pharmacist is not in the pharmacy must meet the requirements described in subparagraph (F) of this paragraph.

(F) In addition to the requirements of subparagraphs (A) - (D) of this paragraph, if a prescription drug order is delivered to the patient or his or her agent at the patient's residence or other designated location, the following is applicable.

(i) The information as specified in subparagraph (A) of this paragraph shall be delivered with the dispensed prescription in writing.

(ii) If prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacy shall provide a toll-free telephone line which is answered during normal business hours to enable communication between the patient and a pharmacist.

(iii) The pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container in both English and Spanish the local and if applicable, toll-free telephone number of the pharmacy and the statement: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions at (insert the pharmacy's local and toll-free telephone numbers)."

(iv) The pharmacy shall maintain and use adequate storage or shipment containers and use shipping processes to ensure drug stability and potency. Such shipping processes shall include the use of appropriate packaging material and/or devices to ensure that the drug is maintained at an appropriate temperature range to maintain the integrity of the medication throughout the delivery process.

(v) The pharmacy shall use a delivery system, which is designed to assure that the drugs are delivered to the appropriate patient.

(G) The provisions of this paragraph do not apply to patients in facilities where drugs are administered to patients by a person required to do so by the laws of the state (i.e., nursing homes).

(2) Pharmaceutical care services.

(A) Drug regimen review.

(i) For the purpose of promoting therapeutic appropriateness, a pharmacist shall, prior to or at the time of dispensing a prescription drug order, review the patient's medication record. Such review shall at a minimum identify clinically significant:

(I) known allergies;

(II) rational therapy-contraindications;

(III) reasonable dose and route of administration;

(IV) reasonable directions for use;

(V) duplication of therapy;

(VI) drug-drug interactions;

(VII) drug-food interactions;

(VIII) drug-disease interactions;

(IX) adverse drug reactions; and

(X) proper utilization, including overutilization or underutilization.

(ii) Upon identifying any clinically significant conditions, situations, or items listed in clause (i) of this subparagraph, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner. The pharmacist shall document such occurrences as specified in subparagraph (C) of this paragraph.

(iii) The drug regimen review may be conducted by remotely accessing the pharmacy's electronic data base from outside the pharmacy by:

(I) an individual Texas licensed pharmacist employee of the pharmacy provided the pharmacy establishes controls to protect the privacy of the patient and the security of confidential records; or

(II) a pharmacist employed by a Class E pharmacy provided the pharmacies have entered into a written contract or agreement which outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws and regulations.

(iv) Prior to dispensing, any questions regarding a prescription drug order must be resolved with the prescriber and written documentation of these discussions made and maintained as specified in subparagraph (C) of this paragraph.

(B) Other pharmaceutical care services which may be provided by pharmacists include, but are not limited to, the following:

(i) managing drug therapy as delegated by a practitioner as allowed under the provisions of the Medical Practice Act;

(ii) administering immunizations and vaccinations under written protocol of a physician;

(iii) managing patient compliance programs;

(iv) providing preventative health care services; and

(v) providing case management of patients who are being treated with high-risk or high-cost drugs, or who are considered

"high risk" due to their age, medical condition, family history, or related concern.

(C) Documentation of consultation. When a pharmacist consults a prescriber as described in subparagraph (A) of this paragraph the pharmacist shall document on the prescription or in the pharmacy's data processing system associated with the prescription such occurrences and shall include the following information:

(i) date the prescriber was consulted;

(ii) name of the person communicating the prescriber's instructions;

(iii) any applicable information pertaining to the consultation; and

(iv) initials or identification code of the pharmacist performing the consultation clearly recorded for the purpose of identifying the pharmacist who performed the consultation.

(3) Substitution of generically equivalent drugs or interchangeable biological products. A pharmacist may dispense a generically equivalent drug or interchangeable biological product and shall comply with the provisions of §309.3 of this title (relating to Substitution Requirements).

(4) Substitution of dosage form.

(A) As specified in §562.012 of the Act, a pharmacist may dispense a dosage form of a drug product different from that prescribed, such as a tablet instead of a capsule or liquid instead of tablets, provided:

(i) the patient consents to the dosage form substitution; and

(ii) the dosage form so dispensed:

(I) contains the identical amount of the active ingredients as the dosage prescribed for the patient;

(II) is not an enteric-coated or time release product;

(III) does not alter desired clinical outcomes;

(B) Substitution of dosage form may not include the substitution of a product that has been compounded by the pharmacist unless the pharmacist contacts the practitioner prior to dispensing and obtains permission to dispense the compounded product.

(5) Therapeutic Drug Interchange. A switch to a drug providing a similar therapeutic response to the one prescribed shall not be made without prior approval of the prescribing practitioner. This paragraph does not apply to generic substitution. For generic substitution, see the requirements of paragraph (3) of this subsection.

(A) The patient shall be notified of the therapeutic drug interchange prior to, or upon delivery, of the dispensed prescription to the patient. Such notification shall include:

(i) a description of the change;

(ii) the reason for the change;

(iii) whom to notify with questions concerning the change; and

(iv) instructions for return of the drug if not wanted by the patient.

(B) The pharmacy shall maintain documentation of patient notification of therapeutic drug interchange which shall include:

(i) the date of the notification;

(ii) the method of notification;

(iii) a description of the change; and

(iv) the reason for the change.

(C) The provisions of this paragraph do not apply to prescriptions for patients in facilities where drugs are administered to patients by a person required to do so by the laws of this state if the practitioner issuing the prescription has agreed to use of a formulary that includes a listing of therapeutic interchanges that the practitioner has agreed to allow. The pharmacy must maintain a copy of the formulary including a list of the practitioners that have agreed to the formulary and the signature of these practitioners.

(6) Prescription containers.

(A) A drug dispensed pursuant to a prescription drug order shall be dispensed in a child-resistant container unless:

(i) the patient or the practitioner requests the prescription not be dispensed in a child-resistant container; or

(ii) the product is exempted from requirements of the Poison Prevention Packaging Act of 1970.

(B) A drug dispensed pursuant to a prescription drug order shall be dispensed in an appropriate container as specified on the manufacturer's container.

(C) Prescription containers or closures shall not be re-used. However, if a patient or patient's agent has difficulty reading or understanding a prescription label, a prescription container may be reused provided:

(i) the container is designed to provide audio-recorded information about the proper use of the prescription medication;

(ii) the container is reused for the same patient;

(iii) the container is cleaned; and

(iv) a new safety closure is used each time the prescription container is reused.

(7) Labeling.

(A) At the time of delivery of the drug, the dispensing container shall bear a label in plain language and printed in an easily readable font size, unless otherwise specified, with at least the following information:

(i) name, address and phone number of the pharmacy;

(ii) unique identification number of the prescription that is printed in an easily readable font size comparable to but no smaller than ten-point Times Roman;

(iii) date the prescription is dispensed;

(iv) initials or an identification code of the dispensing pharmacist;

(v) name of the prescribing practitioner;

(vi) if the prescription was signed by a pharmacist, the name of the pharmacist who signed the prescription for a dangerous drug under delegated authority of a physician as specified in Subtitle B, Chapter 157, Occupations Code;

(vii) name of the patient or if such drug was prescribed for an animal, the species of the animal and the name of the

owner that is printed in an easily readable font size comparable to but no smaller than ten-point Times Roman. The name of the patient's partner or family member is not required to be on the label of a drug prescribed for a partner for a sexually transmitted disease or for a patient's family members if the patient has an illness determined by the Centers for Disease Control and Prevention, the World Health Organization, or the Governor's office to be pandemic;

(viii) instructions for use that is printed in an easily readable font comparable to but no smaller than ten-point Times Roman;

(ix) quantity dispensed;

(x) appropriate ancillary instructions such as storage instructions or cautionary statements such as warnings of potential harmful effects of combining the drug product with any product containing alcohol;

(xi) if the prescription is for a Schedules II - IV controlled substance, the statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed";

(xii) if the pharmacist has selected a generically equivalent drug or interchangeable biological product pursuant to the provisions of the Act, Chapter 562, the statement "Substituted for Brand Prescribed" or "Substituted for 'Brand Name'" where "Brand Name" is the actual name of the brand name product prescribed;

(xiii) the name and strength of the actual drug or biological product dispensed that is printed in an easily readable size comparable to but no smaller than ten-point Times Roman, unless otherwise directed by the prescribing practitioner;

(I) The name shall be either:

(-a-) the brand name; or

(-b-) if no brand name, then the generic drug or interchangeable biological product name and name of the manufacturer or distributor of such generic drug or interchangeable biological product. (The name of the manufacturer or distributor may be reduced to an abbreviation or initials, provided the abbreviation or initials are sufficient to identify the manufacturer or distributor. For combination drug products or non-sterile compounded drug preparations having no brand name, the principal active ingredients shall be indicated on the label.)

(II) Except as provided in clause (xii) of this subparagraph, the brand name of the prescribed drug or biological product shall not appear on the prescription container label unless it is the drug product actually dispensed.

(xiv) if the drug is dispensed in a container other than the manufacturer's original container, the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the drug is dispensed or the manufacturer's expiration date, whichever is earlier. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(xv) either on the prescription label or the written information accompanying the prescription, the statement "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement.

(B) If the prescription label required in subparagraph (A) of this paragraph is printed in a type size smaller than ten-point Times Roman, the pharmacy shall provide the patient written information containing the information as specified in subparagraph (A) of this paragraph in an easily readable font comparable to but no smaller than ten-point Times Roman.

(C) The label is not required to include the initials or identification code of the dispensing pharmacist as specified in subparagraph (A) of this paragraph if the identity of the dispensing pharmacist is recorded in the pharmacy's data processing system. The record of the identity of the dispensing pharmacist shall not be altered in the pharmacy's data processing system.

(D) The dispensing container is not required to bear the label as specified in subparagraph (A) of this paragraph if:

(i) the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital);

(ii) no more than a 90-day supply is dispensed at one time;

(iii) the drug is not in the possession of the ultimate user prior to administration;

(iv) the pharmacist-in-charge has determined that the institution:

(I) maintains medication administration records which include adequate directions for use for the drug(s) prescribed;

(II) maintains records of ordering, receipt, and administration of the drug(s); and

(III) provides for appropriate safeguards for the control and storage of the drug(s); and

(v) the dispensing container bears a label that adequately:

(I) identifies the:

(-a-) pharmacy by name and address;

(-b-) unique identification number of the prescription;

(-c-) name and strength of the drug dispensed;

(-d-) name of the patient; and

(-e-) name of the prescribing practitioner or, if applicable, the name of the pharmacist who signed the prescription drug order;

(II) if the drug is dispensed in a container other than the manufacturer's original container, specifies the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the drug is dispensed or the manufacturer's expiration date, whichever is earlier. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(III) sets forth the directions for use and cautionary statements, if any, contained on the prescription drug order or required by law.

(8) Returning Undelivered Medication to Stock.

(A) As specified in §431.021(w), Health and Safety Code, a pharmacist may not accept an unused prescription or drug,

in whole or in part, for the purpose of resale or re-dispensing to any person after the prescription or drug has been originally dispensed, or sold except as provided in §291.8 of this title (relating to Return of Prescription Drugs). Prescriptions that have not been picked up by or delivered to the patient or patient's agent may be returned to the pharmacy's stock for dispensing.

(B) A pharmacist shall evaluate the quality and safety of the prescriptions to be returned to stock.

(C) Prescriptions returned to stock for dispensing shall not be mixed within the manufacturer's container.

(D) Prescriptions returned to stock for dispensing should be used as soon as possible and stored in the dispensing container. The expiration date of the medication shall be the lesser of one year from the dispensing date on the prescription label or the manufacturer's expiration date if dispensed in the manufacturer's original container.

(E) At the time of dispensing, the prescription medication shall be placed in a new prescription container and not dispensed in the previously labeled container unless the label can be completely removed. However, if the medication is in the manufacturer's original container, the pharmacy label must be removed so that no confidential patient information is released.

(d) Equipment and supplies. Class A pharmacies dispensing prescription drug orders shall have the following equipment and supplies:

(1) data processing system including a printer or comparable equipment;

(2) refrigerator;

(3) adequate supply of child-resistant, light-resistant, tight, and if applicable, glass containers;

(4) adequate supply of prescription, poison, and other applicable labels;

(5) appropriate equipment necessary for the proper preparation of prescription drug orders; and

(6) metric-apothecary weight and measure conversion charts.

(e) Library. A reference library shall be maintained which includes the following in hard-copy or electronic format:

(1) current copies of the following:

(A) Texas Pharmacy Act and rules;

(B) Texas Dangerous Drug Act and rules;

(C) Texas Controlled Substances Act and rules; and

(D) Federal Controlled Substances Act and rules (or official publication describing the requirements of the Federal Controlled Substances Act and rules);

(2) at least one current or updated reference from each of the following categories:

(A) a patient prescription drug information reference text or leaflets which are designed for the patient and must be available to the patient;

(B) a reference text on drug interactions. A separate reference is not required if other references maintained by the pharmacy contain drug interaction information including information needed to determine severity or significance of the interaction and appropriate recommendations or actions to be taken;

(C) a general information reference text, such as:

(i) Facts and Comparisons with current supplements;

(ii) Clinical Pharmacology;

(iii) American Hospital Formulary Service with current supplements; or

(iv) Remington's Pharmaceutical Sciences; and

(3) basic antidote information and the telephone number of the nearest Regional Poison Control Center.

(f) Drugs.

(1) Procurement and storage.

(A) The pharmacist-in-charge shall have the responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff relative to such responsibility.

(B) Prescription drugs and devices and nonprescription Schedule V controlled substances shall be stored within the prescription department or a locked storage area.

(C) All drugs shall be stored at the proper temperature, as defined in the USP/NF and §291.15 of this title (relating to Storage of Drugs).

(2) Out-of-date drugs or devices.

(A) Any drug or device bearing an expiration date shall not be dispensed beyond the expiration date of the drug or device.

(B) Outdated drugs or devices shall be removed from dispensing stock and shall be quarantined together until such drugs or devices are disposed of properly.

(3) Nonprescription Schedule V controlled substances.

(A) Schedule V controlled substances containing codeine, dihydrocodeine, or any of the salts of codeine or dihydrocodeine may not be distributed without a prescription drug order from a practitioner.

(B) A pharmacist may distribute nonprescription Schedule V controlled substances which contain no more than 15 milligrams of opium per 29.5729 ml or per 28.35 Gm provided:

(i) such distribution is made only by a pharmacist; a nonpharmacist employee may not distribute a nonprescription Schedule V controlled substance even if under the supervision of a pharmacist; however, after the pharmacist has fulfilled professional and legal responsibilities, the actual cash, credit transaction, or delivery may be completed by a nonpharmacist:

(ii) not more than 240 ml (eight fluid ounces), or not more than 48 solid dosage units of any substance containing opium, may be distributed to the same purchaser in any given 48-hour period without a prescription drug order;

(iii) the purchaser is at least 18 years of age; and

(iv) the pharmacist requires every purchaser not known to the pharmacist to furnish suitable identification (including proof of age where appropriate).

(C) A record of such distribution shall be maintained by the pharmacy in a bound record book. The record shall contain the following information:

(i) true name of the purchaser;

(ii) current address of the purchaser;

(iii) name and quantity of controlled substance purchased;

(iv) date of each purchase; and

(v) signature or written initials of the distributing pharmacist.

(4) Class A Pharmacies may not sell, purchase, trade or possess prescription drug samples, unless the pharmacy meets the requirements as specified in §291.16 of this title (relating to Samples).

(g) Prepackaging of drugs.

(1) Drugs may be prepackaged in quantities suitable for internal distribution only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(2) The label of a prepackaged unit shall indicate:

(A) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(B) facility's lot number;

(C) facility's beyond use date; and

(D) quantity of the drug, if the quantity is greater than one.

(3) Records of prepackaging shall be maintained to show:

(A) name of the drug, strength, and dosage form;

(B) facility's lot number;

(C) manufacturer or distributor;

(D) manufacturer's lot number;

(E) manufacturer's expiration date;

(F) quantity per prepackaged unit;

(G) number of prepackaged units;

(H) date packaged;

(I) name, initials, or electronic signature of the prepacker; and

(J) signature, or electronic signature of the responsible pharmacist.

(4) Stock packages, repackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(h) Customized patient medication packages.

(1) Purpose. In lieu of dispensing two or more prescribed drug products in separate containers, a pharmacist may, with the consent of the patient, the patient's caregiver, or the prescriber, provide a customized patient medication package (patient med-pak).

(2) Label.

(A) The patient med-pak shall bear a label stating:

(i) the name of the patient;

(ii) the unique identification number for the patient med-pak itself and a separate unique identification number for each of the prescription drug orders for each of the drug products contained therein;

(iii) the name, strength, physical description or identification, and total quantity of each drug product contained therein;

(iv) the directions for use and cautionary statements, if any, contained in the prescription drug order for each drug product contained therein;

(v) if applicable, a warning of the potential harmful effect of combining any form of alcoholic beverage with any drug product contained therein;

(vi) any storage instructions or cautionary statements required by the official compendia;

(vii) the name of the prescriber of each drug product;

(viii) the name, address, and telephone number of the pharmacy;

(ix) the initials or an identification code of the dispensing pharmacist;

(x) the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the med-pak is dispensed or the earliest manufacturer's expiration date for a product contained in the med-pak if it is less than one-year from the date dispensed. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication;

(xi) either on the prescription label or the written information accompanying the prescription, the statement "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement; and

(xii) any other information, statements, or warnings required for any of the drug products contained therein.

(B) If the patient med-pak allows for the removal or separation of the intact containers therefrom, each individual container shall bear a label identifying each of the drug product contained therein.

(C) The dispensing container is not required to bear the label as specified in subparagraph (A) of this paragraph if:

(i) the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital);

(ii) no more than a 90-day supply is dispensed at one time;

(iii) the drug is not in the possession of the ultimate user prior to administration;

(iv) the pharmacist-in-charge has determined that the institution:

(I) maintains medication administration records which include adequate directions for use for the drug(s) prescribed;

(II) maintains records of ordering, receipt, and administration of the drug(s); and

(III) provides for appropriate safeguards for the control and storage of the drug(s); and

(v) the dispensing container bears a label that adequately:

(I) identifies the:

(-a-) pharmacy by name and address;

(-b-) name and strength of each drug product dispensed;

(-c-) name of the patient; and

(-d-) name of the prescribing practitioner of each drug product, or the pharmacist who signed the prescription drug order;

(II) the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the med-pak is dispensed or the earliest manufacturer's expiration date for a product contained in the med-pak if it is less than one-year from the date dispensed. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(III) for each drug product sets forth the directions for use and cautionary statements, if any, contained on the prescription drug order or required by law.

(3) Labeling. The patient med-pak shall be accompanied by a patient package insert, in the event that any drug contained therein is required to be dispensed with such insert as accompanying labeling. Alternatively, such required information may be incorporated into a single, overall educational insert provided by the pharmacist for the total patient med-pak.

(4) Packaging. In the absence of more stringent packaging requirements for any of the drug products contained therein, each container of the patient med-pak shall comply with official packaging standards. Each container shall be either not reclosable or so designed as to show evidence of having been opened.

(5) Guidelines. It is the responsibility of the dispensing pharmacist when preparing a patient med-pak, to take into account any applicable compendial requirements or guidelines and the physical and chemical compatibility of the dosage forms placed within each container, as well as any therapeutic incompatibilities that may attend the simultaneous administration of the drugs.

(6) Recordkeeping. In addition to any individual prescription filing requirements, a record of each patient med-pak shall be made and filed. Each record shall contain, as a minimum:

(A) the name and address of the patient;

(B) the unique identification number for the patient med-pak itself and a separate unique identification number for each of the prescription drug orders for each of the drug products contained therein;

(C) the name of the manufacturer or distributor and lot number for each drug product contained therein;

(D) information identifying or describing the design, characteristics, or specifications of the patient med-pak sufficient to allow subsequent preparation of an identical patient med-pak for the patient;

(E) the date of preparation of the patient med-pak and the beyond-use date that was assigned;

(F) any special labeling instructions; and

(G) the initials or an identification code of the dispensing pharmacist.

(7) The patient med-pak label is not required to include the initials or identification code of the dispensing pharmacist as specified in paragraph (2)(A) of this subsection if the identity of the dispensing pharmacist is recorded in the pharmacy's data processing system. The record of the identity of the dispensing pharmacist shall not be altered in the pharmacy's data processing system.

(i) Automated devices and systems.

(1) Automated compounding or counting devices. If a pharmacy uses automated compounding or counting devices:

(A) the pharmacy shall have a method to calibrate and verify the accuracy of the automated compounding or counting device and document the calibration and verification on a routine basis;

(B) the devices may be loaded with bulk or unlabeled drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist;

(C) the label of an automated compounding or counting device container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(D) records of loading bulk or unlabeled drugs into an automated compounding or counting device shall be maintained to show:

(i) name of the drug, strength, and dosage form;

(ii) manufacturer or distributor;

(iii) manufacturer's lot number;

(iv) manufacturer's expiration date;

(v) date of loading;

(vi) name, initials, or electronic signature of the person loading the automated compounding or counting device; and

(vii) signature or electronic signature of the responsible pharmacist; and

(E) the automated compounding or counting device shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature to the record as specified in subparagraph (D) of this paragraph.

(2) Automated pharmacy dispensing systems.

(A) Authority to use automated pharmacy dispensing systems. A pharmacy may use an automated pharmacy dispensing system to fill prescription drug orders provided that:

(i) the pharmacist-in-charge is responsible for the supervision of the operation of the system;

(ii) the automated pharmacy dispensing system has been tested by the pharmacy and found to dispense accurately. The pharmacy shall make the results of such testing available to the board upon request; and

(iii) the pharmacy will make the automated pharmacy dispensing system available for inspection by the board for the purpose of validating the accuracy of the system.

(B) Quality assurance program. A pharmacy which uses an automated pharmacy dispensing system to fill prescription

drug orders shall operate according to a written program for quality assurance of the automated pharmacy dispensing system which:

(i) requires continuous monitoring of the automated pharmacy dispensing system; and

(ii) establishes mechanisms and procedures to test the accuracy of the automated pharmacy dispensing system at least every six months and whenever any upgrade or change is made to the system and documents each such activity.

(C) Policies and procedures of operation.

(i) When an automated pharmacy dispensing system is used to fill prescription drug orders, it shall be operated according to written policies and procedures of operation. The policies and procedures of operation shall:

(I) provide for a pharmacist's review, approval, and accountability for the transmission of each original or new prescription drug order to the automated pharmacy dispensing system before the transmission is made;

(II) provide for access to the automated pharmacy dispensing system for stocking and retrieval of medications which is limited to licensed healthcare professionals or pharmacy technicians acting under the supervision of a pharmacist;

(III) require prior to use, that a pharmacist checks, verifies, and documents that the automated pharmacy dispensing system has been accurately filled each time the system is stocked;

(IV) provide for an accountability record to be maintained which documents all transactions relative to stocking and removing medications from the automated pharmacy dispensing system;

(V) require a prospective drug regimen review is conducted as specified in subsection (c)(2) of this section; and

(VI) establish and make provisions for documentation of a preventative maintenance program for the automated pharmacy dispensing system.

(ii) A pharmacy which uses an automated pharmacy dispensing system to fill prescription drug orders shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(D) Recovery Plan. A pharmacy which uses an automated pharmacy dispensing system to fill prescription drug orders shall maintain a written plan for recovery from a disaster or any other situation which interrupts the ability of the automated pharmacy dispensing system to provide services necessary for the operation of the pharmacy. The written plan for recovery shall include:

(i) planning and preparation for maintaining pharmacy services when an automated pharmacy dispensing system is experiencing downtime;

(ii) procedures for response when an automated pharmacy dispensing system is experiencing downtime; and

(iii) procedures for the maintenance and testing of the written plan for recovery.

(E) Final check of prescriptions dispensed using an automated pharmacy dispensing system. For the purpose of §291.32(c)(2)(D) of this title (relating to Personnel), a pharmacist must perform the final check of all prescriptions prior to delivery to the patient to ensure that the prescription is dispensed accurately as prescribed.

(i) This final check shall be considered accomplished if:

(I) a check of the final product is conducted by a pharmacist after the automated pharmacy dispensing system has completed the prescription and prior to delivery to the patient; or

(II) the following checks are conducted by a pharmacist:

(-a-) if the automated pharmacy dispensing system contains bulk stock drugs, a pharmacist verifies that those drugs have been accurately stocked as specified in subparagraph (C)(i)(III) of this paragraph; and

(-b-) a pharmacist checks the accuracy of the data entry of each original or new prescription drug order entered into the automated pharmacy dispensing system.

(ii) If the final check is accomplished as specified in clause (i)(II) of this subparagraph, the following additional requirements must be met.

(I) The dispensing process must be fully automated from the time the pharmacist releases the prescription to the automated pharmacy dispensing system until a completed, labeled prescription ready for delivery to the patient is produced.

(II) The pharmacy has conducted initial testing and has a continuous quality assurance program which documents that the automated pharmacy dispensing system dispenses accurately as specified in subparagraphs (A) and (B) of this paragraph.

(III) The automated pharmacy dispensing system documents and maintains:

(-a-) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in clause (i)(II) of this subparagraph; and

(-b-) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist, pharmacy technician, or pharmacy technician trainee who performs any other portion of the dispensing process.

(IV) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated pharmacy dispensing system at least every month rather than every six months as specified in subparagraph (B) of this paragraph.

(3) Automated checking device.

(A) For the purpose of §291.32(c)(2)(D) of this title, the final check of a dispensed prescription shall be considered accomplished using an automated checking device provided:

(i) a check of the final product is conducted by a pharmacist prior to delivery to the patient or the following checks are performed by a pharmacist:

(I) the prepackaged drug used to fill the order is checked by a pharmacist who verifies that the drug is labeled and packaged accurately; and

(II) a pharmacist checks the accuracy of each original or new prescription drug order.

(ii) the prescription is dispensed, labeled, and made ready for delivery to the patient in compliance with Class A (Community) Pharmacy rules; and

(iii) prior to delivery to the patient:

(I) the automated checking device confirms that the correct drug and strength has been labeled with the correct label for the correct patient; and

(II) a pharmacist performs all other duties required to ensure that the prescription has been dispensed safely and accurately as prescribed.

(B) If the final check is accomplished as specified in subparagraph (A) of this paragraph, the following additional requirements must be met.

(i) The pharmacy has conducted initial testing of the automated checking device and has a continuous quality assurance program which documents that the automated checking device accurately confirms that the correct drug and strength has been labeled with the correct label for the correct patient.

(ii) The pharmacy documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (A)(i) of this paragraph; and

(II) the name(s) initials, or identification code(s) and specific activity(ies) of each pharmacist or pharmacy technician who perform any other portion of the dispensing process.

(iii) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated checking device at least monthly.

(4) Automated storage and distribution device. A pharmacy may use an automated storage and distribution device to deliver a previously verified prescription to a patient or patient's agent when the pharmacy is open or when the pharmacy is closed as specified in subsection (b)(3)(B)(iii) of this section, provided:

(A) the device is used to deliver refills of prescription drug orders and shall not be used to deliver new prescriptions as defined by §291.31(28) of this title (relating to Definitions);

(B) the automated storage and distribution device may not be used to deliver a controlled substance;

(C) drugs stored in the automated storage and distribution device are stored at proper temperatures;

(D) the patient or patient's agent is given the option to use the system;

(E) the patient or patient's agent has access to a pharmacist for questions regarding the prescription at the pharmacy where the automated storage and distribution device is located, by a telephone available at the pharmacy that connects directly to another pharmacy, or by a telephone available at the pharmacy and a posted telephone number to reach another pharmacy;

(F) the pharmacist-in-charge is responsible for the supervision of the operation of the system;

(G) the automated storage and distribution device has been tested by the pharmacy and found to dispense prescriptions accurately. The pharmacy shall make the results of such testing available to the board upon request;

(H) the automated storage and distribution device may be loaded with previously verified prescriptions only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist;

(I) the pharmacy will make the automated storage and distribution device available for inspection by the board;

(J) the automated storage and distribution device is located within the pharmacy building whereby pharmacy staff has access to the device from within the prescription department and patients have access to the device from outside the prescription department. The device may not be located on an outside wall of the pharmacy and may not be accessible from a drive-thru;

(K) the automated storage and distribution device is secure from access and removal of prescription drug orders by unauthorized individuals;

(L) the automated storage and distribution device has adequate security system to prevent unauthorized access and to maintain patient confidentiality; and

(M) the automated storage and distribution device records a digital image of the individual accessing the device to pick-up a prescription and such record is maintained by the pharmacy for two years.

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 August 22, 2016.

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Texas State Board of Pharmacy
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SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.76

The Texas State Board of Pharmacy adopts amendments to §291.76, concerning Class C Pharmacies Located in a Freestanding Ambulatory Surgical Center. The amendments are adopted with changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4603).

The amendments allow pharmacists to record certain information in the patient's chart in lieu of keeping a separate log.

The Coalition for Nurses in Advanced Practice provided grammatical corrections. The Board agrees with the changes and made the changes suggested.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.76. Class C Pharmacies Located in a Freestanding Ambulatory Surgical Center.

(a) Purpose. The purpose of this section is to provide standards in the conduct, practice activities, and operation of a pharmacy located in a freestanding ambulatory surgical center that is licensed by the Texas Department of State Health Services. Class C pharmacies located in a freestanding ambulatory surgical center shall comply with

this section, in lieu of §§291.71 - 291.75 of this title (relating to Purpose; Definitions; Personnel; Operational Standards; and Records).

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

(1) Act--The Texas Pharmacy Act, Occupations Code, Subtitle J, as amended.

(2) Administer--The direct application of a prescription drug by injection, inhalation, ingestion, or any other means to the body of a patient by:

(A) a practitioner, an authorized agent under his supervision, or other person authorized by law; or

(B) the patient at the direction of a practitioner.

(3) Ambulatory surgical center (ASC)--A freestanding facility that is licensed by the Texas Department of State Health Services that primarily provides surgical services to patients who do not require overnight hospitalization or extensive recovery, convalescent time or observation. The planned total length of stay for an ASC patient shall not exceed 23 hours. Patient stays of greater than 23 hours shall be the result of an unanticipated medical condition and shall occur infrequently. The 23-hour period begins with the induction of anesthesia.

(4) Automated medication supply system--A mechanical system that performs operations or activities relative to the storage and distribution of medications for administration and which collects, controls, and maintains all transaction information.

(5) Board--The Texas State Board of Pharmacy.

(6) Consultant pharmacist--A pharmacist retained by a facility on a routine basis to consult with the ASC in areas that pertain to the practice of pharmacy.

(7) Controlled substance--A drug, immediate precursor, or other substance listed in Schedules I - V or Penalty Groups 1 - 4 of the Texas Controlled Substances Act, as amended, or a drug immediate precursor, or other substance included in Schedule I - V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(8) Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(9) Distribute--The delivery of a prescription drug or device other than by administering or dispensing.

(10) Downtime--Period of time during which a data processing system is not operable.

(11) Electronic signature--A unique security code or other identifier which specifically identifies the person entering information into a data processing system. A facility which utilizes electronic signatures must:

(A) maintain a permanent list of the unique security codes assigned to persons authorized to use the data processing system; and

(B) have an ongoing security program which is capable of identifying misuse and/or unauthorized use of electronic signatures.

(12) Floor stock--Prescription drugs or devices not labeled for a specific patient and maintained at a nursing station or other ASC department (excluding the pharmacy) for the purpose of administration to a patient of the ASC.

(13) Formulary--List of drugs approved for use in the ASC by an appropriate committee of the ambulatory surgical center.

(14) Hard copy--A physical document that is readable without the use of a special device (i.e., data processing system, computer, etc.).

(15) Investigational new drug--New drug intended for investigational use by experts qualified to evaluate the safety and effectiveness of the drug as authorized by the federal Food and Drug Administration.

(16) Medication order--An order from a practitioner or his authorized agent for administration of a drug or device.

(17) Pharmacist-in-charge--Pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(18) Pharmacy--Area or areas in a facility, separate from patient care areas, where drugs are stored, bulk compounded, delivered, compounded, dispensed, and/or distributed to other areas or departments of the ASC, or dispensed to an ultimate user or his or her agent.

(19) Prescription drug--

(A) A substance for which federal or state law requires a prescription before it may be legally dispensed to the public;

(B) A drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(i) Caution: federal law prohibits dispensing without prescription or "Rx only" or another legend that complies with federal law; or

(ii) Caution: federal law restricts this drug to use by or on order of a licensed veterinarian; or

(C) A drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by a practitioner only.

(20) Prescription drug order--

(A) An order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) An order pursuant to Subtitle B, Chapter 157, Occupations Code.

(21) Full-time pharmacist--A pharmacist who works in a pharmacy from 30 to 40 hours per week or if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(22) Part-time pharmacist--A pharmacist who works less than full-time.

(23) Pharmacy technician--An individual who is registered with the board as a pharmacy technician and whose responsibility in a pharmacy is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist.

(24) Pharmacy technician trainee--An individual who is registered with the board as a pharmacy technician trainee and is authorized to participate in a pharmacy's technician training program.

(25) Texas Controlled Substances Act--The Texas Controlled Substances Act, the Health and Safety Code, Chapter 481, as amended.

(c) Personnel.

(1) Pharmacist-in-charge.

(A) General. Each ambulatory surgical center shall have one pharmacist-in-charge who is employed or under contract, at least on a consulting or part-time basis, but may be employed on a full-time basis.

(B) Responsibilities. The pharmacist-in-charge shall have the responsibility for, at a minimum, the following:

(i) establishing specifications for procurement and storage of all materials, including drugs, chemicals, and biologicals;

(ii) participating in the development of a formulary for the ASC, subject to approval of the appropriate committee of the ASC;

(iii) distributing drugs to be administered to patients pursuant to the practitioner's medication order;

(iv) filling and labeling all containers from which drugs are to be distributed or dispensed;

(v) maintaining and making available a sufficient inventory of antidotes and other emergency drugs, both in the pharmacy and patient care areas, as well as current antidote information, telephone numbers of regional poison control center and other emergency assistance organizations, and such other materials and information as may be deemed necessary by the appropriate committee of the ASC;

(vi) maintaining records of all transactions of the ASC pharmacy as may be required by applicable state and federal law, and as may be necessary to maintain accurate control over and accountability for all pharmaceutical materials;

(vii) participating in those aspects of the ASC's patient care evaluation program which relate to pharmaceutical material utilization and effectiveness;

(viii) participating in teaching and/or research programs in the ASC;

(ix) implementing the policies and decisions of the appropriate committee(s) relating to pharmaceutical services of the ASC;

(x) providing effective and efficient messenger and delivery service to connect the ASC pharmacy with appropriate areas of the ASC on a regular basis throughout the normal workday of the ASC;

(xi) labeling, storing, and distributing investigational new drugs, including maintaining information in the pharmacy and nursing station where such drugs are being administered, concerning the dosage form, route of administration, strength, actions, uses, side effects, adverse effects, interactions, and symptoms of toxicity of investigational new drugs;

(xii) meeting all inspection and other requirements of the Texas Pharmacy Act and this subsection; and

(xiii) maintaining records in a data processing system such that the data processing system is in compliance with the requirements for a Class C (institutional) pharmacy located in a free-standing ASC.

(2) Consultant pharmacist.

(A) The consultant pharmacist may be the pharmacist-in-charge.

(B) A written contract shall exist between the ASC and any consultant pharmacist, and a copy of the written contract shall be made available to the board upon request.

(3) Pharmacists.

(A) General.

(i) The pharmacist-in-charge shall be assisted by a sufficient number of additional licensed pharmacists as may be required to operate the ASC pharmacy competently, safely, and adequately to meet the needs of the patients of the facility.

(ii) All pharmacists shall assist the pharmacist-in-charge in meeting the responsibilities as outlined in paragraph (1)(B) of this subsection and in ordering, administering, and accounting for pharmaceutical materials.

(iii) All pharmacists shall be responsible for any delegated act performed by pharmacy technicians or pharmacy technician trainees under his or her supervision.

(iv) All pharmacists while on duty shall be responsible for complying with all state and federal laws or rules governing the practice of pharmacy.

(B) Duties. Duties of the pharmacist-in-charge and all other pharmacists shall include, but need not be limited to, the following:

(i) receiving and interpreting prescription drug orders and oral medication orders and reducing these orders to writing either manually or electronically;

(ii) selecting prescription drugs and/or devices and/or suppliers; and

(iii) interpreting patient profiles.

(C) Special requirements for compounding non-sterile preparations. All pharmacists engaged in compounding non-sterile preparations shall meet the training requirements specified in §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations).

(4) Pharmacy technicians and pharmacy technician trainees.

(A) General. All pharmacy technicians and pharmacy technician trainees shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician and Pharmacy Technician Trainee Training).

(B) Duties. Pharmacy technicians and pharmacy technician trainees may not perform any of the duties listed in paragraph (3)(B) of this subsection. Duties may include, but need not be limited to, the following functions, under the direct supervision of a pharmacist:

(i) prepacking and labeling unit and multiple dose packages, provided a pharmacist supervises and conducts a final check and affixes his or her name, initials, electronic signature to the appropriate quality control records prior to distribution;

(ii) preparing, packaging, compounding, or labeling prescription drugs pursuant to medication orders, provided a pharmacist supervises and checks the preparation;

(iii) compounding non-sterile preparations pursuant to medication orders provided the pharmacy technicians or pharmacy

technician trainees have completed the training specified in §291.131 of this title;

(iv) bulk compounding, provided a pharmacist supervises and conducts in-process and final checks and affixes his or her name, initials, or electronic signature to the appropriate quality control records prior to distribution;

(v) distributing routine orders for stock supplies to patient care areas;

(vi) entering medication order and drug distribution information into a data processing system, provided judgmental decisions are not required and a pharmacist checks the accuracy of the information entered into the system prior to releasing the order or in compliance with the absence of pharmacist requirements contained in subsection (d)(6)(E) and (F) of this section;

(vii) maintaining inventories of drug supplies;

(viii) maintaining pharmacy records; and

(ix) loading drugs into an automated medication supply system. For the purpose of this clause, direct supervision may be accomplished by physically present supervision or electronic monitoring by a pharmacist.

(C) Procedures.

(i) Pharmacy technicians and pharmacy technician trainees shall handle medication orders in accordance with standard written procedures and guidelines.

(ii) Pharmacy technicians and pharmacy technician trainees shall handle prescription drug orders in the same manner as pharmacy technicians or pharmacy technician trainees working in a Class A pharmacy.

(D) Special requirements for compounding non-sterile preparations. All pharmacy technicians and pharmacy technician trainees engaged in compounding non-sterile preparations shall meet the training requirements specified in §291.131 of this title.

(5) Owner. The owner of an ASC pharmacy shall have responsibility for all administrative and operational functions of the pharmacy. The pharmacist-in-charge may advise the owner on administrative and operational concerns. The owner shall have responsibility for, at a minimum, the following, and if the owner is not a Texas licensed pharmacist, the owner shall consult with the pharmacist-in-charge or another Texas licensed pharmacist:

(A) establishing policies for procurement of prescription drugs and devices and other products dispensed from the ASC pharmacy;

(B) establishing and maintaining effective controls against the theft or diversion of prescription drugs;

(C) if the pharmacy uses an automated medication supply system, reviewing and approving all policies and procedures for system operation, safety, security, accuracy and access, patient confidentiality, prevention of unauthorized access, and malfunction;

(D) providing the pharmacy with the necessary equipment and resources commensurate with its level and type of practice; and

(E) establishing policies and procedures regarding maintenance, storage, and retrieval of records in a data processing system such that the system is in compliance with state and federal requirements.

(6) Identification of pharmacy personnel. All pharmacy personnel shall be identified as follows:

(A) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician.

(B) Pharmacy technician trainees. All pharmacy technician trainees shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician trainee.

(C) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist intern.

(D) Pharmacists. All pharmacists shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist.

(d) Operational standards.

(1) Licensing requirements.

(A) An ASC pharmacy shall register annually or biennially with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(B) An ASC pharmacy which changes ownership shall notify the board within 10 days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(C) An ASC pharmacy which changes location and/or name shall notify the board of the change within 10 days and file for an amended license as specified in §291.3 of this title.

(D) An ASC pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within 10 days of the change, following the procedures in §291.3 of this title.

(E) An ASC pharmacy shall notify the board in writing within 10 days of closing, following the procedures in §291.5 of this title (relating to Closing a Pharmacy).

(F) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for issuance and renewal of a license and the issuance of an amended license.

(G) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(H) An ASC pharmacy, licensed under the Act, §560.051(a)(3), concerning institutional pharmacy (Class C), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(1), concerning community pharmacy (Class A), or the Act, §560.051(a)(2), concerning nuclear pharmacy (Class B), is not required to secure a license for the other type of pharmacy; provided, however, such license is required to comply with the provisions of §291.31 of this title (relating to Definitions), §291.32 of this title (relating to Personnel), §291.33 of this title (relating to Operational Standards), §291.34 of this title (relating to Records), and §291.35 of this title (relating to Official Prescription Records), or §291.51 of this title (relating to Purpose), §291.52 of this title (relating to Definitions), §291.53 of this title (relating to Personnel), §291.54 of this title (relating to Operational Standards), and §291.55 of this title (relating to Records), contained in

Nuclear Pharmacy (Class B), to the extent such sections are applicable to the operation of the pharmacy.

(I) An ASC pharmacy engaged in the compounding of non-sterile preparations shall comply with the provisions of §291.131 of this title.

(J) ASC pharmacy personnel shall not compound sterile preparations unless the pharmacy has applied for and obtained a Class C-S pharmacy license.

(K) An ASC pharmacy engaged in the provision of remote pharmacy services, including storage and dispensing of prescription drugs, shall comply with the provisions of §291.121 of this title (relating to Remote Pharmacy Services).

(L) An ASC pharmacy engaged in centralized prescription dispensing and/or prescription drug or medication order processing shall comply with the provisions of §291.123 of this title (relating to Centralized Prescription Drug or Medication Order Processing) and/or §291.125 of this title (relating to Centralized Prescription Dispensing).

(2) Environment.

(A) General requirements.

(i) Each ambulatory surgical center shall have a designated work area separate from patient areas, and which shall have space adequate for the size and scope of pharmaceutical services and shall have adequate space and security for the storage of drugs.

(ii) The ASC pharmacy shall be arranged in an orderly fashion and shall be kept clean. All required equipment shall be clean and in good operating condition.

(B) Special requirements.

(i) The ASC pharmacy shall have locked storage for Schedule II controlled substances and other controlled drugs requiring additional security.

(ii) The ASC pharmacy shall have a designated area for the storage of poisons and externals separate from drug storage areas.

(C) Security.

(i) The pharmacy and storage areas for prescription drugs and/or devices shall be enclosed and capable of being locked by key, combination, or other mechanical or electronic means, so as to prohibit access by unauthorized individuals. Only individuals authorized by the pharmacist-in-charge may enter the pharmacy or have access to storage areas for prescription drugs and/or devices.

(ii) The pharmacist-in-charge shall consult with ASC personnel with respect to security of the drug storage areas, including provisions for adequate safeguards against theft or diversion of dangerous drugs and controlled substances, and to security of records for such drugs.

(iii) The pharmacy shall have locked storage for Schedule II controlled substances and other drugs requiring additional security.

(3) Equipment and supplies. Ambulatory surgical centers supplying drugs for postoperative use shall have the following equipment and supplies:

(A) data processing system including a printer or comparable equipment;

(B) adequate supply of child-resistant, moisture-proof, and light-proof containers; and

(C) adequate supply of prescription labels and other applicable identification labels.

(4) Library. A reference library shall be maintained that includes the following in hard-copy or electronic format and that pharmacy personnel shall be capable of accessing at all times:

(A) current copies of the following:

(i) Texas Pharmacy Act and rules;

(ii) Texas Dangerous Drug Act and rules;

(iii) Texas Controlled Substances Act and rules;

(iv) Federal Controlled Substances Act and rules or official publication describing the requirements of the Federal Controlled Substances Act and rules;

(B) at least one current or updated general drug information reference which is required to contain drug interaction information including information needed to determine severity or significance of the interaction and appropriate recommendations or actions to be taken; and

(C) basic antidote information and the telephone number of the nearest regional poison control center.

(5) Drugs.

(A) Procurement, preparation, and storage.

(i) The pharmacist-in-charge shall have the responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff of the facility, relative to such responsibility.

(ii) The pharmacist-in-charge shall have the responsibility for determining specifications of all drugs procured by the facility.

(iii) ASC pharmacies may not sell, purchase, trade, or possess prescription drug samples, unless the pharmacy meets the requirements as specified in §291.16 of this title (relating to Samples).

(iv) All drugs shall be stored at the proper temperatures, as defined in the USP/NF and in §291.15 of this title (relating to Storage of Drugs).

(v) Any drug bearing an expiration date may not be dispensed or distributed beyond the expiration date of the drug.

(vi) Outdated drugs shall be removed from dispensing stock and shall be quarantined together until such drugs are disposed of.

(B) Formulary.

(i) A formulary may be developed by an appropriate committee of the ASC.

(ii) The pharmacist-in-charge or consultant pharmacist shall be a full voting member of any committee which involves pharmaceutical services.

(iii) A practitioner may grant approval for pharmacists at the ASC to interchange, in accordance with the facility's formulary, for the drugs on the practitioner's medication orders provided:

(I) a formulary has been developed;

(II) the formulary has been approved by the medical staff of the ASC;

(III) there is a reasonable method for the practitioner to override any interchange; and

(IV) the practitioner authorizes pharmacist in the ASC to interchange on his/her medication orders in accordance with the facility's formulary through his/her written agreement to abide by the policies and procedures of the medical staff and facility.

(C) Prepackaging and loading drugs into automated medication supply system.

(i) Prepackaging of drugs.

(I) Drugs may be prepackaged in quantities suitable for distribution to other Class C pharmacies under common ownership or for internal distribution only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(II) The label of a prepackaged unit shall indicate:

(-a-) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(-b-) facility's lot number;

(-c-) expiration date;

(-d-) quantity of the drug, if quantity is greater than one; and

(-e-) if the drug is distributed to another Class C pharmacy, name of the facility responsible for prepackaging the drug.

(III) Records of prepackaging shall be maintained to show:

(-a-) the name of the drug, strength, and dosage form;

(-b-) facility's lot number;

(-c-) manufacturer or distributor;

(-d-) manufacturer's lot number;

(-e-) expiration date;

(-f-) quantity per prepackaged unit;

(-g-) number of prepackaged units;

(-h-) date packaged;

(-i-) name, initials, or electronic signature of the prepacker;

(-j-) signature or electronic signature of the responsible pharmacist; and

(-k-) if the drug is distributed to another Class C pharmacy, name of the facility receiving the prepackaged drug.

(IV) Stock packages, repackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(ii) Loading bulk unit of use drugs into automated medication supply systems. Automated medication supply systems may be loaded with bulk unit of use drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist. For the purpose of this clause, direct supervision may be accomplished by physically present supervision or electronic monitoring by a pharmacist. In order for the pharmacist to electronically monitor, the medication supply system must allow for bar code scanning to verify the loading of drugs, and a record of the loading must be maintained by the system and accessible for electronic review by the pharmacist.

(6) Medication orders.

(A) Drugs may be administered to patients in ASCs only on the order of a practitioner. No change in the order for drugs may be made without the approval of a practitioner except as authorized by the practitioner in compliance with paragraph (5)(B) of this subsection.

(B) Drugs may be distributed only pursuant to the practitioner's medication order.

(C) ASC pharmacies shall be exempt from the labeling provisions and patient notification requirements of §562.006 and §562.009 of the Act, as respects drugs distributed pursuant to medication orders.

(D) In ASCs with a full-time pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacy is closed, the following is applicable.

(i) Prescription drugs and devices only in sufficient quantities for immediate therapeutic needs of a patient may be removed from the ASC pharmacy.

(ii) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices. The record shall contain the following information:

(I) name of the patient;

(II) name of device or drug, strength, and dosage form;

(III) dose prescribed;

(IV) quantity taken;

(V) time and date; and

(VI) signature or electronic signature of person making withdrawal.

(iv) The medication order in the patient's chart may substitute for such record, provided the medication order meets all the requirements of clause (iii) of this subparagraph.

(v) The pharmacist shall verify the withdrawal as soon as practical, but in no event more than 72 hours from the time of such withdrawal.

(E) In ASCs with a part-time or consultant pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the ASC when the pharmacist is not on duty, or when the pharmacy is closed, the following is applicable.

(i) Prescription drugs and devices only in sufficient quantities for therapeutic needs may be removed from the ASC pharmacy.

(ii) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices; the record shall meet the same requirements as specified in subparagraph (D) of this paragraph.

(iv) The pharmacist shall conduct an audit of patient's medical record according to the schedule set out in the policy and procedures at a reasonable interval, but such interval must occur at least once in every calendar week that the pharmacy is open.

(7) Floor stock. In facilities using a floor stock method of drug distribution, the following is applicable for removing drugs or devices in the absence of a pharmacist.

(A) Prescription drugs and devices may be removed from the pharmacy only in the original manufacturer's container or prepackaged container.

(B) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(C) A record shall be made at the time of withdrawal by the authorized person removing the drug or device; the record shall contain the following information:

(i) name of the drug, strength, and dosage form;

(ii) quantity removed;

(iii) location of floor stock;

(iv) date and time; and

(v) signature or electronic signature of person making the withdrawal.

(D) A pharmacist shall verify the withdrawal according to the following schedule.

(i) In facilities with a full-time pharmacist, the withdrawal shall be verified as soon as practical, but in no event more than 72 hours from the time of such withdrawal.

(ii) In facilities with a part-time or consultant pharmacist, the withdrawal shall be verified after a reasonable interval, but such interval must occur at least once in every calendar week that the pharmacy is open.

(iii) The medication order in the patient's chart may substitute for the record required in subparagraph (C) of this paragraph, provided the medication order meets all the requirements of subparagraph (C) of this paragraph.

(8) Policies and procedures. Written policies and procedures for a drug distribution system, appropriate for the ambulatory surgical center, shall be developed and implemented by the pharmacist-in-charge with the advice of the appropriate committee. The written policies and procedures for the drug distribution system shall include, but not be limited to, procedures regarding the following:

(A) controlled substances;

(B) investigational drugs;

(C) prepackaging and manufacturing;

(D) medication errors;

(E) orders of physician or other practitioner;

(F) floor stocks;

(G) adverse drug reactions;

(H) drugs brought into the facility by the patient;

(I) self-administration;

(J) emergency drug tray;

(K) formulary, if applicable;

(L) drug storage areas;

(M) drug samples;

(N) drug product defect reports;

(O) drug recalls;

(P) outdated drugs;

(Q) preparation and distribution of IV admixtures;

(R) procedures for supplying drugs for postoperative use, if applicable;

(S) use of automated medication supply systems;

(T) use of data processing systems; and

(U) drug regimen review.

(9) Drugs supplied for postoperative use. Drugs supplied to patients for postoperative use shall be supplied according to the following procedures.

(A) Drugs may only be supplied to patients who have been admitted to the ASC.

(B) Drugs may only be supplied in accordance with the system of control and accountability established for drugs supplied from the ambulatory surgical center; such system shall be developed and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(C) Only drugs listed on the approved postoperative drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the medical staff and shall consist of drugs of the nature and type to meet the immediate postoperative needs of the ambulatory surgical center patient.

(D) Drugs may only be supplied in prepackaged quantities not to exceed a 72-hour supply in suitable containers and appropriately prelabeled (including name, address, and phone number of the facility, and necessary auxiliary labels) by the pharmacy, provided, however that topicals and ophthalmics in original manufacturer's containers may be supplied in a quantity exceeding a 72-hour supply.

(E) At the time of delivery of the drug, the practitioner shall complete the label, such that the prescription container bears a label with at least the following information:

(i) date supplied;

(ii) name of practitioner;

(iii) name of patient;

(iv) directions for use;

(v) brand name and strength of the drug; or if no brand name, then the generic name of the drug dispensed, strength, and the name of the manufacturer or distributor of the drug; and

(vi) unique identification number.

(F) After the drug has been labeled, the practitioner or a licensed nurse under the supervision of the practitioner shall give the appropriately labeled, prepackaged medication to the patient.

(G) A perpetual record of drugs which are supplied from the ASC shall be maintained which includes:

(i) name, address, and phone number of the facility;

(ii) date supplied;

(iii) name of practitioner;

(iv) name of patient;

(v) directions for use;

(vi) brand name and strength of the drug; or if no brand name, then the generic name of the drug dispensed, strength, and the name of the manufacturer or distributor of the drug; and

(vii) unique identification number.

(H) The pharmacist-in-charge, or a pharmacist designated by the pharmacist-in-charge, shall review the records at least once in every calendar week that the pharmacy is open.

(10) Drug regimen review.

(A) A pharmacist shall evaluate medication orders and patient medication records for:

(i) known allergies;

(ii) rational therapy--contraindications;

(iii) reasonable dose and route of administration;

(iv) reasonable directions for use;

(v) duplication of therapy;

(vi) drug-drug interactions;

(vii) drug-food interactions;

(viii) drug-disease interactions;

(ix) adverse drug reactions;

(x) proper utilization, including overutilization or underutilization; and

(xi) clinical laboratory or clinical monitoring methods to monitor and evaluate drug effectiveness, side effects, toxicity, or adverse effects, and appropriateness to continued use of the drug in its current regimen.

(B) A retrospective, random drug regimen review as specified in the pharmacy's policies and procedures shall be conducted on a periodic basis to verify proper usage of drugs not to exceed 31 days between such reviews.

(C) Any questions regarding the order must be resolved with the prescriber and a written notation of these discussions made and maintained.

(e) Records.

(1) Maintenance of records.

(A) Every inventory or other record required to be kept under the provisions of this section (relating to Class C Pharmacies Located in a Freestanding Ambulatory Surgical Center) shall be:

(i) kept by the pharmacy and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative, and other authorized local, state, or federal law enforcement agencies; and

(ii) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in a mutually agreeable electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this subsection, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(B) Records of controlled substances listed in Schedule II shall be maintained separately and readily retrievable from all other records of the pharmacy.

(C) Records of controlled substances listed in Schedules III - V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subparagraph, readily retrievable means that the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable apart from all other items appearing on the record.

(D) Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing or direct imaging system provided:

(i) the records in the alternative data retention system contain all of the information required on the manual record; and

(ii) the alternative data retention system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(E) Controlled substance records shall be maintained in a manner to establish receipt and distribution of all controlled substances.

(F) An ASC pharmacy shall maintain a perpetual inventory of controlled substances listed in Schedule II - V which shall be verified for completeness and reconciled at least once in every calendar week that the pharmacy is open.

(G) Distribution records for controlled substances, listed in Schedule II - V, shall include the following information:

(i) patient's name;

(ii) practitioner's name who order the drug;

(iii) name of drug, dosage form, and strength;

(iv) time and date of administration to patient and quantity administered;

(v) signature or electronic signature of individual administering the controlled substance;

(vi) returns to the pharmacy; and

(vii) waste (waste is required to be witnessed and cosigned, manually or electronically, by another individual).

(H) The record required by subparagraph (G) of this paragraph shall be maintained separately from patient records.

(I) A pharmacist shall conduct an audit by randomly comparing the distribution records required by subparagraph (G) with the medication orders in the patient record on a periodic basis to verify proper administration of drugs not to exceed 30 days between such reviews.

(2) Patient records.

(A) Each medication order or set of orders issued together shall bear the following information:

(i) patient name;

(ii) drug name, strength, and dosage form;

(iii) directions for use;

(iv) date; and

(v) signature or electronic signature of the practitioner or that of his or her authorized agent, defined as a employee or consultant/full or part-time pharmacist of the ASC.

(B) Medication orders shall be maintained with the medication administration record in the medical records of the patient.

(3) General requirements for records maintained in a data processing system.

(A) If an ASC pharmacy's data processing system is not in compliance with the board's requirements, the pharmacy must maintain a manual recordkeeping system.

(B) The facility shall maintain a backup copy of information stored in the data processing system using disk, tape, or other electronic backup system and update this backup copy on a regular basis to assure that data is not lost due to system failure.

(C) A pharmacy that changes or discontinues use of a data processing system must:

(i) transfer the records to the new data processing system; or

(ii) purge the records to a printout which contains:

(I) all of the information required on the original document; or

(II) for records of distribution and return for all controlled substances, the same information as required on the audit trail printout as specified in subparagraph (F) of this paragraph. The information on the printout shall be sorted and printed by drug name and list all distributions and returns chronologically.

(D) Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(E) The pharmacist-in-charge shall report to the board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(F) The data processing system shall have the capacity to produce a hard-copy printout of an audit trail of drug distribution and return for any strength and dosage form of a drug (by either brand or generic name or both) during a specified time period. This printout shall contain the following information:

(i) patient's name and room number or patient's facility identification number;

(ii) prescribing or attending practitioner's name;

(iii) name, strength, and dosage form of the drug product actually distributed;

(iv) total quantity distributed from and returned to the pharmacy;

(v) if not immediately retrievable via electronic image, the following shall also be included on the printout:

(I) prescribing or attending practitioner's address; and

(II) practitioner's DEA registration number, if the medication order is for a controlled substance.

(G) An audit trail printout for each strength and dosage form of these drugs distributed during the preceding month shall be produced at least monthly and shall be maintained in a separate file at the facility. The information on this printout shall be sorted by drug name and list all distributions/returns for that drug chronologically.

(H) The pharmacy may elect not to produce the monthly audit trail printout if the data processing system has a workable (electronic) data retention system which can produce an audit trail of drug distribution and returns for the preceding two years. The audit trail required in this clause shall be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy, or other authorized local, state, or federal law enforcement or regulatory agencies.

(I) In the event that an ASC pharmacy which uses a data processing system experiences system downtime, the pharmacy must have an auxiliary procedure which will ensure that all data is retained for on-line data entry as soon as the system is available for use again.

(4) Distribution of controlled substances to another registrant. A pharmacy may distribute controlled substances to a practitioner, another pharmacy, or other registrant, without being registered to distribute, under the following conditions.

(A) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to possess that controlled substance.

(B) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed by the pharmacy during the 12-month period in which the pharmacy is registered; if at any time it does exceed 5.0%, the pharmacy is required to obtain an additional registration to distribute controlled substances.

(C) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained which indicates:

(i) the actual date of distribution;

(ii) the name, strength, and quantity of controlled substances distributed;

(iii) the name, address, and DEA registration number of the distributing pharmacy; and

(iv) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(D) If the distribution is for a Schedule II controlled substance, the following is applicable.

(i) The pharmacy, practitioner, or other registrant who is receiving the controlled substances shall issue Copy 1 and Copy 2 of a DEA order form (DEA 222) to the distributing pharmacy.

(ii) The distributing pharmacy shall:

(I) complete the area on the DEA order form (DEA 222) titled "To Be Filled in by Supplier";

(II) maintain Copy 1 of the DEA order form (DEA 222) at the pharmacy for two years; and

(III) forward Copy 2 of the DEA order form (DEA 222) to the divisional office of the Drug Enforcement Administration.

(5) Other records. Other records to be maintained by the pharmacy include:

(A) a permanent log of the initials or identification codes which will identify each pharmacist by name. The initials or identification code shall be unique to ensure that each pharmacist can be identified, i.e., identical initials or identification codes cannot be used;

(B) Copy 3 of DEA order form (DEA 222), which has been properly dated, initialed, and filed, and all copies of each unaccepted or defective order form and any attached statements or other documents and/or for each order filled using the DEA Controlled Substance Ordering System (CSOS), the original signed order and all linked records for that order;

(C) a copy of the power of attorney to sign DEA 222 order forms (if applicable);

(D) suppliers' invoices of dangerous drugs and controlled substances dated and initialed or signed by the person receiving

the drugs; a pharmacist shall verify that the controlled drugs listed on the invoices were added to the pharmacy's perpetual inventory by clearly recording his/her initials and the date of review of the perpetual inventory;

(E) supplier's credit memos for controlled substances and dangerous drugs;

(F) a copy of inventories required by §291.17 of this title (relating to Inventory Requirements) except that a perpetual inventory of controlled substances listed in Schedule II may be kept in a data processing system if the data processing system is capable of producing a copy of the perpetual inventory on-site;

(G) reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(H) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(I) a copy of any notification required by the Texas Pharmacy Act or these rules, including, but not limited to, the following:

(i) reports of theft or significant loss of controlled substances to DEA, DPS, and the board;

(ii) notification of a change in pharmacist-in-charge of a pharmacy; and

(iii) reports of a fire or other disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease.

(6) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(A) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met.

(i) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of the Drug Enforcement Administration as required by the Code of Federal Regulations, Title 21, §1304(a), and submits a copy of this written notification to the Texas State Board of Pharmacy. Unless the registrant is informed by the divisional director of the Drug Enforcement Administration that permission to keep central records is denied, the pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director.

(ii) The pharmacy maintains a copy of the notification required in this subparagraph.

(iii) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories, which shall be maintained at the pharmacy.

(B) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location.

(C) Access to records. If the records are kept in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records.

(D) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within two business days of written request of a board agent or any other authorized official.

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 August 22, 2016.

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Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
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Proposal publication date: June 24, 2016
For further information, please call: (512) 305-8028

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SUBCHAPTER F. NON-RESIDENT PHARMACY (CLASS E)

22 TAC §291.104

The Texas State Board of Pharmacy adopts amendments to §291.104, concerning Operational Standards. The amendments are adopted without changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4608).

The amendments update the requirements for Class E pharmacies to submit prescription to the Texas State Board of Pharmacy instead of the Texas Department of Public Safety.

Richie Ray suggested that since the time frame for filing a change of name application was eliminated in §291.104, the time frame should be updated in §291.3. The Board agrees with the suggestion and will update §291.3 at a future time.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations 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 G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.133

The Texas State Board of Pharmacy adopts amendments to §291.133, concerning Pharmacies Compounding Sterile Preparations. The amendments are adopted with changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4611).

The amendments update the rules with regard to USP <797>.

The Texas Society of Health-System Pharmacists supported the amendments and suggested correcting the reference to ISA to ISO. Richie Ray suggested adding the word "testing" in subsection (c)(4)(G). The board agrees with the comments and made the recommended changes.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.133. Pharmacies Compounding Sterile Preparations.

(a) Purpose. Pharmacies compounding sterile preparations, prepackaging pharmaceutical products, and distributing those products shall comply with all requirements for their specific license classification and this section. The purpose of this section is to provide standards for the:

(1) compounding of sterile preparations pursuant to a prescription or medication order for a patient from a practitioner in Class A-S, Class B, Class C-S, and Class E-S pharmacies;

(2) compounding, dispensing, and delivery of a reasonable quantity of a compounded sterile preparation in Class A-S, Class B, Class C-S, and Class E-S pharmacies to a practitioner's office for office use by the practitioner;

(3) compounding and distribution of compounded sterile preparations by a Class A-S pharmacy for a Class C-S pharmacy; and

(4) compounding of sterile preparations by a Class C-S pharmacy and the distribution of the compounded preparations to other Class C or Class C-S pharmacies under common ownership.

(b) Definitions. In addition to the definitions for specific license classifications, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) ACPE--Accreditation Council for Pharmacy Education.

(2) Airborne particulate cleanliness class--The level of cleanliness specified by the maximum allowable number of particles per cubic meter of air as specified in the International Organization of Standardization (ISO) Classification Air Cleanliness (ISO 14644-1). For example:

(A) ISO Class 5 (formerly Class 100) is an atmospheric environment that contains less than 3,520 particles 0.5 microns in diameter per cubic meter of air (formerly stated as 100 particles 0.5 microns in diameter per cubic foot of air);

(B) ISO Class 7 (formerly Class 10,000) is an atmospheric environment that contains less than 352,000 particles 0.5 microns in diameter per cubic meter of air (formerly stated as 10,000 particles 0.5 microns in diameter per cubic foot of air); and

(C) ISO Class 8 (formerly Class 100,000) is an atmospheric environment that contains less than 3,520,000 particles 0.5 microns in diameter per cubic meter of air (formerly stated as 100,000 particles 0.5 microns in diameter per cubic foot of air).

(3) Ancillary supplies--Supplies necessary for the preparation and administration of compounded sterile preparations.

(4) Ante-area--An ISO Class 8 or better area where personnel may perform hand hygiene and garbing procedures, staging of components, order entry, labeling, and other high-particulate generating activities. It is also a transition area that:

(A) provides assurance that pressure relationships are constantly maintained so that air flows from clean to dirty areas; and

(B) reduces the need for the heating, ventilating and air conditioning (HVAC) control system to respond to large disturbances.

(5) Aseptic Processing--A mode of processing pharmaceutical and medical preparations that involves the separate sterilization of the preparation and of the package (containers-closures or packaging material for medical devices) and the transfer of the preparation into the container and its closure under at least ISO Class 5 conditions.

(6) Automated compounding device--An automated device that compounds, measures, and/or packages a specified quantity of individual components in a predetermined sequence for a designated sterile preparation.

(7) Batch--A specific quantity of a drug or other material that is intended to have uniform character and quality, within specified limits, and is produced during a single preparation cycle.

(8) Batch preparation compounding--Compounding of multiple sterile preparation units, in a single discrete process, by the same individual(s), carried out during one limited time period. Batch preparation/compounding does not include the preparation of multiple sterile preparation units pursuant to patient specific medication orders.

(9) Beyond-use date--The date or time after which the compounded sterile preparation shall not be stored or transported or begin to be administered to a patient. The beyond-use date is determined from the date or time the preparation is compounded.

(10) Biological Safety Cabinet, Class II--A ventilated cabinet for personnel, product or preparation, and environmental protection having an open front with inward airflow for personnel protection, downward HEPA filtered laminar airflow for product protection, and HEPA filtered exhausted air for environmental protection.

(11) Buffer Area--An ISO Class 7 or, if a Class B pharmacy, ISO Class 8 or better, area where the primary engineering control area is physically located. Activities that occur in this area include the preparation and staging of components and supplies used when compounding sterile preparations.

(12) Clean room--A room in which the concentration of airborne particles is controlled to meet a specified airborne particulate cleanliness class. Microorganisms in the environment are monitored so that a microbial level for air, surface, and personnel gear are not exceeded for a specified cleanliness class.

(13) Component--Any ingredient intended for use in the compounding of a drug preparation, including those that may not appear in such preparation.

(14) Compounding--The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug or medication order based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) for administration to a patient by a practitioner as the result of a practitioner's initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(C) in anticipation of prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(D) for or as an incident to research, teaching, or chemical analysis and not for sale or dispensing, except as allowed under §562.154 or Chapter 563 of the Occupations Code.

(15) Compounding Aseptic Isolator--A form of barrier isolator specifically designed for compounding pharmaceutical ingredients or preparations. It is designed to maintain an aseptic compounding environment within the isolator throughout the compounding and material transfer processes. Air exchange into the isolator from the surrounding environment shall not occur unless it has first passed through a microbial retentive filter (HEPA minimum).

(16) Compounding Aseptic Containment Isolator--A compounding aseptic isolator designed to provide worker protection from exposure to undesirable levels of airborne drug throughout the compounding and material transfer processes and to provide an aseptic environment for compounding sterile preparations. Air exchange with the surrounding environment should not occur unless the air is first passed through a microbial retentive filter (HEPA minimum) system capable of containing airborne concentrations of the physical size and state of the drug being compounded. Where volatile hazardous drugs are prepared, the exhaust air from the isolator should be appropriately removed by properly designed building ventilation.

(17) Compounding Personnel--A pharmacist, pharmacy technician, or pharmacy technician trainee who performs the actual compounding; a pharmacist who supervises pharmacy technicians or pharmacy technician trainees compounding sterile preparations, and a pharmacist who performs an intermediate or final verification of a compounded sterile preparation.

(18) Critical Area--An ISO Class 5 environment.

(19) Critical Sites--A location that includes any component or fluid pathway surfaces (e.g., vial septa, injection ports, beakers) or openings (e.g., opened ampules, needle hubs) exposed and at risk of direct contact with air (e.g., ambient room or HEPA filtered), moisture (e.g., oral and mucosal secretions), or touch contamination. Risk of microbial particulate contamination of the critical site increases with the size of the openings and exposure time.

(20) Device--An instrument, apparatus, implement, machine, contrivance, implant, in-vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

(21) Direct Compounding Area--A critical area within the ISO Class 5 primary engineering control where critical sites are exposed to unidirectional HEPA-filtered air, also known as first air.

(22) Disinfectant--An agent that frees from infection, usually a chemical agent but sometimes a physical one, and that destroys disease-causing pathogens or other harmful microorganisms but may not kill bacterial and fungal spores. It refers to substances applied to inanimate objects.

(23) First Air--The air exiting the HEPA filter in a unidirectional air stream that is essentially particle free.

(24) Hazardous Drugs--Drugs that, studies in animals or humans indicate exposure to the drugs, have a potential for causing cancer, development or reproductive toxicity, or harm to organs. For the purposes of this chapter, radiopharmaceuticals are not considered hazardous drugs.

(25) Hot water--The temperature of water from the pharmacy's sink maintained at a minimum of 105 degrees F (41 degrees C).

(26) HVAC--Heating, ventilation, and air conditioning.

(27) Immediate use--A sterile preparation that is not prepared according to USP 797 standards (i.e., outside the pharmacy and most likely not by pharmacy personnel) which shall be stored for no longer than one hour after completion of the preparation.

(28) IPA--Isopropyl alcohol (2-propanol).

(29) Labeling--All labels and other written, printed, or graphic matter on an immediate container of an article or preparation or on, or in, any package or wrapper in which it is enclosed, except any outer shipping container. The term "label" designates that part of the labeling on the immediate container.

(30) Media-Fill Test--A test used to qualify aseptic technique of compounding personnel or processes and to ensure that the processes used are able to produce sterile preparation without microbial contamination. During this test, a microbiological growth medium such as Soybean-Casein Digest Medium is substituted for the actual drug preparation to simulate admixture compounding. The issues to consider in the development of a media-fill test are the following: media-fill procedures, media selection, fill volume, incubation, time and temperature, inspection of filled units, documentation, interpretation of results, and possible corrective actions required.

(31) Multiple-Dose Container--A multiple-unit container for articles or preparations intended for potential administration only and usually contains antimicrobial preservatives. The beyond-use date for an opened or entered (e.g., needle-punctured) multiple-dose container with antimicrobial preservatives is 28 days, unless otherwise specified by the manufacturer.

(32) Negative Pressure Room--A room that is at a lower pressure compared to adjacent spaces and, therefore, the net flow of air is into the room.

(33) Office use--The administration of a compounded drug to a patient by a practitioner in the practitioner's office or by the practitioner in a health care facility or treatment setting, including a hospital, ambulatory surgical center, or pharmacy in accordance with Chapter 562 of the Act, or for administration or provision by a veterinarian in accordance with §563.054 of the Act.

(34) Pharmacy Bulk Package--A container of a sterile preparation for potential use that contains many single doses. The contents are intended for use in a pharmacy admixture program and are restricted to the preparation of admixtures for infusion or, through a sterile transfer device, for the filling of empty sterile syringes. The closure shall be penetrated only one time after constitution with a suitable sterile transfer device or dispensing set, which allows measured dispensing of the contents. The pharmacy bulk package is to be used only in a suitable work area such as a laminar flow hood (or an equivalent clean air compounding area).

(35) Prepackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original container into unit dose packaging or a multiple dose container for distribution

within a facility licensed as a Class C pharmacy or to other pharmacies under common ownership for distribution within those facilities. The term as defined does not prohibit the prepackaging of drug products for use within other pharmacy classes.

(36) Preparation or Compounded Sterile Preparation--A sterile admixture compounded in a licensed pharmacy or other healthcare-related facility pursuant to the order of a licensed prescriber. The components of the preparation may or may not be sterile products.

(37) Primary Engineering Control--A device or room that provides an ISO Class 5 environment for the exposure of critical sites when compounding sterile preparations. Such devices include, but may not be limited to, laminar airflow workbenches, biological safety cabinets, compounding aseptic isolators, and compounding aseptic containment isolators.

(38) Product--A commercially manufactured sterile drug or nutrient that has been evaluated for safety and efficacy by the U.S. Food and Drug Administration (FDA). Products are accompanied by full prescribing information, which is commonly known as the FDA-approved manufacturer's labeling or product package insert.

(39) Positive Control--A quality assurance sample prepared to test positive for microbial growth.

(40) Quality assurance--The set of activities used to ensure that the process used in the preparation of sterile drug preparations lead to preparations that meet predetermined standards of quality.

(41) Quality control--The set of testing activities used to determine that the ingredients, components (e.g., containers), and final compounded sterile preparations prepared meet predetermined requirements with respect to identity, purity, non-pyrogenicity, and sterility.

(42) Reasonable quantity--An amount of a compounded drug that:

(A) does not exceed the amount a practitioner anticipates may be used in the practitioner's office or facility before the beyond use date of the drug;

(B) is reasonable considering the intended use of the compounded drug and the nature of the practitioner's practice; and

(C) for any practitioner and all practitioners as a whole, is not greater than an amount the pharmacy is capable of compounding in compliance with pharmaceutical standards for identity, strength, quality, and purity of the compounded drug that are consistent with United States Pharmacopoeia guidelines and accreditation practices.

(43) Segregated Compounding Area--A designated space, either a demarcated area or room, that is restricted to preparing low-risk level compounded sterile preparations with 12-hour or less beyond-use date. Such area shall contain a device that provides unidirectional airflow of ISO Class 5 air quality for preparation of compounded sterile preparations and shall be void of activities and materials that are extraneous to sterile compounding.

(44) Single-dose container--A single-unit container for articles or preparations intended for parenteral administration only. It is intended for a single use. A single-dose container is labeled as such. Examples of single-dose containers include pre-filled syringes, cartridges, fusion-sealed containers, and closure-sealed containers when so labeled.

(45) SOPs--Standard operating procedures.

(46) Sterilizing Grade Membranes--Membranes that are documented to retain 100% of a culture of 107 microorganisms of a strain of Brevundimonas (Pseudomonas) diminuta per square centimeter of membrane surface under a pressure of not less than 30 psi (2.0 bar). Such filter membranes are nominally at 0.22-micrometer or 0.2-micrometer nominal pore size, depending on the manufacturer's practice.

(47) Sterilization by Filtration--Passage of a fluid or solution through a sterilizing grade membrane to produce a sterile effluent.

(48) Terminal Sterilization--The application of a lethal process, e.g., steam under pressure or autoclaving, to sealed final preparation containers for the purpose of achieving a predetermined sterility assurance level of usually less than 10-6 or a probability of less than one in one million of a non-sterile unit.

(49) Unidirectional Flow--An airflow moving in a single direction in a robust and uniform manner and at sufficient speed to reproducibly sweep particles away from the critical processing or testing area.

(50) USP/NF--The current edition of the United States Pharmacopeia/National Formulary.

(c) Personnel.

(1) Pharmacist-in-charge.

(A) General. The pharmacy shall have a pharmacist-in-charge in compliance with the specific license classification of the pharmacy.

(B) Responsibilities. In addition to the responsibilities for the specific class of pharmacy, the pharmacist-in-charge shall have the responsibility for, at a minimum, the following concerning the compounding of sterile preparations:

(i) developing a system to ensure that all pharmacy personnel responsible for compounding and/or supervising the compounding of sterile preparations within the pharmacy receive appropriate education and training and competency evaluation;

(ii) determining that all personnel involved in compounding sterile preparations obtain continuing education appropriate for the type of compounding done by the personnel;

(iii) supervising a system to ensure appropriate procurement of drugs and devices and storage of all pharmaceutical materials including pharmaceuticals, components used in the compounding of sterile preparations, and drug delivery devices;

(iv) ensuring that the equipment used in compounding is properly maintained;

(v) developing a system for the disposal and distribution of drugs from the pharmacy;

(vi) developing a system for bulk compounding or batch preparation of drugs;

(vii) developing a system for the compounding, sterility assurance, quality assurance, and quality control of sterile preparations; and

(viii) if applicable, ensuring that the pharmacy has a system to dispose of hazardous waste in a manner so as not to endanger the public health.

(2) Pharmacists.

(A) General.

(i) A pharmacist is responsible for ensuring that compounded sterile preparations are accurately identified, measured, diluted, and mixed and are correctly purified, sterilized, packaged, sealed, labeled, stored, dispensed, and distributed.

(ii) A pharmacist shall inspect and approve all components, drug preparation containers, closures, labeling, and any other materials involved in the compounding process.

(iii) A pharmacist shall review all compounding records for accuracy and conduct periodic in-process checks as defined in the pharmacy's policy and procedures.

(iv) A pharmacist shall review all compounding records for accuracy and conduct a final check.

(v) A pharmacist is responsible for ensuring the proper maintenance, cleanliness, and use of all equipment used in the compounding process.

(vi) A pharmacist shall be accessible at all times, 24 hours a day, to respond to patients' and other health professionals' questions and needs.

(B) Initial training and continuing education.

(i) All pharmacists who compound sterile preparations or supervise pharmacy technicians and pharmacy technician trainees compounding sterile preparations shall comply with the following:

(I) complete through a single course, a minimum of 20 hours of instruction and experience in the areas listed in paragraph (4)(D) of this subsection. Such training shall be obtained through completion of a recognized course in an accredited college of pharmacy or a course sponsored by an ACPE accredited provider;

(II) complete a structured on-the-job didactic and experiential training program at this pharmacy which provides sufficient hours of instruction and experience in the facility's sterile compounding processes and procedures. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; and

(III) possess knowledge about:

(-a-) aseptic processing;

(-b-) quality control and quality assurance as related to environmental, component, and finished preparation release checks and tests;

(-c-) chemical, pharmaceutical, and clinical properties of drugs;

(-d-) container, equipment, and closure system selection; and

(-e-) sterilization techniques.

(ii) The required experiential portion of the training programs specified in this subparagraph must be supervised by an individual who is actively engaged in performing sterile compounding and is qualified and has completed training as specified in this paragraph or paragraph (3) of this subsection.

(iii) In order to renew a license to practice pharmacy, during the previous licensure period, a pharmacist engaged in sterile compounding shall complete a minimum of:

(I) two hours of ACPE-accredited continuing education relating to one or more of the areas listed in paragraph (4)(D) of this subsection if the pharmacist is engaged in compounding low and medium risk sterile preparations; or

(II) four hours of ACPE-accredited continuing education relating to one or more of the areas listed in paragraph (4)(D) of this subsection if the pharmacist is engaged in compounding high risk sterile preparations.

(3) Pharmacy technicians and pharmacy technician trainees.

(A) General. All pharmacy technicians and pharmacy technician trainees shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician and Pharmacy Technician Trainee Training).

(B) Initial training and continuing education.

(i) Pharmacy technicians and pharmacy technician trainees may compound sterile preparations provided the pharmacy technicians and/or pharmacy technician trainees are supervised by a pharmacist as specified in paragraph (2) of this subsection.

(ii) All pharmacy technicians and pharmacy technician trainees who compound sterile preparations for administration to patients shall:

(I) have initial training obtained either through completion of:

(-a-) a single course, a minimum of 40 hours of instruction and experience in the areas listed in paragraph (4)(D) of this subsection. Such training shall be obtained through completion of a course sponsored by an ACPE accredited provider which provides 40 hours of instruction and experience; or

(-b-) a training program which is accredited by the American Society of Health-System Pharmacists.

(II) and

(-a-) complete a structured on-the-job didactic and experiential training program at this pharmacy which provides sufficient hours of instruction and experience in the facility's sterile compounding processes and procedures. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; and

(-b-) possess knowledge about:

(-1-) aseptic processing;

(-2-) quality control and quality assurance as related to environmental, component, and finished preparation release checks and tests;

(-3-) chemical, pharmaceutical, and clinical properties of drugs;

(-4-) container, equipment, and closure system selection; and

(-5-) sterilization techniques.

(iii) Individuals enrolled in training programs accredited by the American Society of Health-System Pharmacists may compound sterile preparations in a licensed pharmacy provided the:

(I) compounding occurs only during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;

(II) individual is under the direct supervision of and responsible to a pharmacist who has completed training as specified in paragraph (2) of this subsection; and

(III) supervising pharmacist conducts periodic in-process checks as defined in the pharmacy's policy and procedures; and

(IV) supervising pharmacist conducts a final check.

(iv) The required experiential portion of the training programs specified in this subparagraph must be supervised by an individual who is actively engaged in performing sterile compounding, is qualified and has completed training as specified in paragraph (2) of this subsection or this paragraph.

(v) In order to renew a registration as a pharmacy technician, during the previous registration period, a pharmacy technician engaged in sterile compounding shall complete a minimum of:

(I) two hours of ACPE accredited continuing education relating to one or more of the areas listed in paragraph (4)(D) of this subsection if the pharmacy technician is engaged in compounding low and medium risk sterile preparations; or

(II) four hours of ACPE accredited continuing education relating to one or more of the areas listed in paragraph (4)(D) of this subsection if pharmacy technician is engaged in compounding high risk sterile preparations.

(4) Evaluation and testing requirements.

(A) All pharmacy personnel preparing sterile preparations shall be trained conscientiously and skillfully by expert personnel through multimedia instructional sources and professional publications in the theoretical principles and practical skills of aseptic manipulations, garbing procedures, aseptic work practices, achieving and maintaining ISO Class 5 environmental conditions, and cleaning and disinfection procedures before beginning to prepare compounded sterile preparations.

(B) All pharmacy personnel preparing sterile preparations shall perform didactic review and pass written and media-fill testing of aseptic manipulative skills initially followed by:

(i) every 12 months for low- and medium-risk level compounding; and

(ii) every six months for high-risk level compounding.

(C) Pharmacy personnel who fail written tests or whose media-fill test vials result in gross microbial colonization shall:

(i) be immediately re-instructed and re-evaluated by expert compounding personnel to ensure correction of all aseptic practice deficiencies; and

(ii) not be allowed to compound sterile preparations for patient use until passing results are achieved.

(D) The didactic and experiential training shall include instruction, experience, and demonstrated proficiency in the following areas:

(i) aseptic technique;

(ii) critical area contamination factors;

(iii) environmental monitoring;

(iv) structure and engineering controls related to facilities;

(v) equipment and supplies;

(vi) sterile preparation calculations and terminology;

(vii) sterile preparation compounding documentation;

(viii) quality assurance procedures;

(ix) aseptic preparation procedures including proper gowning and gloving technique;

(x) handling of hazardous drugs, if applicable;

(xi) cleaning procedures; and

(xii) general conduct in the clean room.

(E) The aseptic technique of each person compounding or responsible for the direct supervision of personnel compounding sterile preparations shall be observed and evaluated by expert personnel as satisfactory through written and practical tests, and challenge testing, and such evaluation documented. Compounding personnel shall not evaluate their own aseptic technique or results of their own media-fill challenge testing.

(F) Media-fill tests must be conducted at each pharmacy where an individual compounds low or medium risk sterile preparations. If pharmacies are under common ownership and control, the media-fill testing may be conducted at only one of the pharmacies provided each of the pharmacies are operated under equivalent policies and procedures and the testing is conducted under the most challenging or stressful conditions. In addition, each pharmacy must maintain documentation of the media-fill test. No preparation intended for patient use shall be compounded by an individual until the on-site media-fill tests indicate that the individual can competently perform aseptic procedures, except that a pharmacist may temporarily compound sterile preparations and supervise pharmacy technicians compounding sterile preparations without media-fill tests provided the pharmacist completes the on-site media-fill tests within seven days of commencing work at the pharmacy.

(G) Media-fill tests must be conducted at each pharmacy where an individual compounds high risk sterile preparations. No preparation intended for patient use shall be compounded by an individual until the on-site media-fill tests indicate that the individual can competently perform aseptic procedures, except that a pharmacist may temporarily compound sterile preparations and supervise pharmacy technicians compounding sterile preparations without media-fill tests provided the pharmacist completes the on-site media-fill tests within seven days of commencing work at the pharmacy.

(H) Media-fill tests procedures for assessing the preparation of specific types of sterile preparations shall be representative of the most challenging or stressful conditions encountered by the pharmacy personnel being evaluated and, if applicable, for sterilizing high-risk level compounded sterile preparations.

(I) Media-fill challenge tests simulating high-risk level compounding shall be used to verify the capability of the compounding environment and process to produce a sterile preparation.

(J) Commercially available sterile fluid culture media, such as Soybean-Casein Digest Medium shall be able to promote exponential colonization of bacteria that are most likely to be transmitted to compounding sterile preparations from the compounding personnel and environment. Media-filled vials are generally incubated at 20 to 25 degrees Celsius or at 30 to 35 degrees Celsius for a minimum of 14 days. If two temperatures are used for incubation of media-filled samples, then these filled containers should be incubated for at least 7 days at each temperature. Failure is indicated by visible turbidity in the medium on or before 14 days.

(K) The pharmacist-in-charge shall ensure continuing competency of pharmacy personnel through in-service education, training, and media-fill tests to supplement initial training. Personnel competency shall be evaluated:

(i) during orientation and training prior to the regular performance of those tasks;

(ii) whenever the quality assurance program yields an unacceptable result;

(iii) whenever unacceptable techniques are observed; and

(iv) at least on an annual basis for low- and medium-risk level compounding, and every six months for high-risk level compounding.

(L) The pharmacist-in-charge shall ensure that proper hand hygiene and garbing practices of compounding personnel are evaluated prior to compounding, supervising, or verifying sterile preparations intended for patient use and whenever an aseptic media fill is performed.

(i) Sampling of compounding personnel glove fingertips shall be performed for all risk level compounding.

(ii) All compounding personnel shall demonstrate competency in proper hand hygiene and garbing procedures and in aseptic work practices (e.g., disinfection of component surfaces, routine disinfection of gloved hands).

(iii) Sterile contact agar plates shall be used to sample the gloved fingertips of compounding personnel after garbing in order to assess garbing competency and after completing the media-fill preparation (without applying sterile 70% IPA).

(iv) The visual observation shall be documented and maintained to provide a permanent record and long-term assessment of personnel competency.

(v) All compounding personnel shall successfully complete an initial competency evaluation and gloved fingertip/thumb sampling procedure no less than three times before initially being allowed to compound sterile preparations for patient use. Immediately after the compounding personnel completes the hand hygiene and garbing procedure (i.e., after donning of sterile gloves and before any disinfecting with sterile 70% IPA), the evaluator will collect a gloved fingertip and thumb sample from both hands of the compounding personnel onto agar plates or media test paddles by having the individual lightly touching each fingertip onto the agar. The test plates or test paddles will be incubated for the appropriate incubation period and at the appropriate temperature. Results of the initial gloved fingertip evaluations shall indicate zero colony-forming units (0 CFU) growth on the agar plates or media test paddles, or the test shall be considered a failure. In the event of a failed gloved fingertip test, the evaluation shall be repeated until the individual can successfully don sterile gloves and pass the gloved fingertip evaluation, defined as zero CFUs growth. No preparation intended for patient use shall be compounded by an individual until the results of the initial gloved fingertip evaluation indicate that the individual can competently perform aseptic procedures except that a pharmacist may temporarily supervise pharmacy technicians compounding sterile preparations while waiting for the results of the evaluation for no more than three days.

(vi) Re-evaluation of all compounding personnel shall occur at least annually for compounding personnel who compound low and medium risk level preparations and every six months for compounding personnel who compound high risk level preparations. Results of gloved fingertip tests conducted immediately after compounding personnel complete a compounding procedure shall indicate no more than 3 CFUs growth, or the test shall be considered a failure, in which case, the evaluation shall be repeated until an acceptable test can be achieved (i.e., the results indicated no more than 3 CFUs growth).

(M) The pharmacist-in-charge shall ensure surface sampling shall be conducted in all ISO classified areas on a periodic basis. Sampling shall be accomplished using contact plates at the conclusion of compounding. The sample area shall be gently touched with the agar surface by rolling the plate across the surface to be sampled.

(5) Documentation of Training. The pharmacy shall maintain a record of the training and continuing education on each person who compounds sterile preparations. The record shall contain, at a minimum, a written record of initial and in-service training, education, and the results of written and practical testing and media-fill testing of pharmacy personnel. The record shall be maintained and available for inspection by the board and contain the following information:

(A) name of the person receiving the training or completing the testing or media-fill tests;

(B) date(s) of the training, testing, or media-fill challenge testing;

(C) general description of the topics covered in the training or testing or of the process validated;

(D) name of the person supervising the training, testing, or media-fill challenge testing; and

(E) signature or initials of the person receiving the training or completing the testing or media-fill challenge testing and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training, testing, or media-fill challenge testing of personnel.

(d) Operational Standards.

(1) General Requirements.

(A) Sterile preparations may be compounded:

(i) upon presentation of a practitioner's prescription drug or medication order based on a valid pharmacist/patient/prescriber relationship;

(ii) in anticipation of future prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(iii) in reasonable quantities for office use by a practitioner and for use by a veterinarian.

(B) Sterile compounding in anticipation of future prescription drug or medication orders must be based upon a history of receiving valid prescriptions issued within an established pharmacist/patient/prescriber relationship, provided that in the pharmacist's professional judgment the quantity prepared is stable for the anticipated shelf time.

(i) The pharmacist's professional judgment shall be based on the criteria used to determine a beyond-use date outlined in paragraph (6)(G) of this subsection.

(ii) Documentation of the criteria used to determine the stability for the anticipated shelf time must be maintained and be available for inspection.

(iii) Any preparation compounded in anticipation of future prescription drug or medication orders shall be labeled. Such label shall contain:

(I) name and strength of the compounded preparation or list of the active ingredients and strengths;

(II) facility's lot number;

(III) beyond-use date as determined by the pharmacist using appropriate documented criteria as outlined in paragraph (6)(G) of this subsection;

(IV) quantity or amount in the container;

(V) appropriate ancillary instructions, such as storage instructions or cautionary statements, including hazardous drug warning labels where appropriate; and

(VI) device-specific instructions, where appropriate.

(C) Commercially available products may be compounded for dispensing to individual patients or for office use provided the following conditions are met:

(i) the commercial product is not reasonably available from normal distribution channels in a timely manner to meet individual patient's needs;

(ii) the pharmacy maintains documentation that the product is not reasonably available due to a drug shortage or unavailability from the manufacturer; and

(iii) the prescribing practitioner has requested that the drug be compounded as described in subparagraph (D) of this paragraph.

(D) A pharmacy may not compound preparations that are essentially copies of commercially available products (e.g., the preparation is dispensed in a strength that is only slightly different from a commercially available product) unless the prescribing practitioner specifically orders the strength or dosage form and specifies why the individual patient needs the particular strength or dosage form of the preparation or why the preparation for office use is needed in the particular strength or dosage form of the preparation. The prescribing practitioner shall provide documentation of a patient specific medical need and the preparation produces a clinically significant therapeutic response (e.g., the physician requests an alternate preparation due to hypersensitivity to excipients or preservative in the FDA-approved product, or the physician requests an effective alternate dosage form) or if the drug product is not commercially available. The unavailability of such drug product must be documented prior to compounding. The methodology for documenting unavailability includes maintaining a copy of the wholesaler's notification showing back-ordered, discontinued, or out-of-stock items. This documentation must be available in hard-copy or electronic format for inspection by the board.

(E) A pharmacy may enter into an agreement to compound and dispense prescription/medication orders for another pharmacy provided the pharmacy complies with the provisions of §291.125 of this title (relating to Centralized Prescription Dispensing).

(F) Compounding pharmacies/pharmacists may advertise and promote the fact that they provide sterile prescription compounding services, which may include specific drug preparations and classes of drugs.

(G) A pharmacy may not compound veterinary preparations for use in food producing animals except in accordance with federal guidelines.

(H) Compounded sterile preparations, including hazardous drugs and radiopharmaceuticals, shall be prepared only under conditions that protect the pharmacy personnel in the preparation and storage areas.

(2) Microbial Contamination Risk Levels. Risk Levels for sterile compounded preparations shall be as outlined in Chapter 797, Pharmacy Compounding--Sterile Preparations of the USP/NF and as listed in this paragraph.

(A) Low-risk level compounded sterile preparations.

(i) Low-Risk conditions. Low-risk level compounded sterile preparations are those compounded under all of the following conditions.

(I) The compounded sterile preparations are compounded with aseptic manipulations entirely within ISO Class 5 or better air quality using only sterile ingredients, products, components, and devices.

(II) The compounding involves only transfer, measuring, and mixing manipulations using not more than three commercially manufactured packages of sterile products and not more than two entries into any one sterile container or package (e.g., bag, vial) of sterile product or administration container/device to prepare the compounded sterile preparation.

(III) Manipulations are limited to aseptically opening ampuls, penetrating disinfected stoppers on vials with sterile needles and syringes, and transferring sterile liquids in sterile syringes to sterile administration devices, package containers of other sterile products, and containers for storage and dispensing.

(IV) For a low-risk preparation, in the absence of passing a sterility test the storage periods cannot exceed the following periods: before administration the compounded sterile preparation is stored properly and are exposed for not more than 48 hours at controlled room temperature, for not more than 14 days if stored at a cold temperature, and for 45 days if stored in a frozen state between minus 25 degrees Celsius and minus 10 degrees Celsius. For delayed activation device systems, the storage period begins when the device is activated.

(ii) Examples of Low-Risk Compounding. Examples of low-risk compounding include the following.

(I) Single volume transfers of sterile dosage forms from ampuls, bottles, bags, and vials using sterile syringes with sterile needles, other administration devices, and other sterile containers. The solution content of ampules shall be passed through a sterile filter to remove any particles.

(II) Simple aseptic measuring and transferring with not more than three packages of manufactured sterile products, including an infusion or diluent solution to compound drug admixtures and nutritional solutions.

(B) Low-Risk Level compounded sterile preparations with 12-hour or less beyond-use date. Low-risk level compounded sterile preparations are those compounded pursuant to a physician's order for a specific patient under all of the following conditions.

(i) The compounded sterile preparations are compounded in compounding aseptic isolator or compounding aseptic containment isolator that does not meet the requirements described in paragraph (7)(C) or (D) of this subsection (relating to Primary Engineering Control Device) or the compounded sterile preparations are compounded in laminar airflow workbench or a biological safety cabinet that cannot be located within the buffer area.

(ii) The primary engineering control device shall be certified and maintain ISO Class 5 for exposure of critical sites and

shall be located in a segregated compounding area restricted to sterile compounding activities that minimizes the risk of contamination of the compounded sterile preparation.

(iii) The segregated compounding area shall not be in a location that has unsealed windows or doors that connect to the outdoors or high traffic flow, or that is adjacent to construction sites, warehouses, or food preparation.

(iv) For a low-risk preparation compounded as described in clauses (i) - (iii) of this subparagraph, administration of such compounded sterile preparations must commence within 12 hours of preparation or as recommended in the manufacturers' package insert, whichever is less. However, the administration of sterile radiopharmaceuticals, with documented testing of chemical stability, may be administered beyond 12 hours of preparation.

(C) Medium-risk level compounded sterile preparations.

(i) Medium-Risk Conditions. Medium-risk level compounded sterile preparations, are those compounded aseptically under low-risk conditions and one or more of the following conditions exists.

(I) Multiple individual or small doses of sterile products are combined or pooled to prepare a compounded sterile preparation that will be administered either to multiple patients or to one patient on multiple occasions.

(II) The compounding process includes complex aseptic manipulations other than the single-volume transfer.

(III) The compounding process requires unusually long duration, such as that required to complete the dissolution or homogenous mixing (e.g., reconstitution of intravenous immunoglobulin or other intravenous protein products).

(IV) The compounded sterile preparations do not contain broad spectrum bacteriostatic substances and they are administered over several days (e.g., an externally worn infusion device).

(V) For a medium-risk preparation, in the absence of passing a sterility test the storage periods cannot exceed the following time periods: before administration, the compounded sterile preparations are properly stored and are exposed for not more than 30 hours at controlled room temperature, for not more than 9 days at a cold temperature, and for 45 days in solid frozen state between minus 25 degrees Celsius and minus 10 degrees Celsius.

(ii) Examples of medium-risk compounding. Examples of medium-risk compounding include the following.

(I) Compounding of total parenteral nutrition fluids using a manual or automated device during which there are multiple injections, detachments, and attachments of nutrient source products to the device or machine to deliver all nutritional components to a final sterile container.

(II) Filling of reservoirs of injection and infusion devices with more than three sterile drug products and evacuations of air from those reservoirs before the filled device is dispensed.

(III) Filling of reservoirs of injection and infusion devices with volumes of sterile drug solutions that will be administered over several days at ambient temperatures between 25 and 40 degrees Celsius (77 and 104 degrees Fahrenheit).

(IV) Transfer of volumes from multiple ampuls or vials into a single, final sterile container or product.

(D) High-risk level compounded sterile preparations.

(i) High-risk Conditions. High-risk level compounded sterile preparations are those compounded under any of the following conditions.

(I) Non-sterile ingredients, including manufactured products not intended for sterile routes of administration (e.g., oral) are incorporated or a non-sterile device is employed before terminal sterilization.

(II) Any of the following are exposed to air quality worse than ISO Class 5 for more than 1 hour:

(-a-) sterile contents of commercially manufactured products;

(-b-) CSPs that lack effective antimicrobial preservatives; and

(-c-) sterile surfaces of devices and containers for the preparation, transfer, sterilization, and packaging of CSPs.

(III) Compounding personnel are improperly garbed and gloved.

(IV) Non-sterile water-containing preparations are exposed no more than 6 hours before being sterilized.

(V) It is assumed, and not verified by examination of labeling and documentation from suppliers or by direct determination, that the chemical purity and content strength of ingredients meet their original or compendial specifications in unopened or in opened packages of bulk ingredients.

(VI) For a sterilized high-risk level preparation, in the absence of passing a sterility test, the storage periods cannot exceed the following time periods: before administration, the compounded sterile preparations are properly stored and are exposed for not more than 24 hours at controlled room temperature, for not more than 3 days at a cold temperature, and for 45 days in solid frozen state between minus 25 degrees Celsius and minus 10 degrees Celsius.

(VII) All non-sterile measuring, mixing, and purifying devices are rinsed thoroughly with sterile, pyrogen-free water, and then thoroughly drained or dried immediately before use for high-risk compounding. All high-risk compounded sterile solutions subjected to terminal sterilization are prefiltered by passing through a filter with a nominal pore size not larger than 1.2 micron preceding or during filling into their final containers to remove particulate matter. Sterilization of high-risk level compounded sterile preparations by filtration shall be performed with a sterile 0.2 micrometer or 0.22 micrometer nominal pore size filter entirely within an ISO Class 5 or superior air quality environment.

(ii) Examples of high-risk compounding. Examples of high-risk compounding include the following.

(I) Dissolving non-sterile bulk drug powders to make solutions, which will be terminally sterilized.

(II) Exposing the sterile ingredients and components used to prepare and package compounded sterile preparations to room air quality worse than ISO Class 5 for more than one hour.

(III) Measuring and mixing sterile ingredients in non-sterile devices before sterilization is performed.

(IV) Assuming, without appropriate evidence or direct determination, that packages of bulk ingredients contain at least 95% by weight of their active chemical moiety and have not been contaminated or adulterated between uses.

(3) Immediate Use Compounded Sterile Preparations. For the purpose of emergency or immediate patient care, such situations may include cardiopulmonary resuscitation, emergency room treat-

ment, preparation of diagnostic agents, or critical therapy where the preparation of the compounded sterile preparation under low-risk level conditions would subject the patient to additional risk due to delays in therapy. Compounded sterile preparations are exempted from the requirements described in this paragraph for low-risk level compounded sterile preparations when all of the following criteria are met.

(A) Only simple aseptic measuring and transfer manipulations are performed with not more than three sterile non-hazardous commercial drug and diagnostic radiopharmaceutical drug products, including an infusion or diluent solution, from the manufacturers' original containers and not more than two entries into any one container or package of sterile infusion solution or administration container/device.

(B) Unless required for the preparation, the compounding procedure occurs continuously without delays or interruptions and does not exceed 1 hour.

(C) During preparation, aseptic technique is followed and, if not immediately administered, the finished compounded sterile preparation is under continuous supervision to minimize the potential for contact with nonsterile surfaces, introduction of particulate matter of biological fluids, mix-ups with other compounded sterile preparations, and direct contact of outside surfaces.

(D) Administration begins not later than one hour following the completion of preparing the compounded sterile preparation.

(E) When the compounded sterile preparations is not administered by the person who prepared it, or its administration is not witnessed by the person who prepared it, the compounded sterile preparation shall bear a label listing patient identification information such as name and identification number(s), the names and amounts of all ingredients, the name or initials of the person who prepared the compounded sterile preparation, and the exact 1-hour beyond-use time and date.

(F) If administration has not begun within one hour following the completion of preparing the compounded sterile preparation, the compounded sterile preparation is promptly and safely discarded. Immediate use compounded sterile preparations shall not be stored for later use.

(G) Hazardous drugs shall not be prepared as immediate use compounded sterile preparations.

(4) Single-dose and multiple dose containers.

(A) Opened or needle punctured single-dose containers, such as bags bottles, syringes, and vials of sterile products shall be used within one hour if opened in worse than ISO Class 5 air quality. Any remaining contents must be discarded.

(B) Single-dose containers, including single-dose large volume parenteral solutions and single-dose vials, exposed to ISO Class 5 or cleaner air may be used up to six hours after initial needle puncture.

(C) Opened single-dose fusion sealed containers shall not be stored for any time period.

(D) Multiple-dose containers may be used up to 28 days after initial needle puncture unless otherwise specified by the manufacturer.

(5) Library. In addition to the library requirements of the pharmacy's specific license classification, a pharmacy shall maintain current or updated copies in hard-copy or electronic format of each of the following:

(A) a reference text on injectable drug preparations, such as Handbook on Injectable Drug Products;

(B) a specialty reference text appropriate for the scope of pharmacy services provided by the pharmacy, e.g., if the pharmacy prepares hazardous drugs, a reference text on the preparation of hazardous drugs; and

(C) the United States Pharmacopeia/National Formulary containing USP Chapter 71, Sterility Tests, USP Chapter 85, Bacterial Endotoxins Test, Pharmaceutical Compounding--Nonsterile Preparations, USP Chapter 795, USP Chapter 797, Pharmaceutical Compounding--Sterile Preparations, and USP Chapter 1163, Quality Assurance in Pharmaceutical Compounding; and

(D) any additional USP/NF chapters applicable to the practice of the pharmacy (e.g., USP Chapter 800, Hazardous Drugs--Handling in Healthcare Settings, USP Chapter 823, Positron Emission Tomography Drugs for Compounding, Investigational, and Research Uses).

(6) Environment. Compounding facilities shall be physically designed and environmentally controlled to minimize airborne contamination from contacting critical sites.

(A) Low and Medium Risk Preparations. A pharmacy that prepares low- and medium-risk preparations shall have a clean room for the compounding of sterile preparations that is constructed to minimize the opportunities for particulate and microbial contamination. The clean room shall:

(i) be clean, well lit, and of sufficient size to support sterile compounding activities;

(ii) be maintained at a temperature of 20 degrees Celsius or cooler and at a humidity below 60%;

(iii) be used only for the compounding of sterile preparations;

(iv) be designed such that hand sanitizing and gowning occurs outside the buffer area but allows hands-free access by compounding personnel to the buffer area;

(v) have non-porous and washable floors or floor covering to enable regular disinfection;

(vi) be ventilated in a manner to avoid disruption from the HVAC system and room cross-drafts;

(vii) have walls, ceilings, floors, fixtures, shelving, counters, and cabinets that are smooth, impervious, free from cracks and crevices (e.g., coved), non-shedding and resistant to damage by disinfectant agents;

(viii) have junctures of ceilings to walls coved or caulked to avoid cracks and crevices;

(ix) have drugs and supplies stored on shelving areas above the floor to permit adequate floor cleaning;

(x) contain only the appropriate compounding supplies and not be used for bulk storage for supplies and materials. Objects that shed particles shall not be brought into the clean room. A Class B pharmacy may use low-linting absorbent materials in the primary engineering control device;

(xi) contain an ante-area that contains a sink with hot and cold running water that enables hands-free use with a closed system of soap dispensing to minimize the risk of extrinsic contamination. A Class B pharmacy may have a sink with hot and cold running water that enables hands-free use with a closed system of soap dispensing

immediately outside the ante-area if antiseptic hand cleansing is performed using a waterless alcohol-based surgical hand scrub with persistent activity following manufacturers' recommendations once inside the ante-area; and

(xii) contain a buffer area. The following is applicable for the buffer area.

(I) There shall be some demarcation designation that delineates the ante-area from the buffer area. The demarcation shall be such that it does not create conditions that could adversely affect the cleanliness of the area.

(II) The buffer area shall be segregated from surrounding, unclassified spaces to reduce the risk of contaminants being blown, dragged, or otherwise introduced into the filtered unidirectional airflow environment, and this segregation should be continuously monitored.

(III) A buffer area that is not physically separated from the ante-area shall employ the principle of displacement airflow as defined in Chapter 797, Pharmaceutical Compounding--Sterile Preparations, of the USP/NF, with limited access to personnel.

(IV) The buffer area shall not contain sources of water (i.e., sinks) or floor drains other than distilled or sterile water introduced for facilitating the use of heat block wells for radiopharmaceuticals.

(B) High-risk Preparations.

(i) In addition to the requirements in subparagraph (A) of this paragraph, when high-risk preparations are compounded, the primary engineering control shall be located in a buffer area that provides a physical separation, through the use of walls, doors and pass-throughs and has a minimum differential positive pressure of 0.02 to 0.05 inches water column.

(ii) Presterilization procedures for high-risk level compounded sterile preparations, such as weighing and mixing, shall be completed in no worse than an ISO Class 8 environment.

(C) Automated compounding device.

(i) General. If automated compounding devices are used, the pharmacy shall have a method to calibrate and verify the accuracy of automated compounding devices used in aseptic processing and document the calibration and verification on a daily basis, based on the manufacturer's recommendations, and review the results at least weekly.

(ii) Loading bulk drugs into automated compounding devices.

(I) Automated compounding device may be loaded with bulk drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(II) The label of an automated compounding device container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor.

(III) Records of loading bulk drugs into an automated compounding device shall be maintained to show:

(-a-) name of the drug, strength, and dosage form;

(-b-) manufacturer or distributor;

(-c-) manufacturer's lot number;

(-d-) manufacturer's expiration date;

(-e-) quantity added to the automated compounding device;

(-f-) date of loading;

(-g-) name, initials, or electronic signature of the person loading the automated compounding device; and

(-h-) name, initials, or electronic signature of the responsible pharmacist.

(IV) The automated compounding device shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature or electronic signature to the record specified in subclause (III) of this clause.

(D) Hazardous drugs. If the preparation is hazardous, the following is also applicable.

(i) Hazardous drugs shall be prepared only under conditions that protect personnel during preparation and storage.

(ii) Hazardous drugs shall be stored separately from other inventory in a manner to prevent contamination and personnel exposure.

(iii) All personnel involved in the compounding of hazardous drugs shall wear appropriate protective apparel, such as gowns, face masks, eye protection, hair covers, shoe covers or dedicated shoes, and appropriate gloving at all times when handling hazardous drugs, including receiving, distribution, stocking, inventorying, preparation, for administration and disposal.

(iv) Appropriate safety and containment techniques for compounding hazardous drugs shall be used in conjunction with aseptic techniques required for preparing sterile preparations.

(v) Disposal of hazardous waste shall comply with all applicable local, state, and federal requirements.

(vi) Prepared doses of hazardous drugs must be dispensed, labeled with proper precautions inside and outside, and distributed in a manner to minimize patient contact with hazardous agents.

(E) Blood-labeling procedures. When compounding activities require the manipulation of a patient's blood-derived material (e.g., radiolabeling a patient's or donor's white blood cells), the manipulations shall be performed in a ISO Class 5 biological safety cabinet located in a buffer area and shall be clearly separated from routine material-handling procedures and equipment used in preparation activities to avoid any cross-contamination. The preparations shall not require sterilization.

(F) Cleaning and disinfecting the sterile compounding areas. The following cleaning and disinfecting practices and frequencies apply to direct and contiguous compounding areas, which include ISO Class 5 compounding areas for exposure of critical sites as well as buffer areas, ante-areas, and segregated compounding areas.

(i) The pharmacist-in-charge is responsible for developing written procedures for cleaning and disinfecting the direct and contiguous compounding areas and assuring the procedures are followed.

(ii) These procedures shall be conducted at the beginning of each work shift, before each batch preparation is started, when there are spills, and when surface contamination is known or suspected resulting from procedural breaches, and every 30 minutes during continuous compounding of individual compounded sterile preparations, unless a particular compounding procedure requires more than 30 minutes to complete, in which case, the direct compounding area is to be cleaned immediately after the compounding activity is completed.

(iii) Before compounding is performed, all items shall be removed from the direct and contiguous compounding areas and all surfaces are cleaned by removing loose material and residue from spills, followed by an application of a residue-free disinfecting agent (e.g., IPA), which is allowed to dry before compounding begins. In a Class B pharmacy, objects used in preparing sterile radiopharmaceuticals (e.g., dose calibrator) which cannot be reasonably removed from the compounding area shall be sterilized with an application of a residue-free disinfection agent.

(iv) Work surfaces in the buffer areas and ante-areas, as well as segregated compounding areas, shall be cleaned and disinfected at least daily. Dust and debris shall be removed when necessary from storage sites for compounding ingredients and supplies using a method that does not degrade the ISO Class 7 or 8 air quality.

(v) Floors in the buffer area, ante-area, and segregated compounding area are cleaned by mopping with a cleaning and disinfecting agent at least once daily when no aseptic operations are in progress. Mopping shall be performed by trained personnel using approved agents and procedures described in the written SOPs. It is incumbent on compounding personnel to ensure that such cleaning is performed properly.

(vi) In the buffer area, ante-area, and segregated compounding area, walls, ceilings, and shelving shall be cleaned and disinfected monthly. Cleaning and disinfecting agents shall be used with careful consideration of compatibilities, effectiveness, and inappropriate or toxic residues.

(vii) All cleaning materials, such as wipers, sponges, and mops, shall be non-shedding, and dedicated to use in the buffer area, ante-area, and segregated compounding areas and shall not be removed from these areas except for disposal. Floor mops may be used in both the buffer area and ante-area, but only in that order. If cleaning materials are reused, procedures shall be developed that ensure that the effectiveness of the cleaning device is maintained and that repeated use does not add to the bio-burden of the area being cleaned.

(viii) Supplies and equipment removed from shipping cartons must be wiped with a disinfecting agent, such as sterile IPA. After the disinfectant is sprayed or wiped on a surface to be disinfected, the disinfectant shall be allowed to dry, during which time the item shall not be used for compounding purposes. However, if sterile supplies are received in sealed pouches, the pouches may be removed as the supplies are introduced into the ISO Class 5 area without the need to disinfect the individual sterile supply items. No shipping or other external cartons may be taken into the buffer area or segregated compounding area.

(ix) Storage shelving emptied of all supplies, walls, and ceilings are cleaned and disinfected at planned intervals, monthly, if not more frequently.

(x) Cleaning must be done by personnel trained in appropriate cleaning techniques.

(xi) Proper documentation and frequency of cleaning must be maintained and shall contain the following:

(I) date and time of cleaning;

(II) type of cleaning performed; and

(III) name of individual who performed the cleaning.

(G) Security requirements. The pharmacist-in-charge may authorize personnel to gain access to that area of the pharmacy containing dispensed sterile preparations, in the absence of the pharmacist, for the purpose of retrieving dispensed prescriptions to deliver to patients. If the pharmacy allows such after-hours access, the area containing the dispensed sterile preparations shall be an enclosed and lockable area separate from the area containing undispensed prescription drugs. A list of the authorized personnel having such access shall be in the pharmacy's policy and procedure manual.

(H) Storage requirements and beyond-use dating.

(i) Storage requirements. All drugs shall be stored at the proper temperature and conditions, as defined in the USP/NF and in §291.15 of this title (relating to Storage of Drugs).

(ii) Beyond-use dating.

(I) Beyond-use dates for compounded sterile preparations shall be assigned based on professional experience, which shall include careful interpretation of appropriate information sources for the same or similar formulations.

(II) Beyond-use dates for compounded sterile preparations that are prepared strictly in accordance with manufacturers' product labeling must be those specified in that labeling, or from appropriate literature sources or direct testing.

(III) When assigning a beyond-use date, compounding personnel shall consult and apply drug-specific and general stability documentation and literature where available, and they should consider the nature of the drug and its degradation mechanism, the container in which it is packaged, the expected storage conditions, and the intended duration of therapy.

(IV) The sterility and storage and stability beyond-use date for attached and activated container pairs of drug products for intravascular administration shall be applied as indicated by the manufacturer.

(7) Primary engineering control device. The pharmacy shall prepare sterile preparations in a primary engineering control device (PEC), such as a laminar air flow hood, biological safety cabinet, compounding aseptic isolator (CAI), or compounding aseptic containment isolator (CACI) which is capable of maintaining at least ISO Class 5 conditions for 0.5 micrometer particles while compounding sterile preparations.

(A) Laminar air flow hood. If the pharmacy is using a laminar air flow hood as its PEC, the laminar air flow hood shall:

(i) be located in the buffer area and placed in the buffer area in a manner as to avoid conditions that could adversely affect its operation such as strong air currents from opened doors, personnel traffic, or air streams from the heating, ventilating and air condition system;

(ii) be certified by a qualified independent contractor according to the appropriate Controlled Environment Testing Association (CETA) standard (CAG-003-2006) for operational efficiency at least every six months and whenever the device or room is relocated or altered or major service to the facility is performed;

(iii) have pre-filters inspected periodically and replaced as needed, in accordance with written policies and procedures and the manufacturer's specification, and the inspection and/or replacement date documented; and

(iv) be located in a buffer area that has a minimum differential positive pressure of 0.02 to 0.05 inches water column. A buffer area that is not physically separated from the ante-area shall employ the principle of displacement airflow as defined in Chapter 797, Pharmaceutical Compounding--Sterile Preparations, of the USP/NF, with limited access to personnel.

(B) Biological safety cabinet.

(i) If the pharmacy is using a biological safety cabinet as its PEC for the preparation of hazardous sterile compounded preparations, the biological safety cabinet shall be a Class II or III vertical flow biological safety cabinet located in an ISO Class 7 area that is physically separated from other preparation areas. The area for preparation of sterile chemotherapeutic preparations shall:

(I) have not less than 0.01 inches water column negative pressure to the adjacent positive pressure ISO Class 7 or better ante-area; and

(II) have a pressure indicator that can be readily monitored for correct room pressurization.

(ii) Pharmacies that prepare a low volume of hazardous drugs, are not required to comply with the provisions of clause (i) of this subparagraph if the pharmacy uses a device that provides two tiers of containment (e.g., closed-system vial transfer device within a BSC).

(iii) If the pharmacy is using a biological safety cabinet as its PEC for the preparation of non-hazardous sterile compounded preparations, the biological safety cabinet shall:

(I) be located in the buffer area and placed in the buffer area in a manner as to avoid conditions that could adversely affect its operation such as strong air currents from opened doors, personnel traffic, or air streams from the heating, ventilating and air condition system;

(II) be certified by a qualified independent contractor according to the International Organization of Standardization (ISO) Classification of Particulate Matter in Room Air (ISO 14644-1) for operational efficiency at least every six months and whenever the device or room is relocated or altered or major service to the facility is performed, in accordance with the manufacturer's specifications and test procedures specified in the Institute of Environmental Sciences and Technology (IEST) document IEST-RP-CC002.3;

(III) have pre-filters inspected periodically and replaced as needed, in accordance with written policies and procedures and the manufacturer's specification, and the inspection and/or replacement date documented; and

(IV) be located in a buffer area that has a minimum differential positive pressure of 0.02 to 0.05 inches water column.

(C) Compounding aseptic isolator.

(i) If the pharmacy is using a compounding aseptic isolator (CAI) as its PEC, the CAI shall provide unidirectional airflow within the main processing and antechambers, and be placed in an ISO Class 7 buffer area unless the isolator meets all of the following conditions:

(I) The isolator must provide isolation from the room and maintain ISO Class 5 during dynamic operating conditions including transferring ingredients, components, and devices into and out of the isolator and during preparation of compounded sterile preparations.

(II) Particle counts sampled approximately 6 to 12 inches upstream of the critical exposure site must maintain ISO Class 5 levels during compounding operations.

(III) The CAI must be validated according to CETA CAG-002-2006 standards.

(IV) The pharmacy shall maintain documentation from the manufacturer that the isolator meets this standard when located in worse than ISO Class 7 environments.

(ii) If the isolator meets the requirements in clause (i) of this subparagraph, the CAI may be placed in a non-ISO classified area of the pharmacy; however, the area shall be segregated from other areas of the pharmacy and shall:

(I) be clean, well lit, and of sufficient size;

(II) be used only for the compounding of low- and medium-risk, non-hazardous sterile preparations;

(III) be located in an area of the pharmacy with non-porous and washable floors or floor covering to enable regular disinfection; and

(IV) be an area in which the CAI is placed in a manner as to avoid conditions that could adversely affect its operation.

(iii) In addition to the requirements specified in clauses (i) and (ii) of this subparagraph, if the CAI is used in the compounding of high-risk non-hazardous preparations, the CAI shall be placed in an area or room with at least ISO 8 quality air so that high-risk powders weighed in at least ISO-8 air quality conditions, compounding utensils for measuring and other compounding equipment are not exposed to lesser air quality prior to the completion of compounding and packaging of the high-risk preparation.

(D) Compounding aseptic containment isolator.

(i) If the pharmacy is using a compounding aseptic containment isolator as its PEC for the preparation of low- and medium-risk hazardous drugs, the CACI shall be located in a separate room away from other areas of the pharmacy and shall:

(I) provide at least 0.01 inches water column negative pressure compared to the other areas of the pharmacy;

(II) provide unidirectional airflow within the main processing and antechambers, and be placed in an ISO Class 7 buffer area, unless the CACI meets all of the following conditions.

(-a-) The isolator must provide isolation from the room and maintain ISO Class 5 during dynamic operating conditions including transferring ingredients, components, and devices into and out of the isolator and during preparation of compounded sterile preparations.

(-b-) Particle counts sampled approximately 6 to 12 inches upstream of the critical exposure site must maintain ISO Class 5 levels during compounding operations.

(-c-) The CACI must be validated according to CETA CAG-002-2006 standards.

(-d-) The pharmacy shall maintain documentation from the manufacturer that the isolator meets this standard when located in worse than ISO Class 7 environments.

(ii) If the CACI meets all conditions specified in clause (i) of this subparagraph, the CACI shall not be located in the same room as a CAI, but shall be located in a separate room in the pharmacy, that is not required to maintain ISO classified air. The room in which the CACI is located shall provide a minimum of 0.01 inches water column negative pressure compared with the other areas of the pharmacy and shall meet the following requirements:

(I) be clean, well lit, and of sufficient size;

(II) be maintained at a temperature of 20 degrees Celsius or cooler and a humidity below 60%;

(III) be used only for the compounding of hazardous sterile preparations;

(IV) be located in an area of the pharmacy with walls, ceilings, floors, fixtures, shelving, counters, and cabinets that are smooth, impervious, free from cracks and crevices, non-shedding and resistant to damage by disinfectant agents; and

(V) have non-porous and washable floors or floor covering to enable regular disinfection.

(iii) If the CACI is used in the compounding of high-risk hazardous preparations, the CACI shall be placed in an area or room with at least ISO 8 quality air so that high-risk powders, weighed in at least ISO-8 air quality conditions, are not exposed to lesser air quality prior to the completion of compounding and packaging of the high-risk preparation.

(iv) Pharmacies that prepare a low volume of hazardous drugs, are not required to comply with the provisions of clauses (i) and (iii) of this subparagraph if the pharmacy uses a device that provides two tiers of containment (e.g., CACI that is located in a non-negative pressure room).

(8) Additional Equipment and Supplies. Pharmacies compounding sterile preparations shall have the following equipment and supplies:

(A) a calibrated system or device (i.e., thermometer) to monitor the temperature to ensure that proper storage requirements are met, if sterile preparations are stored in the refrigerator;

(B) a calibrated system or device to monitor the temperature where bulk chemicals are stored;

(C) a temperature-sensing mechanism suitably placed in the controlled temperature storage space to reflect accurately the true temperature;

(D) if applicable, a Class A prescription balance, or analytical balance and weights. Such balance shall be properly maintained and subject to periodic inspection by the Texas State Board of Pharmacy;

(E) equipment and utensils necessary for the proper compounding of sterile preparations. Such equipment and utensils used in the compounding process shall be:

(i) of appropriate design, appropriate capacity, and be operated within designed operational limits;

(ii) of suitable composition so that surfaces that contact components, in-process material, or drug products shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the drug preparation beyond the desired result;

(iii) cleaned and sanitized immediately prior to and after each use; and

(iv) routinely inspected, calibrated (if necessary), or checked to ensure proper performance;

(F) appropriate disposal containers for used needles, syringes, etc., and if applicable, hazardous waste from the preparation of hazardous drugs and/or biohazardous waste;

(G) appropriate packaging or delivery containers to maintain proper storage conditions for sterile preparations;

(H) infusion devices, if applicable; and

(I) all necessary supplies, including:

(i) disposable needles, syringes, and other supplies for aseptic mixing;

(ii) disinfectant cleaning solutions;

(iii) sterile 70% isopropyl alcohol;

(iv) sterile gloves, both for hazardous and non-hazardous drug compounding;

(v) sterile alcohol-based or water-less alcohol based surgical scrub;

(vi) hand washing agents with bactericidal action;

(vii) disposable, lint free towels or wipes;

(viii) appropriate filters and filtration equipment;

(ix) hazardous spill kits, if applicable; and

(x) masks, caps, coveralls or gowns with tight cuffs, shoe covers, and gloves, as applicable.

(9) Labeling.

(A) Prescription drug or medication orders. In addition to the labeling requirements for the pharmacy's specific license classification, the label dispensed or distributed pursuant to a prescription drug or medication order shall contain the following:

(i) the generic name(s) or the official name(s) of the principal active ingredient(s) of the compounded sterile preparation;

(ii) for outpatient prescription orders other than sterile radiopharmaceuticals, a statement that the compounded sterile preparation has been compounded by the pharmacy. (An auxiliary label may be used on the container to meet this requirement);

(iii) a beyond-use date. The beyond-use date shall be determined as outlined in Chapter 797, Pharmacy Compounding--Sterile Preparations of the USP/NF, and paragraph (7)(G) of this subsection;

(B) Batch. If the sterile preparation is compounded in a batch, the following shall also be included on the batch label:

(i) unique lot number assigned to the batch;

(ii) quantity;

(iii) appropriate ancillary instructions, such as storage instructions or cautionary statements, including hazardous drug warning labels where appropriate; and

(iv) device-specific instructions, where appropriate.

(C) Pharmacy bulk package. The label of a pharmacy bulk package shall:

(i) state prominently "Pharmacy Bulk Package--Not for Direct Infusion;"

(ii) contain or refer to information on proper techniques to help ensure safe use of the preparation; and

(iii) bear a statement limiting the time frame in which the container may be used once it has been entered, provided it is held under the labeled storage conditions.

(10) Written drug information for prescription drug orders only. Written information about the compounded preparation or its major active ingredient(s) shall be given to the patient at the time of dispensing a prescription drug order. A statement which indicates that the preparation was compounded by the pharmacy must be included in this written information. If there is no written information available, the pa-

tient shall be advised that the drug has been compounded and how to contact a pharmacist, and if appropriate, the prescriber, concerning the drug. This paragraph does not apply to the preparation of radiopharmaceuticals.

(11) Pharmaceutical Care Services. In addition to the pharmaceutical care requirements for the pharmacy's specific license classification, the following requirements for sterile preparations compounded pursuant to prescription drug orders must be met. This paragraph does not apply to the preparation of radiopharmaceuticals.

(A) Primary provider. There shall be a designated physician primarily responsible for the patient's medical care. There shall be a clear understanding between the physician, the patient, and the pharmacy of the responsibilities of each in the areas of the delivery of care, and the monitoring of the patient. This shall be documented in the patient medication record (PMR).

(B) Patient training. The pharmacist-in-charge shall develop policies to ensure that the patient and/or patient's caregiver receives information regarding drugs and their safe and appropriate use, including instruction when applicable, regarding:

(i) appropriate disposition of hazardous solutions and ancillary supplies;

(ii) proper disposition of controlled substances in the home;

(iii) self-administration of drugs, where appropriate;

(iv) emergency procedures, including how to contact an appropriate individual in the event of problems or emergencies related to drug therapy; and

(v) if the patient or patient's caregiver prepares sterile preparations in the home, the following additional information shall be provided:

(I) safeguards against microbial contamination, including aseptic techniques for compounding intravenous admixtures and aseptic techniques for injecting additives to premixed intravenous solutions;

(II) appropriate storage methods, including storage durations for sterile pharmaceuticals and expirations of self-mixed solutions;

(III) handling and disposition of premixed and self-mixed intravenous admixtures; and

(IV) proper disposition of intravenous admixture compounding supplies such as syringes, vials, ampules, and intravenous solution containers.

(C) Pharmacist-patient relationship. It is imperative that a pharmacist-patient relationship be established and maintained throughout the patient's course of therapy. This shall be documented in the patient's medication record (PMR).

(D) Patient monitoring. The pharmacist-in-charge shall develop policies to ensure that:

(i) the patient's response to drug therapy is monitored and conveyed to the appropriate health care provider;

(ii) the first dose of any new drug therapy is administered in the presence of an individual qualified to monitor for and respond to adverse drug reactions; and

(iii) reports of adverse events with a compounded sterile preparation are reviewed promptly and thoroughly to correct and prevent future occurrences.

(12) Drugs, components, and materials used in sterile compounding.

(A) Drugs used in sterile compounding shall be a USP/NF grade substances manufactured in an FDA-registered facility.

(B) If USP/NF grade substances are not available shall be of a chemical grade in one of the following categories:

(i) Chemically Pure (CP);

(ii) Analytical Reagent (AR);

(iii) American Chemical Society (ACS); or

(iv) Food Chemical Codex.

(C) If a drug, component or material is not purchased from a FDA-registered facility, the pharmacist shall establish purity and stability by obtaining a Certificate of Analysis from the supplier and the pharmacist shall compare the monograph of drugs in a similar class to the Certificate of Analysis.

(D) All components shall:

(i) be manufactured in an FDA-registered facility; or

(ii) in the professional judgment of the pharmacist, be of high quality and obtained from acceptable and reliable alternative sources; and

(iii) stored in properly labeled containers in a clean, dry area, under proper temperatures.

(E) Drug preparation containers and closures shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the compounded drug preparation beyond the desired result.

(F) Components, drug preparation containers, and closures shall be rotated so that the oldest stock is used first.

(G) Container closure systems shall provide adequate protection against foreseeable external factors in storage and use that can cause deterioration or contamination of the compounded drug preparation.

(H) A pharmacy may not compound a preparation that contains ingredients appearing on a federal Food and Drug Administration list of drug products withdrawn or removed from the market for safety reasons.

(13) Compounding process.

(A) Standard operating procedures (SOPs). All significant procedures performed in the compounding area shall be covered by written SOPs designed to ensure accountability, accuracy, quality, safety, and uniformity in the compounding process. At a minimum, SOPs shall be developed and implemented for:

(i) the facility;

(ii) equipment;

(iii) personnel;

(iv) preparation evaluation;

(v) quality assurance;

(vi) preparation recall;

(vii) packaging; and

(viii) storage of compounded sterile preparations.

(B) USP/NF. Any compounded formulation with an official monograph in the USP/NF shall be compounded, labeled, and packaged in conformity with the USP/NF monograph for the drug.

(C) Personnel Cleansing and Garbing.

(i) Any person with an apparent illness or open lesion, including rashes, sunburn, weeping sores, conjunctivitis, and active respiratory infection, that may adversely affect the safety or quality of a drug preparation being compounded shall be excluded from working in ISO Class 5, ISO Class 7, and ISO Class 8 compounding areas until the condition is remedied.

(ii) Before entering the buffer area, compounding personnel must remove the following:

(I) personal outer garments (e.g., bandanas, coats, hats, jackets, scarves, sweaters, vests);

(II) all cosmetics, because they shed flakes and particles; and

(III) all hand, wrist, and other body jewelry or piercings (e.g., earrings, lip or eyebrow piercings) that can interfere with the effectiveness of personal protective equipment (e.g., fit of gloves and cuffs of sleeves).

(iii) The wearing of artificial nails or extenders is prohibited while working in the sterile compounding environment. Natural nails shall be kept neat and trimmed.

(iv) Personnel shall don personal protective equipment and perform hand hygiene in an order that proceeds from the dirtiest to the cleanest activities as follows:

(I) Activities considered the dirtiest include donning of dedicated shoes or shoe covers, head and facial hair covers (e.g., beard covers in addition to face masks), and face mask/eye shield. Eye shields are optional unless working with irritants like germicidal disinfecting agents or when preparing hazardous drugs.

(II) After donning dedicated shoes or shoe covers, head and facial hair covers, and face masks, personnel shall perform a hand hygiene procedure by removing debris from underneath fingernails using a nail cleaner under running warm water followed by vigorous hand washing. Personnel shall begin washing arms at the hands and continue washing to elbows for at least 30 seconds with either a plain (non-antimicrobial) soap, or antimicrobial soap, and water while in the ante-area. Hands and forearms to the elbows shall be completely dried using lint-free disposable towels, an electronic hands-free hand dryer, or a HEPA filtered hand dryer.

(III) After completion of hand washing, personnel shall don clean non-shedding gowns with sleeves that fit snugly around the wrists and enclosed at the neck.

(IV) Once inside the buffer area or segregated compounding area, and prior to donning sterile powder-free gloves, antiseptic hand cleansing shall be performed using a waterless alcohol-based surgical hand scrub with persistent activity following manufacturers' recommendations. Hands shall be allowed to dry thoroughly before donning sterile gloves.

(V) Sterile gloves that form a continuous barrier with the gown shall be the last item donned before compounding begins. Sterile gloves shall be donned using proper technique to ensure the sterility of the glove is not compromised while donning. The cuff of the sterile glove shall cover the cuff of the gown at the wrist. When preparing hazardous preparations, the compounder shall double glove or shall use single gloves ensuring that the gloves are sterile powder-free chemotherapy-rated gloves. Routine application of sterile 70% IPA shall occur throughout the compounding day and whenever non-sterile surfaces are touched.

(v) When compounding personnel shall temporarily exit the buffer area during a work shift, the exterior gown, if not visibly soiled, may be removed and retained in the ante-area, to be re-donned during that same work shift only. However, shoe covers, hair and facial hair covers, face mask/eye shield, and gloves shall be replaced with new ones before re-entering the buffer area along with performing proper hand hygiene.

(vi) During high-risk compounding activities that precede terminal sterilization, such as weighing and mixing of non-sterile ingredients, compounding personnel shall be garbed and gloved the same as when performing compounding in an ISO Class 5 environment. Properly garbed and gloved compounding personnel who are exposed to air quality that is either known or suspected to be worse than ISO Class 7 shall re-garb personal protective equipment along with washing their hands properly, performing antiseptic hand cleansing with a sterile 70% IPA-based or another suitable sterile alcohol-based surgical hand scrub, and donning sterile gloves upon re-entering the ISO Class 7 buffer area.

(vii) When compounding aseptic isolators or compounding aseptic containment isolators are the source of the ISO Class 5 environment, at the start of each new compounding procedure, a new pair of sterile gloves shall be donned within the CAI or CACI. In addition, the compounding personnel should follow the requirements as specified in this subparagraph, unless the isolator manufacturer can provide written documentation based on validated environmental testing that any components of personal protective equipment or cleansing are not required.

(14) Quality Assurance.

(A) Initial Formula Validation. Prior to routine compounding of a sterile preparation, a pharmacy shall conduct an evaluation that shows that the pharmacy is capable of compounding a preparation that is sterile and that contains the stated amount of active ingredient(s).

(i) Low risk preparations.

(I) Quality assurance practices include, but are not limited to the following:

(-a-) Routine disinfection and air quality testing of the direct compounding environment to minimize microbial surface contamination and maintain ISO Class 5 air quality.

(-b-) Visual confirmation that compounding personnel are properly donning and wearing appropriate items and types of protective garments and goggles.

(-c-) Review of all orders and packages of ingredients to ensure that the correct identity and amounts of ingredients were compounded.

(-d-) Visual inspection of compounded sterile preparations, except for sterile radiopharmaceuticals, to ensure the absence of particulate matter in solutions, the absence of leakage from vials and bags, and the accuracy and thoroughness of labeling.

(II) Example of a Media-Fill Test Procedure. This, or an equivalent test, is performed at least annually by each person authorized to compound in a low-risk level under conditions that closely simulate the most challenging or stressful conditions encountered during compounding of low-risk level sterile preparations. Once begun, this test is completed without interruption within an ISO Class 5 air quality environment. Three sets of four 5-milliliter aliquots of sterile Soybean-Casein Digest Medium are transferred with the same sterile 10-milliliter syringe and vented needle combination

into separate sealed, empty, sterile 30-milliliter clear vials (i.e., four 5-milliliter aliquots into each of three 30-milliliter vials). Sterile adhesive seals are aseptically affixed to the rubber closures on the three filled vials. The vials are incubated within a range of 20 - 35 degrees Celsius for a minimum of 14 days. Failure is indicated by visible turbidity in the medium on or before 14 days. The media-fill test must include a positive-control sample.

(ii) Medium risk preparations.

(I) Quality assurance procedures for medium-risk level compounded sterile preparations include all those for low-risk level compounded sterile preparations, as well as a more challenging media-fill test passed annually, or more frequently.

(II) Example of a Media-Fill Test Procedure. This, or an equivalent test, is performed at least annually under conditions that closely simulate the most challenging or stressful conditions encountered during compounding. This test is completed without interruption within an ISO Class 5 air quality environment. Six 100-milliliter aliquots of sterile Soybean-Casein Digest Medium are aseptically transferred by gravity through separate tubing sets into separate evacuated sterile containers. The six containers are then arranged as three pairs, and a sterile 10-milliliter syringe and 18-gauge needle combination is used to exchange two 5-milliliter aliquots of medium from one container to the other container in the pair. For example, after a 5-milliliter aliquot from the first container is added to the second container in the pair, the second container is agitated for 10 seconds, then a 5-milliliter aliquot is removed and returned to the first container in the pair. The first container is then agitated for 10 seconds, and the next 5-milliliter aliquot is transferred from it back to the second container in the pair. Following the two 5-milliliter aliquot exchanges in each pair of containers, a 5-milliliter aliquot of medium from each container is aseptically injected into a sealed, empty, sterile 10-milliliter clear vial, using a sterile 10-milliliter syringe and vented needle. Sterile adhesive seals are aseptically affixed to the rubber closures on the three filled vials. The vials are incubated within a range of 20 - 35 degrees Celsius for a minimum of 14 days. Failure is indicated by visible turbidity in the medium on or before 14 days. The media-fill test must include a positive-control sample.

(iii) High risk preparations.

(I) Procedures for high-risk level compounded sterile preparations include all those for low-risk level compounded sterile preparations. In addition, a media-fill test that represents high-risk level compounding is performed twice a year by each person authorized to compound high-risk level compounded sterile preparations.

(II) Example of a Media-Fill Test Procedure Compounded Sterile Preparations Sterilized by Filtration. This test, or an equivalent test, is performed under conditions that closely simulate the most challenging or stressful conditions encountered when compounding high-risk level compounded sterile preparations. Note: Sterility tests for autoclaved compounded sterile preparations are not required unless they are prepared in batches of more than 25 units. This test is completed without interruption in the following sequence:

(-a-) Dissolve 3 grams of non-sterile commercially available Soybean-Casein Digest Medium in 100 milliliters of non-bacteriostatic water to make a 3% non-sterile solution.

(-b-) Draw 25 milliliters of the medium into each of three 30-milliliter sterile syringes. Transfer 5 milliliters from each syringe into separate sterile 10-milliliter vials. These vials are the positive controls to generate exponential microbial growth, which is indicated by visible turbidity upon incubation.

(-c-) Under aseptic conditions and using aseptic techniques, affix a sterile 0.2-micron porosity filter unit and a 20-gauge needle to each syringe. Inject the next 10 milliliters from each syringe into three separate 10-milliliter sterile vials. Repeat the process for three more vials. Label all vials, affix sterile adhesive seals to the closure of the nine vials, and incubate them at 20 to 35 degrees Celsius for a minimum of 14 days. Inspect for microbial growth over 14 days as described in Chapter 797 Pharmaceutical Compounding--Sterile Preparations, of the USP/NF.

(III) Filter Integrity Testing. Filters need to undergo testing to evaluate the integrity of filters used to sterilize high-risk preparations, such as Bubble Point Testing or comparable filter integrity testing. Such testing is not a replacement for sterility testing and shall not be interpreted as such. Such test shall be performed after a sterilization procedure on all filters used to sterilize each high-risk preparation or batch preparation and the results documented. The results should be compared with the filter manufacturer's specification for the specific filter used. If a filter fails the integrity test, the preparation or batch must be sterilized again using new unused filters.

(B) Finished preparation release checks and tests.

(i) All high-risk level compounded sterile preparations that are prepared in groups of more than 25 identical individual single-dose packages (such as ampuls, bags, syringes, and vials), or in multiple dose vials for administration to multiple patients, or are exposed longer than 12 hours at 2 - 8 degrees Celsius and longer than six hours at warmer than 8 degrees Celsius before they are sterilized shall be tested to ensure they are sterile and do not contain excessive bacterial endotoxins as specified in Chapter 71, Sterility Tests of the USP/NF before being dispensed or administered.

(ii) All compounded sterile preparations, except for sterile radiopharmaceuticals, that are intended to be solutions must be visually examined for the presence of particulate matter and not administered or dispensed when such matter is observed.

(iii) The prescription drug and medication orders, written compounding procedure, preparation records, and expended materials used to make compounded sterile preparations at all contamination risk levels shall be inspected for accuracy of correct identities and amounts of ingredients, aseptic mixing and sterilization, packaging, labeling, and expected physical appearance before they are dispensed or administered.

(iv) Written procedures for checking compounding accuracy shall be followed for every compounded sterile preparation during preparation, in accordance with pharmacy's policies and procedures, and immediately prior to release, including label accuracy and the accuracy of the addition of all drug products or ingredients used to prepare the finished preparation and their volumes or quantities. A pharmacist shall ensure that components used in compounding are accurately weighed, measured, or subdivided as appropriate to conform to the formula being prepared.

(C) Environmental Testing.

(i) Viable and nonviable environmental sampling testing. Environmental sampling shall occur, at a minimum, every six months as part of a comprehensive quality management program and under any of the following conditions:

(I) as part of the commissioning and certification of new facilities and equipment;

(II) following any servicing of facilities and equipment;

(III) as part of the re-certification of facilities and equipment;

(IV) in response to identified problems with end products or staff technique; or

(V) in response to issues with compounded sterile preparations, observed compounding personnel work practices, or patient-related infections (where the compounded sterile preparation is being considered as a potential source of the infection).

(ii) Total particle counts. Certification that each ISO classified area (e.g., ISO Class 5, 7, and 8), is within established guidelines shall be performed no less than every six months and whenever the equipment is relocated or the physical structure of the buffer area or ante-area has been altered. All certification records shall be maintained and reviewed to ensure that the controlled environments comply with the proper air cleanliness, room pressures, and air changes per hour. Testing shall be performed by qualified operators using current, state-of-the-art equipment, with results of the following:

(I) ISO Class 5 - not more than 3520 particles 0.5 micrometer and larger size per cubic meter of air;

(II) ISO Class 7 - not more than 352,000 particles of 0.5 micrometer and larger size per cubic meter of air for any buffer area; and

(III) ISO Class 8 - not more than 3,520,000 particles of 0.5 micrometer and larger size per cubic meter of air for any ante-area.

(iii) Pressure differential monitoring. A pressure gauge or velocity meter shall be installed to monitor the pressure differential or airflow between the buffer area and the ante-area and between the ante-area and the general environment outside the compounding area. The results shall be reviewed and documented on a log at least every work shift (minimum frequency shall be at least daily) or by a continuous recording device. The pressure between the ISO Class 7 or ISO Class 8 and the general pharmacy area shall not be less than 0.02 inch water column.

(iv) Sampling plan. An appropriate environmental sampling plan shall be developed for airborne viable particles based on a risk assessment of compounding activities performed. Selected sampling sites shall include locations within each ISO Class 5 environment and in the ISO Class 7 and 8 areas and in the segregated compounding areas at greatest risk of contamination. The plan shall include sample location, method of collection, frequency of sampling, volume of air sampled, and time of day as related to activity in the compounding area and action levels.

(v) Viable air sampling. Evaluation of airborne microorganisms using volumetric collection methods in the controlled air environments shall be performed by properly trained individuals for all compounding risk levels. For low-, medium-, and high-risk level compounding, air sampling shall be performed at locations that are prone to contamination during compounding activities and during other activities such as staging, labeling, gowning, and cleaning. Locations shall include zones of air backwash turbulence within the laminar airflow workbench and other areas where air backwash turbulence may enter the compounding area. For low-risk level compounded sterile preparations within 12-hour or less beyond-use-date prepared in a primary engineering control that maintains an ISO Class 5, air sampling shall be performed at locations inside the ISO Class 5 environment and other areas that are in close proximity to the ISO Class 5 environment during the certification of the primary engineering control.

(vi) Air sampling frequency and process. Air sampling shall be performed at least every 6 months as a part of the re-certification of facilities and equipment. A sufficient volume of air shall be sampled and the manufacturer's guidelines for use of the electronic air sampling equipment followed. At the end of the designated sampling or exposure period for air sampling activities, the microbial growth media plates are recovered and their covers secured and they are inverted and incubated at a temperature and for a time period conducive to multiplication of microorganisms. Sampling data shall be collected and reviewed on a periodic basis as a means of evaluating the overall control of the compounding environment. If an activity consistently shows elevated levels of microbial growth, competent microbiology or infection control personnel shall be consulted. A colony forming unit (cfu) count greater than 1 cfu per cubic meter of air for ISO Class 5, greater than 10 cfu per cubic meter of air for ISO Class 7, and greater than 100 cfu per cubic meter of air for ISO Class 8 or worse should prompt a re-evaluation of the adequacy of personnel work practices, cleaning procedures, operational procedures, and air filtration efficiency within the aseptic compounding location. An investigation into the source of the contamination shall be conducted. The source of the problem shall be eliminated, the affected area cleaned, and resampling performed. Counts of cfu are to be used as an approximate measure of the environmental microbial bioburden. Action levels are determined on the basis of cfu data gathered at each sampling location and trended over time. Regardless of the number of cfu identified in the pharmacy, further corrective actions will be dictated by the identification of microorganisms recovered by an appropriate credentialed laboratory of any microbial bioburden captured as a cfu using an impaction air sampler. Highly pathogenic microorganisms (e.g., gram-negative rods, coagulase positive staphylococcus, molds and yeasts) can be potentially fatal to patient receiving compounded sterile preparations and must be immediately remedied, regardless of colony forming unit count, with the assistance, if needed, of a competent microbiologist, infection control professional, or industrial hygienist.

(vii) Compounding accuracy checks. Written procedures for checking compounding accuracy shall be followed for every compounded sterile preparation during preparation and immediately prior to release, including label accuracy and the accuracy of the addition of all drug products or ingredients used to prepare the finished preparation and their volumes or quantities. At each step of the compounding process, the pharmacist shall ensure that components used in compounding are accurately weighed, measured, or subdivided as appropriate to conform to the formula being prepared.

(15) Quality control.

(A) Quality control procedures. The pharmacy shall follow established quality control procedures to monitor the compounding environment and quality of compounded drug preparations for conformity with the quality indicators established for the preparation. When developing these procedures, pharmacy personnel shall consider the provisions of USP Chapter 71, Sterility Tests, USP Chapter 85, Bacterial Endotoxins Test, Pharmaceutical Compounding-Non-sterile Preparations, USP Chapter 795, USP Chapter 797, Pharmaceutical Compounding--Sterile Preparations, USP Chapter 800, Hazardous Drugs--Handling in Healthcare Settings, USP Chapter 823, Positron Emission Tomography Drugs for Compounding, Investigational, and Research Uses, USP Chapter 1160, Pharmaceutical Calculations in Prescription Compounding, and USP Chapter 1163, Quality Assurance in Pharmaceutical Compounding of the current USP/NF. Such procedures shall be documented and be available for inspection.

(B) Verification of compounding accuracy and sterility.

(i) The accuracy of identities, concentrations, amounts, and purities of ingredients in compounded sterile preparations shall be confirmed by reviewing labels on packages, observing and documenting correct measurements with approved and correctly standardized devices, and reviewing information in labeling and certificates of analysis provided by suppliers.

(ii) If the correct identity, purity, strength, and sterility of ingredients and components of compounded sterile preparations cannot be confirmed such ingredients and components shall be discarded immediately. Any compounded sterile preparation that fails sterility testing following sterilization by one method (e.g., filtration) is to be discarded and not subjected to a second method of sterilization.

(iii) If individual ingredients, such as bulk drug substances, are not labeled with expiration dates, when the drug substances are stable indefinitely in their commercial packages under labeled storage conditions, such ingredients may gain or lose moisture during storage and use and shall require testing to determine the correct amount to weigh for accurate content of active chemical moieties in compounded sterile preparations.

(e) Records. Any testing, cleaning, procedures, or other activities required in this subsection shall be documented and such documentation shall be maintained by the pharmacy.

(1) Maintenance of records. Every record required under this section must be:

(A) kept by the pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Compounding records.

(A) Compounding pursuant to patient specific prescription drug orders or medication orders. Compounding records for all compounded preparations shall be maintained by the pharmacy and shall include:

(i) the date and time of preparation;

(ii) a complete formula, including methodology and necessary equipment which includes the brand name(s) of the raw materials, or if no brand name, the generic name(s) or official name and name(s) of the manufacturer(s) or distributor of the raw materials and the quantities of each; however, if the sterile preparation is compounded according to the manufacturer's labeling instructions, then documentation of the formula is not required;

(iii) written or electronic signature or initials of the pharmacist or pharmacy technician or pharmacy technician trainee performing the compounding;

(iv) written or electronic signature or initials of the pharmacist responsible for supervising pharmacy technicians or pharmacy technician trainees and conducting finals checks of compounded pharmaceuticals if pharmacy technicians or pharmacy technician trainees perform the compounding function;

(v) the container used and the number of units of finished preparation prepared; and

(vi) a reference to the location of the following documentation which may be maintained with other records, such as quality control records:

(I) the criteria used to determine the beyond-use date; and

(II) documentation of performance of quality control procedures.

(B) Compounding records when batch compounding or compounding in anticipation of future prescription drug or medication orders.

(i) Master work sheet. A master work sheet shall be developed and approved by a pharmacist for preparations prepared in batch. Once approved, a duplicate of the master work sheet shall be used as the preparation work sheet from which each batch is prepared and on which all documentation for that batch occurs. The master work sheet shall contain at a minimum:

(I) the formula;

(II) the components;

(III) the compounding directions;

(IV) a sample label;

(V) evaluation and testing requirements;

(VI) specific equipment used during preparation; and

(VII) storage requirements.

(ii) Preparation work sheet. The preparation work sheet for each batch of preparations shall document the following:

(I) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;

(II) lot number for each component;

(III) component manufacturer/distributor or suitable identifying number;

(IV) container specifications (e.g., syringe, pump cassette);

(V) unique lot or control number assigned to batch;

(VI) expiration date of batch-prepared preparations;

(VII) date of preparation;

(VIII) name, initials, or electronic signature of the person(s) involved in the preparation;

(IX) name, initials, or electronic signature of the responsible pharmacist;

(X) finished preparation evaluation and testing specifications, if applicable; and

(XI) comparison of actual yield to anticipated or theoretical yield, when appropriate.

(f) Office Use Compounding and Distribution of Sterile Compounded Preparations

(1) General.

(A) A pharmacy may compound, dispense, deliver, and distribute a compounded sterile preparation as specified in Subchapter D, Texas Pharmacy Act Chapter 562.

(B) A Class A-S pharmacy is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute sterile compounded preparations to a Class C or Class C-S pharmacy.

(C) A Class C-S pharmacy is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute sterile compounded preparations that the Class C-S pharmacy has compounded for other Class C or Class C-S pharmacies under common ownership.

(D) To compound and deliver a compounded preparation under this subsection, a pharmacy must:

(i) verify the source of the raw materials to be used in a compounded drug;

(ii) comply with applicable United States Pharmacopoeia guidelines, including the testing requirements, and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191);

(iii) enter into a written agreement with a practitioner for the practitioner's office use of a compounded preparation;

(iv) comply with all applicable competency and accrediting standards as determined by the board; and

(v) comply with the provisions of this subsection.

(E) This subsection does not apply to Class B pharmacies compounding sterile radiopharmaceuticals that are furnished for departmental or physicians' use if such authorized users maintain a Texas radioactive materials license.

(2) Written Agreement. A pharmacy that provides sterile compounded preparations to practitioners for office use or to another pharmacy shall enter into a written agreement with the practitioner or pharmacy. The written agreement shall:

(A) address acceptable standards of practice for a compounding pharmacy and a practitioner and receiving pharmacy that enter into the agreement including a statement that the compounded drugs may only be administered to the patient and may not be dispensed to the patient or sold to any other person or entity except to a veterinarian as authorized by §563.054 of the Act;

(B) require the practitioner or receiving pharmacy to include on a patient's chart, medication order or medication administration record the lot number and beyond-use date of a compounded preparation administered to a patient;

(C) describe the scope of services to be performed by the pharmacy and practitioner or receiving pharmacy, including a statement of the process for:

(i) a patient to report an adverse reaction or submit a complaint; and

(ii) the pharmacy to recall batches of compounded preparations.

(3) Recordkeeping.

(A) Maintenance of Records.

(i) Records of orders and distribution of sterile compounded preparations to a practitioner for office use or to an institutional pharmacy for administration to a patient shall:

(I) be kept by the pharmacy and be available, for at least two years from the date of the record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies;

(II) maintained separately from the records of preparations dispensed pursuant to a prescription or medication order; and

(III) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy or its representative. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format. Failure to provide the records set out in this subsection, either on site or within 72 hours for whatever reason, constitutes prima facie evidence of failure to keep and maintain records.

(ii) Records may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided the data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(B) Orders. The pharmacy shall maintain a record of all sterile compounded preparations ordered by a practitioner for office use or by an institutional pharmacy for administration to a patient. The record shall include the following information:

(i) date of the order;

(ii) name, address, and phone number of the practitioner who ordered the preparation and if applicable, the name, address and phone number of the institutional pharmacy ordering the preparation; and

(iii) name, strength, and quantity of the preparation ordered.

(C) Distributions. The pharmacy shall maintain a record of all sterile compounded preparations distributed pursuant to an order to a practitioner for office use or by an institutional pharmacy for administration to a patient. The record shall include the following information:

(i) date the preparation was compounded;

(ii) date the preparation was distributed;

(iii) name, strength and quantity in each container of the preparation;

(iv) pharmacy's lot number;

(v) quantity of containers shipped; and

(vi) name, address, and phone number of the practitioner or institutional pharmacy to whom the preparation is distributed.

(D) Audit Trail.

(i) The pharmacy shall store the order and distribution records of preparations for all sterile compounded preparations ordered by and or distributed to a practitioner for office use or by a pharmacy licensed to compound sterile preparations for administration to a patient in such a manner as to be able to provide an audit trail for all orders and distributions of any of the following during a specified time period:

(I) any strength and dosage form of a preparation (by either brand or generic name or both);

(II) any ingredient;

(III) any lot number;

(IV) any practitioner;

(V) any facility; and

(VI) any pharmacy, if applicable.

(ii) The audit trail shall contain the following information:

(I) date of order and date of the distribution;

(II) practitioner's name, address, and name of the institutional pharmacy, if applicable;

(III) name, strength and quantity of the preparation in each container of the preparation;

(IV) name and quantity of each active ingredient;

(V) quantity of containers distributed; and

(VI) pharmacy's lot number.

(4) Labeling. The pharmacy shall affix a label to the preparation containing the following information:

(A) name, address, and phone number of the compounding pharmacy;

(B) the statement: "For Institutional or Office Use Only--Not for Resale"; or if the preparation is distributed to a veterinarian the statement: "Compounded Preparation";

(C) name and strength of the preparation or list of the active ingredients and strengths;

(D) pharmacy's lot number;

(E) beyond-use date as determined by the pharmacist using appropriate documented criteria;

(F) quantity or amount in the container;

(G) appropriate ancillary instructions, such as storage instructions or cautionary statements, including hazardous drug warning labels where appropriate; and

(H) device-specific instructions, where appropriate.

(g) Recall Procedures.

(1) The pharmacy shall have written procedures for the recall of any compounded sterile preparation provided to a patient, to a practitioner for office use, or a pharmacy for administration. Written procedures shall include, but not be limited to the requirements as specified in paragraph (3) of this subsection.

(2) The pharmacy shall immediately initiate a recall of any sterile preparation compounded by the pharmacy upon identification of a potential or confirmed harm to a patient.

(3) In the event of a recall, the pharmacist-in-charge shall ensure that:

(A) each practitioner, facility, and/or pharmacy to which the preparation was distributed is notified, in writing, of the recall;

(B) each patient to whom the preparation was dispensed is notified, in writing, of the recall;

(C) the board is notified of the recall, in writing, not later than 24 hours after the recall is issued;

(D) if the preparation is distributed for office use, the Texas Department of State Health Services, Drugs and Medical Devices Group, is notified of the recall, in writing;

(E) the preparation is quarantined; and

(F) the pharmacy keeps a written record of the recall including all actions taken to notify all parties and steps taken to ensure corrective measures.

(4) If a pharmacy fails to initiate a recall, the board may require a pharmacy to initiate a recall if there is potential for or confirmed harm to a patient.

(5) A pharmacy that compounds sterile preparations shall notify the board immediately of any adverse effects reported to the pharmacy or that are known by the pharmacy to be potentially attributable to a sterile preparation compounded by the pharmacy.

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 August 22, 2016.

TRD-201604303
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
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Proposal publication date: June 24, 2016
For further information, please call: (512) 305-8028

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SUBCHAPTER H. OTHER CLASSES OF PHARMACY

22 TAC §291.151

The Texas State Board of Pharmacy adopts amendments to §291.151, concerning Pharmacies Located in a Freestanding Emergency Medical Care Facility (Class F). The amendments are adopted without changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* at (41 TexReg 4617), and will not be republished.

The amendments clarify recordkeeping requirements and allow pharmacists to record certain information in the patient's chart in lieu of keeping a separate log.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations 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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For further information, please call: (512) 305-8028

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §535.53

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.53, Business Entity; Designated Broker, in Chapter 535, General Provisions, without changes, as published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3598).

The amendments are adopted to clarify that a business entity must be qualified to transact business in Texas at all times to maintain an active license and that the business entity must notify TREC when it is no longer qualified to transact business in Texas. In addition, the amendments more fully set out the scope of required errors and omissions insurance coverage.

The reasoned justification for the amendments is greater clarity in the rule.

No comments were received on the amendments as published.

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; 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 statutes affected by this amendment are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

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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Kerri Lewis
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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22 TAC §535.55

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.55, Education and Sponsorship Requirements for a Salesperson, in Chapter 535, General Provisions, without changes, as published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3599).

The amendments are adopted to align the rule with statutory changes in SB 699, enacted by the 84th Legislature regarding the number of hours required for continuing education and changing term "salesperson" to "sales agent."

The reasoned justification is greater clarity and consistency in the rules.

No comments were received on the amendments as published.

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; 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 statutes affected by this amendment are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

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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Kerri Lewis
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES AND INSTRUCTORS FOR QUALIFYING EDUCATION

22 TAC §535.64

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.64, Content Requirements for Qualifying Real Estate Courses, in Chapter 535, General Provisions, with changes, as published in the June 10, 2016, issue of the *Texas Register* (41 TexReg 4151).

The amendments are adopted to provide consistency and better quality in Real Estate Marketing qualifying courses and are recommended by the Commission's Education Standards Advisory Committee.

One comment was received on the amendments as published. The commenter suggested several edits to the Real Estate Marketing Course Approval form adopted by reference in the rule. The Education Standards Advisory Committee discussed the suggestions and made several clarifying revisions to the form in response to the comments. A typographical error in the rule was also corrected. The Education Standards Advisory Committee recommended adoption of the rule and form with the clarifying edits. The Commission agreed.

The revisions to the form adopted by reference in the rule as adopted do not change the nature or scope so much that the rule and form as adopted could be deemed a different rule or form. The rule and form as adopted do not affect individuals other than those contemplated by the rules as proposed. The rule and form as adopted do not impose more onerous requirements than the proposed rule and form.

The reasoned justification is greater quality and consistency in this qualifying education course resulting in better educated license holders and therefore greater consumer protection.

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; 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 statutes affected by this amendment are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

§535.64. Content Requirements for Qualifying Real Estate Courses.

(a) Mandatory qualifying courses. To be approved by the Commission, the following mandatory qualifying courses must contain the content outlined below:

(1) Principles of Real Estate I, which shall contain the following topics, the units of which are outlined in the PRINS 1-0, Qualifying Real Estate Course Approval Form, Principles of Real Estate I, hereby adopted by reference:

(A) Introduction to Modern Real Estate Practice - 200 minutes;

(B) Real Property - 60 minutes;

(C) Concepts and Responsibilities of Home Ownership - 95 minutes;

(D) Real Estate Brokerage and the Law of Agency - 180 minutes;

(E) Fair Housing Laws - 150 minutes;

(F) Ethics of Practice as a License Holder - 30 minutes;

(G) Texas Real Estate License Act - 180 minutes;

(H) Legal Descriptions - 100 minutes;

(I) Real Estate Contracts - 135 minutes;

(J) Interests in Real Estate - 180 minutes;

(K) How Home Ownership is Held - 70 minutes; and

(L) Listing Agreements - 120 minutes.

(2) Principles of Real Estate II, which shall contain the following topics, the units of which are outlined in the PRINS 2-0, Qualifying Real Estate Course Approval Form, Principles of Real Estate II, hereby adopted by reference:

(A) Real Estate Math - 200 minutes;

(B) Real Estate Appraisal - 200 minutes;

(C) Real Estate Financing Principles - 210 minutes;

(D) Control of Land Use - 115 minutes;

(E) Specializations - 50 minutes;

(F) Real Estate Investments - 110 minutes;

(G) Leases - 95 minutes;

(H) Property Management - 120 minutes;

(I) Estates, Transfers, and Titles - 200 minutes; and

(J) Closing Procedures/Closing the Real Estate Transaction - 200 minutes.

(3) Law of Agency, which shall contain the following topics, the units of which are outlined in the LOA-0, Qualifying Real Estate Course Approval Form, Law of, hereby adopted by reference:

(A) Agency Concepts - 130 minutes;

(B) Basic Agency Relationships, Disclosure & Duties to Client - 125 minutes;

(C) Duties and Disclosures to Third Parties - 125 minutes;

(D) Seller Agency - 120 minutes;

(E) Buyer Agency - 150 minutes;

(F) Representing More than one Party in a Transaction: Intermediary Brokerage - 165 minutes;

(G) Creation and Termination of Agency - 85 minutes;

(H) Clarifying Agency Relationships - 45 minutes;

(I) Employment Issues - 120 minutes;

(J) Agency, Ethics and the Law - 155 minutes;

(K) Deceptive Trade Practices & Consumer Protection Act - 140 minutes; and

(L) Implementation and Presentation - 140 minutes.

(4) Law of Contracts, which shall contain the following topics, the units of which are outlined in the LOC-0, Qualifying Real Estate Course Approval Form, Law of Contracts, hereby adopted by reference:

(A) Texas Contract Law - 155 minutes;

(B) Basics of Real Estate Law - 115 minutes;

(C) Introduction to Contracts - 75 minutes;

(D) Ownership Rights and Limitations - 120 minutes;

(E) Contracts Used in Real Estate - 275 minutes;

(F) The Sales Contract - 135 minutes;

(G) Contingencies, Addenda and Amendments - 105 minutes;

(H) Financing Real Estate - 235 minutes;

(I) Conveyance of Title - 90 minutes;

(J) Transaction Process and Closing - 135 minutes; and

(K) Common Contract Mistakes - 60 minutes.

(5) Promulgated Contract Forms, which shall contain the following topics, the units of which are outlined in the PCF-0, Qualifying Real Estate Course Approval Form, Promulgated Contract Forms, hereby adopted by reference:

(A) Contract Law Overview - 155 minutes;

(B) Laws, Rules and Regulations - 150 minutes;

(C) Parties, Properties and Financing - 155 minutes;

(D) Covenants, Commitments and Notices - 160 minutes;

(E) Closing, Possession and More - 220 minutes;

(F) The Remaining Promulgated Forms - 205 minutes;

(G) Promulgated Addenda, Notices and Other Forms - 205 minutes;

(H) Other Real Estate Matters - 115 minutes; and

(I) Practice Makes Perfect - 135 minutes.

(6) Real Estate Finance, which shall contain the following topics, the units of which are outlined in the REF-0, Qualifying Real Estate Course Approval Form, Real Estate Finance, hereby adopted by reference:

(A) The Nature & Cycle of Real Estate Finance - 105 minutes;

(B) Money & the Monetary System - 100 minutes;

(C) Additional Government Influence - 200 minutes;

(D) The Secondary Mortgage Market - 95 minutes;

(E) Sources of Funds - 110 minutes;

(F) Instruments of Real Estate Finance - 170 minutes;

(G) Loan Types, Terms & Issues - 200 minutes;

(H) Government Loans - 215 minutes;

(I) Lender Loan Processes - 220 minutes;

(J) Defaults & Foreclosures - 85 minutes.

(7) Real Estate Brokerage (mandatory for a broker's license) which shall contain the following topics, the units of which are outlined in the REB-0, Qualifying Real Estate Course Approval Form, Real Estate Brokerage, hereby adopted by reference:

(A) The Real Estate Industry - 30 minutes;

(B) Starting a Brokerage Business - 110 minutes;

(C) Ethical & Legal Business Practices - 300 minutes

(D) Analyzing the Market & the Competition - 110 minutes

(E) Managing Risk - 110 minutes;

(F) Financing Your Business - 110 minutes;

(G) Negotiating a Commercial Lease - 100 minutes;

(H) The Marketing Plan - 150 minutes;

(I) Management Style & Structure - 100 minutes;

(J) Recruiting & Hiring - 100 minutes;

(K) Professional Brokerage Competency & Associate License Holder Productivity - 180 minutes;

(L) Evaluating the Business - 50 minutes;

(M) Growth Opportunities - 50 minutes.

(b) Elective qualifying courses. To be approved by the Commission, the following elective qualifying courses must contain the content outlined below:

(1) Property Management, which shall contain the following topics, the units of which are outlined in the PROPM-0, Qualifying Real Estate Course Approval Form, Property Management, hereby adopted by reference:

(A) Professional Property Management - 120 minutes;

(B) Feasibility of Property Management - 90 minutes

(C) Marketing Plan - 60 minutes;

(D) Management Operations - 130 minutes;

(E) Owner Relations - 120 minutes;

(F) Market Analysis and Management of Housing - 95 minutes;

(G) Leases - 100 minutes;

(H) Tenant Relations - 115 minutes;

(I) Federal, State and Local Laws - 230 minutes;

(J) Maintenance and Construction - 90 minutes;

(K) Commercial Property Management - 150 minutes;

(L) Risk and Environmental Issues - 110 minutes; and

(M) Safety and Security Issues for Property Managers and Staff - 90 minutes;

(2) Real Estate Marketing, which shall contain the following topics, the units of which are outlined in the REM-0, Qualifying Real Estate Course Approval Form, Real Estate Marketing, hereby adopted by reference:

(A) Real Estate Marketing - 80 minutes;

(B) The Marketing Concept - 80 minutes

(C) Marketing Research and Data Analysis - 150 minutes;

(D) Prospecting and Target Marketing - 80 minutes;

(E) Technology and Online Marketing - 100 minutes;

(F) Social Media Marketing - 120 minutes;

(G) Product and Pricing Strategies -180 minutes;

(H) Compensation Models - 60 minutes;

(I) Characteristics of a Successful Sales Agent - 150 minutes;

(J) Understanding Clients - 90 minutes;

(K) Negotiating and Selling Skills - 120 minutes;

(L) Steps to Executing Agreements - 50 minutes; and

(M) State and Federal Laws - 90 minutes;

(N) Ethics and Real Estate Professionalism - 150 minutes;

(3) other than Property Management, and Real Estate Marketing, meet the requirements of §1101.003 of the Act; or

(4) Residential Inspection for Real Estate Agents (or equivalent), which shall include but is not limited to:

(A) repair-related contract forms and addenda;

(B) inspector and client agreements;

(C) inspection standards of practice and standard inspection report form;

(D) tools and procedures;

(E) electromechanical systems (plumbing, heating, air conditioning, appliances, energy-saving considerations); and

(F) structures (lot and landscape, roofs, chimney, gutters, paved areas, walls, windows and doors, insect damage and storage areas).

(c) Related qualifying course. Acceptable related qualifying courses are those courses taken for credit from an accredited college or university, or course approved by the Commission for continuing education credit, that a broker is required to take to fulfill licensing requirements, in any one of the following areas:

(1) accounting;

(2) advertising;

(3) architecture;

(4) business or management;

(5) construction;

(6) finance;

(7) investments;

(8) law;

(9) marketing; and

(10) real estate.

(d) Course Approval forms. All forms adopted by this section are available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

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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Kerri Lewis
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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SUBCHAPTER H. RECOVERY FUND

22 TAC §535.83

The Texas Real Estate Commission (TREC) adopts new §535.83, Association of Designated Broker on Claim, in Chapter 535, General Provisions, without changes, as published in the May 20, 2106, issue of the *Texas Register* (41 TexReg 3601).

The new rule is adopted to clarify which designated broker is to be associated with a licensed business entity when a Real Estate Recovery Trust Account claim is filed or paid on behalf of that licensed business entity.

The reasoned justification is greater clarity of statutory provisions.

No comments were received on the new rule as published.

The new rule is 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; 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 statutes affected by the new rule are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the new rule.

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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Kerri Lewis
General Counsel
Texas Real Estate Commission
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SUBCHAPTER L. INACTIVE LICENSE STATUS

22 TAC §535.123

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.123, Inactive Broker Status, in Chapter 535, General Provisions, with changes, as published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3602).

The amendments are adopted to clarify that a licensed business entity becomes inactive when it is no longer qualified to transact business in Texas or it's designated broker's license is suspended, or revoked, including probated suspension or revocation.

No comments were received on the amendments as published. However, language was inserted to clarify that the revocation included probated revocation for internal consistency within the rule and for consistency with the definition of good standing in 22 TAC §535.53, Business Entity, Designated Broker.

The revisions to the rule as adopted do not change the nature or scope so much that the rule as adopted could be deemed a different rule. The rule as adopted do not affect individuals other than those contemplated by the rule as proposed. The rule as adopted do not impose more onerous requirements than the proposed rule in conjunction with existing 22 TAC §535.53, Business Entity, Designated Broker.

The reasoned justification is greater clarity and consistency in the rules.

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; 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 statutes affected by this amendment are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

§535.123. Inactive Broker Status.

(a) The license of an individual broker immediately becomes inactive when:

(1) the Commission receives an application for inactive status from the broker; or

(2) the broker is placed on inactive status by the Commission for failure to comply with a requirement of the Act or this chapter.

(b) The license of a business entity broker immediately becomes inactive when:

(1) the Commission receives an application for inactive status from the broker;

(2) the entity is not qualified to transact business in Texas;

(3) the designated broker's license:

(A) expires;

(B) is suspended, including a probated suspension; or

(C) is revoked, including a probated revocation; or

(4) the designated broker dies or resigns as designated broker.

(c) The broker must confirm to the Commission in writing that the broker has given all sales agents sponsored by the broker written notice of termination of sponsorship at least 30 days before filing the application for inactive status.

(d) It is the responsibility of the broker on inactive status to pay all required license renewal fees timely to prevent the inactive license from expiring.

(e) To return to active status, a broker on inactive status must apply to the Commission for return to active status on a form approved by the Commission, pay the appropriate fee, and satisfy any continuing education requirements under the Act and this chapter.

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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Kerri Lewis
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Texas Real Estate Commission
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SUBCHAPTER Q. ADMINISTRATIVE PENALTIES

22 TAC §535.191

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.191, Schedule of Administrative Penalties, in Chapter 535, General Provisions, without changes, as published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3602).

The amendments are adopted to lower the administrative penalty for bad check violations and include a penalty for violations of 22 TAC §535.53.

No comments were received on the amendments as published.

The reasoned justification is greater clarity in the rules.

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; 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 statutes affected by this amendment are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

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 R. REAL ESTATE INSPECTORS

22 TAC §§535.227 - 535.233

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §§535.227, Standards of Practice: General Provisions, 535.228, Standards of Practice: Minimum Inspection Requirements for Structural Systems; 535.229, Standards of Practice: Minimum Inspection Requirements for Electrical Systems; 535.230, Standards of Practice: Minimum Inspection Requirements for Heating, Ventilation, and Air Conditioning Systems; 535.231, Standards of Practice: Minimum Inspection Requirements for Plumbing Systems; 535.232, Standards of Practice: Minimum Inspection Requirements for Appliances; and 535.233, Standards of Practice: Minimum Inspection Requirements for Optional Systems in Subchapter R, Real Estate Inspectors, in Chapter 535, General Provisions. The rules are adopted with changes to the text as published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3603).

The adopted amendments to §535.227, Standards of Practice: General Provisions provide clarity and consistency by restructuring and renumbering this section, streamlining wording, and removing redundant language. These amendments move §535.227(b) to subsection (a), and renumber the other subsections accordingly. Language was added to subsection (a) clarifying when the SOPs apply, and the definitions for "specialized equipment," "specialized procedures," "substantially completed," and "technically exhaustive" were incorporated into the body of subsection (a) because those definitions are not used elsewhere in the rules.

The adopted amendments to §535.228, Standards of Practice: Minimum Inspection Requirements for Structural Systems, and §535.233, Standards of Practice: Minimum Inspection Requirements for Optional Systems renumber and restructure those pro-

visions, streamline wording, and remove redundant language to provide clarity and consistency.

The adopted amendments to §535.229, Standards of practice: Minimum Inspection Requirements for Electrical Systems; §535.230, Standards of Practice: Minimum Inspection Requirements for Heating, Ventilation, and Air Conditioning Systems; §535.231, Standards of Practice: Minimum Inspection Requirements for Plumbing Systems; and §535.232, Standards of Practice: Minimum Inspection Requirements for Appliances renumber and restructure those provisions for clarity and consistency.

One comment was received. The commenter recommended defining "performing" or otherwise modifying the term when used. The Commenter also recommended changes to §535.229 Standards of practice: Minimum Inspection Requirements for Electrical Systems to update that rule to correspond with changes to the International Residential Code and National Electric Code. This comment would require substantive changes to the rules as published. These amendments to the rules are meant to be a non-substantive reorganization of the rules and not intended to implement any substantive changes. The Inspector Committee will consider this comment at a future date when it considers substantive changes to the Standards of Practice.

The commenter recommended subdividing a subsection of §535.227 for consistency with the other rules. The Inspector Committee agreed and the change was made.

The commenter recommended changing the term "bibbs" to "bibs" in §535.231. The inspector disagrees with this comment because "bibbs" is the standard industry term. The commenter recommended changes regarding the numbering and structuring of §535.230 and §535.231. Staff disagrees with this recommendation because it does not follow the acceptable Rule construction guidelines. The commenter also pointed out several typographical errors, which have been corrected.

The revisions to the rules as adopted do not change the nature or scope so much that they could be deemed different rules. The rules as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules as adopted do not impose more onerous requirements than the proposed rules.

The reasoned justification is greater clarity and consistency in the rules.

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; and Texas Occupations Code §1102.058, which authorizes the Commission to adopt rules related to the standards of practice of real estate inspection.

The statute affected by this amendment is Chapter 1102, Texas Occupations Code. No other statute, code or article is affected by the amendments.

§535.227. Standards of Practice: General Provisions.

(a) Scope.

(1) These standards of practice apply when a professional inspector or real estate inspector who is licensed under this chapter accepts employment to perform a real estate inspection for a prospective buyer or seller of real property.

(2) These standards of practice define the minimum requirements for a real estate inspection conducted on a one to four family unit that is substantially completed. Substantially completed means the stage of construction when a new building, addition, improvement, or alteration to an existing building can be occupied or used for its intended purpose.

(3) For the purposes of these standards of practice a real estate inspection:

(A) is a limited visual survey and basic performance evaluation of the systems and components of a building using normal controls that provides information regarding the general condition of a residence at the time of inspection.

(B) is not intended to be a comprehensive investigation or exploratory probe to determine the cause or effect of deficiencies noted by the inspector; and

(C) does not require the use of:

(i) specialized equipment, including but not limited to:

(I) thermal imaging equipment;

(II) moisture meters;

(III) gas or carbon monoxide detection equipment;

(IV) environmental testing equipment and devices;

(V) elevation determination devices; or

(VI) ladders capable of reaching surfaces over one story above ground surfaces; or

(ii) specialized procedures, including but not limited to:

(I) environmental testing;

(II) elevation measurement;

(III) calculations; or

(IV) any method employing destructive testing that damages otherwise sound materials or finishes.

(4) These standards of practice do not prohibit an inspector from providing a higher level of inspection performance than required by these standards of practice or from inspecting components and systems in addition to those listed under the standards of practice.

(b) Definitions.

(1) Accessible--In the reasonable judgment of the inspector, capable of being approached, entered, or viewed without:

(A) hazard to the inspector;

(B) having to climb over obstacles, moving furnishings or large, heavy, or fragile objects;

(C) using specialized equipment or procedures;

(D) disassembling items other than covers or panels intended to be removed for inspection;

(E) damaging property, permanent construction or building finish; or

(F) using a ladder for portions of the inspection other than the roof or attic space.

(2) Chapter 1102--Texas Occupations Code, Chapter 1102.

(3) Component--A part of a system.

(4) Cosmetic--Related only to appearance or aesthetics, and not related to performance, operability, or water penetration.

(5) Deficiency--In the reasonable judgment of the inspector, a condition that:

(A) adversely and materially affects the performance of a system, or component; or

(B) constitutes a hazard to life, limb, or property as specified by these standards of practice.

(6) Deficient--Reported as having one or more deficiencies.

(7) Inspect--To operate in normal ranges using ordinary controls at typical settings, look at and examine accessible systems or components and report observed deficiencies as specified by these standards of practice.

(8) Performance--Achievement of an operation, function or configuration relative to accepted industry standard practices with consideration of age and normal wear and tear from ordinary use.

(9) Report--To provide the inspector's opinions and findings on the standard inspection report form as required by §535.222 and §535.223 of this title.

(10) Standards of practice--§§535.227 - 535.233 of this title.

(c) General Requirements. The inspector shall:

(1) operate fixed or installed equipment and appliances listed herein in at least one mode with ordinary controls at typical settings;

(2) visually inspect accessible systems or components from near proximity to the systems and components, and from the interior of the attic and crawl spaces; and

(3) complete the standard inspection report form as required by §535.222 and §535.223 of this title.

(d) General limitations. The inspector is not required to:

(1) inspect:

(A) items other than those listed within these standards of practice;

(B) elevators;

(C) detached buildings, decks, docks, fences, waterfront structures, or related equipment;

(D) anything buried, hidden, latent, or concealed;

(E) sub-surface drainage systems;

(F) automated or programmable control systems, automatic shut-off, photoelectric sensors, timers, clocks, metering devices, signal lights, lightning arrestor system, remote controls, security or data distribution systems, solar panels or smart home automation components; or

(G) concrete flatwork such as driveways, sidewalks, walkways, paving stones or patios;

(2) report:

(A) past repairs that appear to be effective and workmanlike except as specifically required by these standards;

(B) cosmetic or aesthetic conditions; or

(C) wear and tear from ordinary use;

(3) determine:

(A) the presence or absence of pests, termites, or other wood-destroying insects or organisms;

(B) the presence, absence, or risk of:

(i) asbestos;

(ii) lead-based paint;

(iii) mold, mildew;

(iv) corrosive or contaminated drywall "Chinese Drywall"; or

(v) any other environmental hazard, environmental pathogen, carcinogen, toxin, mycotoxin, pollutant, fungal presence or activity, or poison;

(C) types of wood or preservative treatment and fastener compatibility; or

(D) the cause or source of a condition;

(E) the cause or effect of deficiencies;

(F) any of the following issues concerning a system or component:

(i) insurability or warrantability;

(ii) suitability, adequacy, compatibility, capacity, reliability, marketability, or operating costs;

(iii) recalls, counterfeit products, or product lawsuits;

(iv) life expectancy or age;

(v) energy efficiency, vapor barriers, or thermostatic performance;

(vi) compliance with any code, listing, testing or protocol authority;

(vii) utility sources; or

(viii) manufacturer or regulatory requirements, except as specifically required by these standards;

(4) anticipate future events or conditions, including but not limited to:

(A) decay, deterioration, or damage that may occur after the inspection;

(B) deficiencies from abuse, misuse or lack of use;

(C) changes in performance of any component or system due to changes in use or occupancy;

(D) the consequences of the inspection or its effects on current or future buyers and sellers;

(E) common household accidents, personal injury, or death;

(F) the presence of water penetrations; or

(G) future performance of any item;

(5) operate shut-off, safety, stop, pressure or pressure-regulating valves or items requiring the use of codes, keys, combinations, or similar devices;

(6) designate conditions as safe;

(7) recommend or provide engineering, architectural, appraisal, mitigation, physical surveying, realty, or other specialist services;

(8) review historical records, installation instructions, repair plans, cost estimates, disclosure documents, or other reports;

(9) verify sizing, efficiency, or adequacy of the ground surface drainage system;

(10) verify sizing, efficiency, or adequacy of the gutter and downspout system;

(11) operate recirculation or sump pumps;

(12) remedy conditions preventing inspection of any item;

(13) apply open flame or light a pilot to operate any appliance;

(14) turn on decommissioned equipment, systems or utility services; or

(15) provide repair cost estimates, recommendations, or re-inspection services.

(e) In the event of a conflict between the general provisions set out in this section, and the specific provisions specified elsewhere in the standards of practice, specific provisions shall take precedence.

(f) Departure provision.

(1) An inspector may depart from the inspection of a component or system required by the standards of practice only if:

(A) the inspector and client agree the item is not to be inspected;

(B) the inspector is not qualified to inspect the item;

(C) in the reasonable judgment of the inspector, the inspector determines that:

(i) conditions exist that prevent inspection of an item;

(ii) conditions or materials are hazardous to the health or safety of the inspector; or

(iii) the actions of the inspector may cause damage to the property;

(D) the item is a common element of a multi-family development and is not in physical contact with the unit being inspected, such as the foundation under another building or a part of the foundation under another unit in the same building;

(2) If an inspector departs from the inspection of a component or system required by the standards of practice, the inspector shall:

(A) notify the client at the earliest practical opportunity that the component or system will not be inspected; and

(B) make an appropriate notation on the inspection report form, stating the reason the component or system was not inspected.

(3) If the inspector routinely departs from inspection of a component or system required by the standards of practice, and the inspector has reason to believe that the property being inspected includes that component or system, the earliest practical opportunity for the notice required by this subsection is the first contact the inspector makes with the prospective client.

(g) Enforcement. Failure to comply with the standards of practice is grounds for disciplinary action as prescribed by Chapter 1102.

§535.228. Standards of Practice: Minimum Inspection Requirements for Structural Systems

(a) Foundations.

(1) The inspector shall:

(A) render a written opinion as to the performance of the foundation; and

(B) report:

(i) the type of foundations;

(ii) the vantage point from which the crawl space was inspected;

(C) generally report present and visible indications used to render the opinion of adverse performance, such as:

(i) binding, out-of-square, non-latching doors;

(ii) framing or frieze board separations;

(iii) sloping floors;

(iv) window, wall, floor, or ceiling cracks or separations; and

(v) rotating, buckling, cracking, or deflecting masonry cladding.

(D) report as Deficient:

(i) deteriorated materials;

(ii) deficiencies in foundation components such as; beams, joists, bridging, blocking, piers, posts, pilings, columns, sills or subfloor;

(iii) deficiencies in retaining walls related to foundation performance;

(iv) exposed or damaged reinforcement;

(v) crawl space ventilation that is not performing; and

(vi) crawl space drainage that is not performing.

(2) The inspector is not required to:

(A) enter a crawl space or any area where headroom is less than 18 inches or the access opening is less than 24 inches wide and 18 inches high;

(B) provide an exhaustive list of indicators of possible adverse performance; or

(C) inspect retaining walls not related to foundation performance.

(b) Grading and drainage.

(1) The inspector shall report as Deficient:

(A) drainage around the foundation that is not performing;

(B) deficiencies in grade levels around the foundation; and

(C) deficiencies in installed gutter and downspout systems.

(2) The inspector is not required to:

(A) inspect flatwork or detention/retention ponds (except as related to slope and drainage);

(B) determine area hydrology or the presence of underground water; or

(C) determine the efficiency or performance of underground or surface drainage systems.

(c) Roof covering materials.

(1) The inspector shall:

(A) inspect the roof covering materials from the surface of the roof;

(B) report:

(i) type of roof coverings;

(ii) vantage point from where the roof was inspected;

(iii) evidence of water penetration;

(iv) evidence of previous repairs to the roof covering material, flashing details, skylights and other roof penetrations; and

(C) report as Deficient deficiencies in:

(i) fasteners;

(ii) adhesion;

(iii) roof covering materials;

(iv) flashing details;

(v) skylights; and

(vi) other roof penetrations.

(2) The inspector is not required to:

(A) inspect the roof from the roof level if, in the inspector's reasonable judgment:

(i) the inspector cannot safely reach or stay on the roof; or

(ii) significant damage to the roof covering materials may result from walking on the roof;

(B) determine:

(i) the remaining life expectancy of the roof covering; or

(ii) the number of layers of roof covering material;

(C) identify latent hail damage;

(D) exhaustively examine all fasteners and adhesion, or

(E) provide an exhaustive list of locations of deficiencies and water penetrations.

(d) Roof structures and attics.

(1) The inspector shall:

(A) report:

(i) the vantage point from which the attic space was inspected;

(ii) approximate average depth of attic insulation;

(iii) evidence of water penetration;

(B) report as Deficient:

(i) attic space ventilation that is not performing;

(ii) deflections or depressions in the roof surface as related to adverse performance of the framing and decking;

(iii) missing insulation;

(iv) deficiencies in:

(I) installed framing members and decking;

(II) attic access ladders and access openings; and

(III) attic ventilators.

(2) The inspector is not required to:

(A) enter attics or unfinished spaces where openings are less than 22 inches by 30 inches or headroom is less than 30 inches;

(B) operate powered ventilators; or

(C) provide an exhaustive list of locations of deficiencies and water penetrations.

(e) Interior walls, ceilings, floors, and doors.

(1) The inspector shall:

(A) report evidence of water penetration;

(B) report as Deficient:

(i) deficiencies in the condition and performance of doors and hardware;

(ii) deficiencies related to structural performance or water penetration; and

(iii) the absence of or deficiencies in fire separation between the garage and the living space and between the garage and its attic.

(2) The inspector is not required to:

(A) report cosmetic damage or the condition of floor, wall, or ceiling coverings; paints, stains, or other surface coatings; cabinets; or countertops, or

(B) provide an exhaustive list of locations of deficiencies and water penetrations.

(f) Exterior walls, doors, and windows.

(1) The inspector shall:

(A) report evidence of water penetration;

(B) report as Deficient:

(i) the absence of performing emergency escape and rescue openings in all sleeping rooms;

(ii) a solid wood door less than 1-3/8 inches in thickness, a solid or honeycomb core steel door less than 1-3/8 inches thick, or a 20-minute fire-rated door between the residence and an attached garage;

(iii) missing or damaged screens;

(iv) deficiencies related to structural performance or water penetration;

(v) deficiencies in:

(I) weather stripping, gaskets or other air barrier materials;

(II) claddings;

(III) water resistant materials and coatings;

(IV) flashing details and terminations;

(V) the condition and performance of exterior doors, garage doors and hardware; and

(VI) the condition and performance of windows and components.

(2) The inspector is not required to:

(A) report the condition of awnings, blinds, shutters, security devices, or other non-structural systems;

(B) determine the cosmetic condition of paints, stains, or other surface coatings; or

(C) operate a lock if the key is not available.

(D) provide an exhaustive list of locations of deficiencies and water penetrations.

(g) Exterior and interior glazing.

(1) The inspector shall report as Deficient:

(A) insulated windows that are obviously fogged or display other evidence of broken seals;

(B) deficiencies in glazing, weather stripping and glazing compound in windows and doors; and

(C) the absence of safety glass in hazardous locations.

(2) The inspector is not required to:

(A) exhaustively inspect insulated windows for evidence of broken seals;

(B) exhaustively inspect glazing for identifying labels; or

(C) identify specific locations of damage.

(h) Interior and exterior stairways.

(1) The inspector shall report as Deficient:

(A) spacing between intermediate balusters, spindles, or rails for steps, stairways, guards, and railings that permit passage of an object greater than 4 inches in diameter, except that on the open side of the staircase treads, spheres less than 4-3/8 inches in diameter may pass through the guard rail balusters or spindles; and

(B) deficiencies in steps, stairways, landings, guardrails, and handrails.

(2) The inspector is not required to exhaustively measure every stairway component.

(i) Fireplaces and chimneys.

(1) The inspector shall report as Deficient:

(A) built-up creosote in accessible areas of the firebox and flue;

(B) the presence of combustible materials in near proximity to the firebox opening;

(C) the absence of fireblocking at the attic penetration of the chimney flue, where accessible; and

(D) deficiencies in the:

(i) damper;

(ii) lintel, hearth, hearth extension, and firebox;

(iii) gas valve and location;

(iv) circulating fan;

(v) combustion air vents; and

(vi) chimney structure, termination, coping, crown, caps, and spark arrestor.

(2) The inspector is not required to:

(A) verify the integrity of the flue;

(B) perform a chimney smoke test; or

(C) determine the adequacy of the draft.

(j) Porches, Balconies, Decks, and Carports.

(1) The inspector shall:

(A) inspect:

(i) attached balconies, carports, and porches;

(ii) abutting porches, decks, and balconies that are used for ingress and egress; and

(B) report as Deficient:

(i) on decks 30 inches or higher above the adjacent grade, spacings between intermediate balusters, spindles, or rails that permit passage of an object greater than four inches in diameter; and

(ii) deficiencies in accessible components.

(2) The inspector is not required to:

(A) exhaustively measure every porch, balcony, deck, or attached carport components; or

(B) enter any area where headroom is less than 18 inches or the access opening is less than 24 inches wide and 18 inches high.

§535.229. Standards of Practice: Minimum Inspection Requirements for Electrical Systems

(a) Service entrance and panels.

(1) The inspector shall report as Deficient:

(A) a drop, weatherhead or mast that is not securely fastened to the building;

(B) the absence of or deficiencies in the grounding electrode system;

(C) missing or damaged dead fronts or covers plates;

(D) conductors not protected from the edges of electrical cabinets, gutters, or cutout boxes;

(E) electrical cabinets and panel boards not appropriate for their location; such as a clothes closet, bathrooms or where they are exposed to physical damage;

(F) electrical cabinets and panel boards that are not accessible or do not have a minimum of 36-inches of clearance in front of them;

(G) deficiencies in:

(i) electrical cabinets, gutters, cutout boxes, and panel boards;

(ii) the insulation of the service entrance conductors, drip loop, separation of conductors at weatherheads, and clearances;

(iii) the compatibility of overcurrent devices and conductors;

(iv) the overcurrent device and circuit for labeled and listed 240 volt appliances;

(v) bonding and grounding;

(vi) conductors;

(vii) the operation of installed ground-fault or arc-fault circuit interrupter devices; and

(H) the absence of:

(i) trip ties on 240 volt overcurrent devices or multi-wire branch circuit;

(ii) appropriate connections;

(iii) anti-oxidants on aluminum conductor terminations;

(iv) a main disconnecting means.

(2) The inspector is not required to:

(A) determine present or future sufficiency of service capacity amperage, voltage, or the capacity of the electrical system;

(B) test arc-fault circuit interrupter devices when the property is occupied or damage to personal property may result, in the inspector's reasonable judgment;

(C) conduct voltage drop calculations;

(D) determine the accuracy of overcurrent device labeling;

(E) remove covers where hazardous as judged by the inspector;

(F) verify the effectiveness of overcurrent devices; or

(G) operate overcurrent devices.

(b) Branch circuits, connected devices, and fixtures.

(1) The inspector shall:

(A) manually test the installed and accessible smoke and carbon monoxide alarms;

(B) report the type of branch circuit conductors;

(C) report as Deficient:

(i) the absence of ground-fault circuit interrupter protection in all:

(I) bathroom receptacles;

(II) garage receptacles;

(III) outdoor receptacles;

(IV) crawl space receptacles;

(V) unfinished basement receptacles;

(VI) kitchen countertop receptacles; and

(VII) receptacles that are located within six feet of the outside edge of a sink;

(ii) the failure of operation of ground-fault circuit interrupter protection devices;

(iii) missing or damaged receptacle, switch or junction box covers;

(iv) the absence of:

(I) equipment disconnects;

(II) appropriate connections, such as copper/aluminum approved devices, if branch circuit aluminum conductors are discovered in the main or sub-panel based on a random sampling of accessible receptacles and switches;

(v) deficiencies in:

(I) receptacles;

(II) switches;

(III) bonding or grounding;

(IV) wiring, wiring terminations, junction boxes, devices, and fixtures, including improper location;

(V) doorbell and chime components;

(VI) smoke and carbon monoxide alarms;

(vi) improper use of extension cords;

(vii) deficiencies in or absences of conduit, where applicable; and

(vii) the absence of smoke alarms:

(I) in each sleeping room;

(II) outside each separate sleeping area in the immediate vicinity of the sleeping rooms; and

(III) in the living space of each story of the dwelling.

(2) The inspector is not required to:

(A) inspect low voltage wiring;

(B) disassemble mechanical appliances;

(C) verify the effectiveness of smoke alarms;

(D) verify interconnectivity of smoke alarms;

(E) activate smoke or carbon monoxide alarms that are or may be monitored or require the use of codes;

(F) verify that smoke alarms are suitable for the hearing-impaired; or

(G) remove the covers of junction, fixture, receptacle or switch boxes unless specifically required by these standards.

§535.230. Standards of Practice: Minimum Inspection Requirements for Heating, Ventilation, and Air Conditioning Systems.

(a) Heating equipment.

(1) General requirements.

(A) The inspector shall report:

(i) the type of heating systems; and

(ii) the energy sources; and

(B) report as Deficient:

(i) inoperative units;

(ii) deficiencies in the thermostats;

(iii) inappropriate location;

(iv) the lack of protection from physical damage;

(v) burners, burner ignition devices or heating elements, switches, and thermostats that are not a minimum of 18 inches above the lowest garage floor elevation, unless the unit is listed for garage floor installation;

(vi) the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish;

(vii) when applicable; a floored passageway and service platform that would allow access for equipment inspection, service, repair or replacement; and

(viii) deficiencies in mounting and performance of window and wall units;

(2) Requirements for electric units. The inspector shall report deficiencies in:

(A) performance of heat pumps;

(B) performance of heating elements; and

(C) condition of conductors; and

(3) Requirements for gas units. The inspector shall report as Deficient:

(A) gas leaks;

(B) flame impingement, uplifting flame, improper flame color, or excessive scale buildup;

(C) the absence of a gas shut-off valve within six feet of the appliance;

(D) the absence of a gas appliance connector or one that exceeds six feet in length;

(E) gas appliance connectors that are concealed within or extended through walls, floors, partitions, ceilings or appliance housings; and

(F) deficiencies in:

(i) combustion, and dilution air;

(ii) gas shut-off valves;

(iii) access to a gas shutoff valves that prohibits full operation;

(iv) gas appliance connector materials; and

(v) the vent pipe, draft hood, draft, proximity to combustibles, and vent termination point and clearances; and

(b) Cooling equipment

(1) Requirements for cooling units other than evaporative coolers.

(A) the inspector shall report the type of systems;

(B) the inspector shall report as Deficient:

(i) inoperative units;

(ii) inadequate cooling as demonstrated by its performance;

(iii) the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish;

(iv) when applicable; a floored passageway and service platform that would allow access for equipment inspection, service, repair or replacement;

(v) noticeable vibration of blowers or fans;

(vi) water in the auxiliary/secondary drain pan;

(vii) a primary drain pipe that discharges in a sewer vent;

(viii) missing or deficient refrigerant pipe insulation;

(ix) dirty coils, where accessible;

(x) condensing units lacking adequate clearances or air circulation or that has deficiencies in the fins, location, levelness, or elevation above grade surfaces;

(xi) deficiencies in:

(I) the condensate drain and auxiliary/secondary pan and drain system;

(II) mounting and performance of window or wall units; and

(III) thermostats.

(2) Requirements for evaporative coolers.

(A) The inspector shall report:

(i) type of systems;

(ii) the type of water supply line;

(B) The inspector shall report as Deficient:

(i) inoperative units;

(ii) inadequate access and clearances;

(iii) deficiencies in performance or mounting;

(iv) missing or damaged components;

(v) the presence of active water leaks; and

(vi) the absence of backflow prevention.

(c) Duct systems, chases, and vents.

(1) The inspector shall report as Deficient:

(A) damaged duct systems or improper material;

(B) damaged or missing duct insulation;

(C) the absence of air flow at accessible supply registers;

(D) the presence of gas piping and sewer vents concealed in ducts, plenums and chases;

(E) ducts or plenums in contact with earth; and

(2) The inspector shall report as Deficient deficiencies in:

(A) filters;

(B) grills or registers; and

(C) the location of return air openings.

(d) For heating, ventilation, and air conditioning systems inspected under this section, the inspector is not required to perform the following actions:

(1) program digital thermostats or controls;

(2) inspect:

(A) for pressure of the system refrigerant, type of refrigerant, or refrigerant leaks;

(B) winterized or decommissioned equipment; or

(C) duct fans, humidifiers, dehumidifiers, air purifiers, motorized dampers, electronic air filters, multi-stage controllers, sequencers, heat reclaimers, wood burning stoves, boilers, oil-fired units, supplemental heating appliances, de-icing provisions, or reversing valves;

(3) operate:

(A) setback features on thermostats or controls;

(B) cooling equipment when the outdoor temperature is less than 60 degrees Fahrenheit;

(C) radiant heaters, steam heat systems, or unvented gas-fired heating appliances; or

(D) heat pumps, in the heat pump mode, when the outdoor temperature is above 70 degrees;

(4) verify:

(A) compatibility of components;

(B) tonnage match of indoor coils and outside coils or condensing units;

(C) the accuracy of thermostats; or

(D) the integrity of the heat exchanger; or

(5) determine:

(A) sizing, efficiency, or adequacy of the system;

(B) balanced air flow of the conditioned air to the various parts of the building; or

(C) types of materials contained in insulation.

§535.231. Standards of Practice: Minimum Inspection Requirements for Plumbing Systems.

(a) Plumbing systems.

(1) The inspector shall:

(A) report:

(i) location of water meter;

(ii) location of homeowners main water supply shut-off valve; and

(iii) static water pressure;

(B) report as Deficient:

(i) the presence of active leaks;

(ii) the lack of a pressure reducing valve when the water pressure exceeds 80 PSI;

(iii) the lack of an expansion tank at the water heater(s) when a pressure reducing valve is in place at the water supply line/system;

(iv) the absence of:

(I) fixture shut-off valves;

(II) dielectric unions, when applicable;

(III) back-flow devices, anti-siphon devices, or air gaps at the flow end of fixtures; and

(v) deficiencies in:

(I) water supply pipes and waste pipes;

(II) the installation and termination of the vent system;

(III) the performance of fixtures and faucets not connected to an appliance;

(IV) water supply, as determined by viewing functional flow in two fixtures operated simultaneously;

(V) fixture drain performance;

(VI) orientation of hot and cold faucets;

(VII) installed mechanical drain stops;

(VIII) commodes, fixtures, showers, tubs, and enclosures; and

(IX) the condition of the gas distribution system.

(2) The inspector is not required to:

(A) operate any main, branch, or shut-off valves;

(B) operate or inspect sump pumps or waste ejector pumps;

(C) verify the performance of:

(i) the bathtub overflow;

(ii) clothes washing machine drains or hose bibbs; or

(iii) floor drains;

(D) inspect:

(i) any system that has been winterized, shut down or otherwise secured;

(ii) circulating pumps, free-standing appliances, solar water heating systems, water-conditioning equipment, filter systems, water mains, private water supply systems, water wells, pressure tanks, sprinkler systems, swimming pools, or fire sprinkler systems;

(iii) inaccessible gas supply system components for leaks;

(iv) for sewer clean-outs; or

(v) for the presence or performance of private sewage disposal systems; or

(E) determine:

(i) quality, potability, or volume of the water supply; or

(ii) effectiveness of backflow or anti-siphon devices.

(b) Water heaters.

(1) General Requirements.

(A) The inspector shall:

(i) report:

(I) the energy source;

(II) the capacity of the units;

(ii) report as Deficient:

(I) inoperative units;

(II) leaking or corroded fittings or tanks;

(III) damaged or missing components;

(IV) the absence of a cold water shut-off valve;

(V) if applicable, the absence of a pan or a pan drain system that does not terminate over a waste receptor or to the exterior of the building above the ground surface;

(VI) inappropriate locations;

(VII) the lack of protection from physical damage;

(VIII) burners, burner ignition devices or heating elements, switches, or thermostats that are not a minimum of 18 inches above the lowest garage floor elevation, unless the unit is listed for garage floor installation;

(IX) the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish;

(X) when applicable; a floored passageway and service platform that would allow access for equipment inspection, service, repair or replacement;

(XI) the absence of or deficiencies in the temperature and pressure relief valve and discharge piping;

(XII) a temperature and pressure relief valve that failed to operate, when tested manually;

(B) The inspector is not required to:

(i) verify the effectiveness of the temperature and pressure relief valve, discharge piping, or pan drain pipes;

(ii) operate the temperature and pressure relief valve if the operation of the valve may, in the inspector's reasonable judgment, cause damage to persons or property; or

(iii) determine the efficiency or adequacy of the unit.

(2) Requirements for electric units. The inspector shall report as Deficient deficiencies in:

(A) performance of heating elements; and

(B) condition of conductors; and

(3) Requirements for gas units. The inspector shall report as Deficient:

(A) gas leaks;

(B) flame impingement, uplifting flame, improper flame color, or excessive scale build-up;

(C) the absence of a gas shut-off valve within six feet of the appliance;

(D) the absence of a gas appliance connector or one that exceeds six feet in length;

(E) gas appliance connectors that are concealed within or extended through walls, floors, partitions, ceilings or appliance housings;

(F) deficiencies in:

(i) combustion and dilution air;

(ii) gas shut-off valves;

(iii) access to a gas shutoff valves that prohibit full operation;

(iv) gas appliance connector materials; and

(v) vent pipe, draft hood, draft, proximity to combustibles, and vent termination point and clearances.

(c) Hydro-massage therapy equipment.

(1) The inspector shall report as Deficient:

(A) inoperative units;

(B) the presence of active leaks;

(C) deficiencies in components and performance;

(D) missing and damaged components;

(E) the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish; and

(F) the absence or failure of operation of ground-fault circuit interrupter protection devices; and

(2) The inspector is not required to determine the adequacy of self-draining features of circulation systems.

§535.232. Standards of Practice: Minimum Inspection Requirements for Appliances.

(a) General provisions. The inspector is not required to:

(1) operate or determine the condition of other auxiliary components of inspected items;

(2) test for microwave oven radiation leaks;

(3) inspect self-cleaning functions;

(4) disassemble appliances;

(5) determine the adequacy of venting systems; or

(6) determine proper routing and lengths of duct systems.

(b) Dishwashers. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) rusted, missing or damaged components;

(4) the presence of active water leaks; and

(5) the absence of backflow prevention.

(c) Food waste disposers. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) missing or damaged components; and

(4) the presence of active water leaks.

(d) Range hoods and exhaust systems. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) missing or damaged components;

(4) ducts that do not terminate outside the building, if the unit is not of a re-circulating type or configuration; and

(5) improper duct material.

(e) Electric or gas ranges, cooktops, and ovens. The inspector shall report as Deficient:

(1) inoperative units;

(2) missing or damaged components;

(3) combustible material within thirty inches above the cook top burners;

(4) absence of an anti-tip device, if applicable;

(5) gas leaks;

(6) the absence of a gas shutoff valve within six feet of the appliance;

(7) the absence of a gas appliance connector or one that exceeds six feet in length;

(8) gas appliance connectors that are concealed within or extended through walls, floors, partitions, ceilings or appliance housings; and

(9) deficiencies in:

(A) thermostat accuracy (within 25 degrees at a setting of 350° F);

(B) mounting and performance;

(C) gas shut-off valves;

(D) access to a gas shutoff valves that prohibits full operation; and

(E) gas appliance connector materials.

(f) Microwave ovens. The inspector shall inspect built-in units and report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting; and

(3) missing or damaged components.

(g) Mechanical exhaust systems and bathroom heaters. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) missing or damaged components;

(4) ducts that do not terminate outside the building; and

(5) a gas heater that is not vented to the exterior of the building unless the unit is listed as an unvented type.

(h) Garage door operators. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) missing or damaged components;

(4) installed photoelectric sensors located more than six inches above the garage floor; and

(5) door locks or side ropes that have not been removed or disabled.

(i) Dryer exhaust systems. The inspector shall report as Deficient:

(1) missing or damaged components;

(2) the absence of a dryer exhaust system when provisions are present for a dryer;

(3) ducts that do not terminate to the outside of the building;

(4) screened terminations; and

(5) ducts that are not made of metal with a smooth interior finish.

§535.233. Standards of Practice: Minimum Inspection Requirements for Optional Systems.

(a) An inspector is not required to inspect the components or systems described under this section.

(b) If an inspector agrees to inspect a component or system described under this section, the general provisions under §535.227 of this title and the provisions and requirements of this section applicable to that component or system apply.

(c) Landscape irrigation (sprinkler) systems.

(1) The inspector shall:

(A) manually operate all zones or stations on the system through the controller;

(B) report as Deficient:

(i) the absence of a rain or moisture sensor,

(ii) inoperative zone valves;

(iii) surface water leaks;

(iv) the absence of a backflow prevention device;

(v) the absence of shut-off valves between the water meter and backflow device;

(vi) deficiencies in the performance and mounting of the controller;

(vii) missing or damaged components; and

(viii) deficiencies in the performance of the water emission devices; such as, sprayer heads, rotary sprinkler heads, bubblers or drip lines.

(2) The inspector is not required to inspect:

(A) for effective coverage of the irrigation system;

(B) the automatic function of the controller;

(C) the effectiveness of the sensors; such as, rain, moisture, wind, flow or freeze sensors; or

(D) sizing and effectiveness of backflow prevention device.

(d) Swimming pools, spas, hot tubs, and equipment.

(1) The inspector shall:

(A) report the type of construction;

(B) report as Deficient:

(i) the presence of a single blockable main drain (potential entrapment hazard);

(ii) a pump motor, blower, or other electrical equipment that lacks bonding;

(iii) the absence of or deficiencies in safety barriers;

(iv) water leaks in above-ground pipes and equipment;

(v) the absence or failure in performance of ground-fault circuit interrupter protection devices; and

(vi) deficiencies in:

(I) surfaces;

(II) tiles, coping, and decks;

(III) slides, steps, diving boards, handrails, and other equipment;

(IV) drains, skimmers, and valves;

(V) filters, gauges, pumps, motors, controls, and sweeps;

(VI) lighting fixtures; and

(VII) the pool heater that these standards of practice require to be reported for the heating system.

(2) The inspector is not required to:

(A) disassemble filters or dismantle or otherwise open any components or lines;

(B) operate valves;

(C) uncover or excavate any lines or concealed components of the system;

(D) fill the pool, spa, or hot tub with water;

(E) inspect any system that has been winterized, shut down, or otherwise secured;

(F) determine the presence of sub-surface water tables;

(G) determine the effectiveness of entrapment covers;

(H) determine the presence of pool shell or sub-surface leaks; or

(I) inspect ancillary equipment such as computer controls, covers, chlorinators or other chemical dispensers, or water ionization devices or conditioners other than required by this section.

(e) Outbuildings.

(1) The inspector shall report as Deficient the absence or failure in performance of ground-fault circuit interrupter protection devices in grade-level portions of unfinished accessory buildings used for storage or work areas, boathouses, and boat hoists; and

(2) The inspector shall report as Deficient deficiencies in the structural, electrical, plumbing, heating, ventilation, and cooling systems that these standards of practice require to be reported for the principal building.

(f) Private water wells.

(1) The inspector shall:

(A) operate at least two fixtures simultaneously;

(B) recommend or arrange to have performed coliform testing;

(C) report:

(i) the type of pump and storage equipment;

(ii) the proximity of any known septic system;

(D) report as Deficient deficiencies in:

(i) water pressure and flow and performance of pressure switches;

(ii) the condition of accessible equipment and components; and

(iii) the well head, including improper site drainage and clearances.

(2) The inspector is not required to:

(A) open, uncover, or remove the pump, heads, screens, lines, or other components of the system;

(B) determine the reliability of the water supply or source; or

(C) locate or verify underground water leaks.

(g) Private sewage disposal (septic) systems.

(1) The inspector shall:

(A) report:

(i) the type of system;

(ii) the location of the drain or distribution field;

(iii) the proximity of any known water wells, underground cisterns, water supply lines, bodies of water, sharp slopes or breaks, easement lines, property lines, soil absorption systems, swimming pools, or sprinkler systems;

(B) report as Deficient:

(i) visual or olfactory evidence of effluent seepage or flow at the surface of the ground;

(ii) inoperative aerators or dosing pumps; and

(iii) deficiencies in:

(I) accessible components;

(II) functional flow;

(III) site drainage and clearances around or adjacent to the system; and

(IV) the aerobic discharge system.

(2) The inspector is not required to:

(A) excavate or uncover the system or its components;

(B) determine the size, adequacy, or efficiency of the system; or

(C) determine the type of construction used.

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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Kristen Worman
Deputy General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3093

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TITLE 25. HEALTH SERVICES

PART 4. ANATOMICAL BOARD OF THE STATE OF TEXAS

CHAPTER 477. DISTRIBUTION OF BODIES

25 TAC §§477.1, 477.2, 477.4, 477.5, 477.7

The Anatomical Board of the State of Texas (Board) adopts amendments to §§477.1, 477.2, 477.4, 477.5, and 477.7 concerning the rules and procedures for the distribution of cadavers and/or anatomical specimens to recognized search organizations. The Board adopts amendments to §§477.1, 477.2, 477.4, 477.5, and 477.7 without changes to the proposed text as published in the July 1, 2016, issue of the *Texas Register* (41 TexReg 4779).

The Board's adopted amendments are to implement Health and Safety Code §691.030 and §692A.011 as amended by Senate Bill 1214 in the 84th Legislative Session. The amendments to §691.030 and §692A.011 provide that the use of cadavers and/or anatomical specimens by recognized search organizations must be coordinated through the Anatomical Board of the State of Texas.

The amendment to §477.1 defines the term "search organizations" to be organizations described in §691.030(a)(3) of the Health and Safety Code.

Amendments to §477.2 necessitate that search organizations meet the requirements described in §691.030(a)(3) of the Health and Safety Code.

Amendments to §477.4 set forth the circumstances under which a cadaver or anatomical specimen may be transferred to a recognized search organization.

Amendments to §477.5 relate to the procedure for a recognized search organization to request transfer of cadavers and/or anatomical specimens, the procedure for approval of the transfer, availability of cadavers and/or anatomical specimens, and the procedure for return of cadavers and/or anatomical specimens.

The amendment to §477.7 requires a recognized search organization receiving cadavers and/or anatomical specimens to file a yearly cadaver procurement and use report.

No comments were received regarding the adoption of the amendments.

The adopted amendments to §§477.1, 477.2, 477.4, 477.5, and 477.7 are also authorized by the Board's general rulemaking power under Health and Safety Code §691.022(b).

The adopted amendments affect Texas Administrative Code, Title 25, Chapter 477.

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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Stephen Luk
Secretary - Treasurer
Anatomical Board of the State of Texas
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For further information, please call: (214) 648-2267

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CHAPTER 479. FACILITIES: STANDARDS AND INSPECTIONS

25 TAC §§479.1 - 479.3, 479.5

The Anatomical Board of the State of Texas (Board) adopts amendments to §§479.1 - 479.3, and 479.5 concerning the rules and procedures for the distribution of cadavers and/or anatomical specimens to recognized search organizations. The Board adopts amendments to §§479.1 - 479.3, and 479.5 without changes to the proposed text as published in the July 1, 2016, issue of the *Texas Register* (41 TexReg 4781).

The Board's adopted amendments are to implement Health and Safety Code §691.030 and §692A.011 as amended by Senate Bill 1214 in the 84th Legislative Session. The amendments to §691.030 and §692A.011 provide that the use of cadavers and/or anatomical specimens by recognized search organizations must be coordinated through the Anatomical Board of the State of Texas.

Amendments to §479.1 allow recognized search organizations and forensic science programs to receive and hold cadavers and/or anatomical specimens.

Amendments to §479.2 relate to the procedure for a search organization to apply to receive and hold cadavers and/or anatomical specimens. This section also relates to the inspection of the facilities of a search organization.

Amendments to §479.3 allow recognized search organizations and forensic science programs to use anatomical specimens in specific field locations provided that certain conditions are met.

Amendments to §479.5 provide a limited exception to Texas Penal Code §42.10 for recognized search organizations and forensic science programs to use human cadaveric materials for training purposes under strict circumstances.

No comments were received regarding the adoption of the amendments.

The adopted amendments to §§479.1, 479.2, 479.3, and 479.5 are authorized by the Board's general rulemaking power under Health and Safety Code §691.022(b).

The adopted amendments affect the Texas Administrative Code, Title 25, Chapter 479.

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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TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 81. INSURANCE

34 TAC §§81.1, 81.3, 81.5, 81.7 - 81.9, 81.11

The Employees Retirement System of Texas (ERS) adopts amendments to 34 Texas Administrative Code (TAC), Chapter 81, concerning Insurance, §§81.1 (Definitions), 81.3 (Health Maintenance Organizations), 81.5 (Eligibility), 81.8 (Waiver of Health Coverage), 81.9 (Grievance Procedures), and 81.11 (Cancellation of Coverage and Sanctions) without changes to the proposed text as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4960), and these sections will not be republished. ERS adopts amendments to 34 TAC §81.7 (Enrollment and Participation) with changes to the proposed text as published, and this section will be republished. The change from the proposed text allows a certified nurse-midwife to be considered a practitioner who can certify the date of birth for a newborn natural child for purposes of eligibility for life and AD&D coverage in the Group Benefits Program (GBP). The amendments were approved by the ERS Board of Trustees at its August 16, 2016, meeting.

ERS adopts amendments to Chapter 81 to comply with recent legislation which added Subchapter J to Chapter 1551, Insurance Code, in connection with a state consumer-directed health plan and to comply with provisions of the Affordable Care Act (ACA). In addition, the amendments simplify plan administration and provide clarification to GBP plan participants, including consolidation of the available GBP optional coverages into one subsection.

Section 81.1, concerning Definitions, is amended to update the rule to use more current terminology, provide clarity to existing definitions, provide definitions to terms that previously existed within the rule, and to eliminate definitions that are no longer necessary. A definition for "Consumer Directed HealthSelect℠" was added for the new GBP high deductible health plan, in connection with the new Insurance Code Chapter 1551, Subchapter J. "GBP health coverage" was also included to describe all of the health plans that are offered through the GBP. The definition of a "spouse" as a dependent in the GBP was reformatted to add additional clarity and guidance to GBP participants that a member's spouse must be formally married or informally married with a filed Declaration of Informal Marriage prior to the effective date of the dependent spouse's enrollment in the GBP. The amendment also creates a narrow exception to the requirement based on clear and compelling evidence that the marriage existed prior to enrollment in the GBP. The definition regarding dependents is also amended to specify the requirements for continued health insurance eligibility for children over age 26 who are mentally or physically incapacitated in accordance with Texas Insurance Code §1551.004(a)(3).

The term "insurance required contribution" replaces "premium" throughout Chapter 81 to more clearly reflect that plans within the GBP are governmental insurance programs that include self-funded benefit plans that do not have traditional premiums like non-governmental plans subject to state insurance laws. GBP benefits are governed by Chapter 1551, Insurance Code, and have statutory eligibility and enrollment requirements that are different from other insurance benefits offered outside of the GBP.

Section 81.3, concerning Administration, is amended to be titled "Health Maintenance Organizations." The amendments provide additional clarity regarding the requirements of health maintenance organizations (HMOs) in the GBP, and there are no substantive changes to the HMO provisions. The rules regarding administration of the insurance required contributions and state contributions in the GBP, currently in §81.3(b) and (c), are moved to §81.7, in order to aggregate the information within a rule that is relevant to that subject and make it easier for users to find applicable rules for a particular subject.

Section 81.5, concerning Eligibility, is amended to clarify that a former COBRA unmarried child is eligible to enroll a newly acquired dependent child within 30 days of the child's date of birth or placement for adoption. Otherwise, these particular GBP participants cannot add dependents to their coverage. Additionally, subsections of §81.5 were moved within the section to provide better organization of the rule.

Section 81.5 (Eligibility) and §81.7 (Enrollment and Participation), are amended to comply with provisions of the ACA by decreasing the waiting period for coverage to the first day of the month following 60 days of employment, deleting references to a preexisting conditions limitation or exclusion, and to provide that married dependents under age 26, who are otherwise eligible dependents, may continue to be enrolled as dependents and are not required to apply for COBRA coverage until they reach age 26.

Section 81.7, concerning Enrollment and Participation, is amended to include subsections moved from §81.3, addressing payment of insurance required contributions and state contributions, in order to aggregate the information within a rule that is relevant to that subject and to clarify the payment of insurance required contributions by the type of participant. The amendments add language to clarify that a Medicare-eligible surviving dependent, eligible for health coverage under the GBP, may be automatically enrolled in the Medicare Advantage Plan unless the surviving dependent opts out and enrolls in other coverage. The amendments also add requirements related to the new optional coverage for a vision plan and the new health benefits plan, Consumer Directed HealthSelect, offered through the GBP, and reflect that the Consumer Directed HealthSelect, commuter spending accounts, vision plan, limited purpose flexible spending accounts, and health savings accounts are additional coverages and plans available to certain eligible members and participants. The amendments also allow participants enrolled in an HMO, whose contract is not renewed, to enroll in another approved HMO for which they are eligible. Such participants may also enroll in HealthSelect or Consumer Directed HealthSelect instead of another HMO. The amendments also clarify qualifying life events that may permit a change in coverage for participants, including dropping or adding eligible dependents, if the requested change is consistent with the qualifying life event. In addition, amendments clarify that annual enrollment opportunities are at times announced by ERS in order to specify that there are different annual enrollment opportunities for members who are not Medicare-eligible and for those members who are not active employees and are eligible for Medicare. Section 81.7 is also amended to repeal §81.7(j), the provision reflecting the preexisting conditions exclusion for the GBP disability income insurance plan, because the rule is not necessary since the Master Benefit Plan Document for the long- and short-term disability plan already includes such requirements.

Section 81.8, concerning Waiver of Health Coverage, is amended to provide better organization and additional clarity regarding incentive credits.

Section 81.9, concerning Grievance Procedure, is amended by changing the title of the section to "Grievance Procedures" to reflect that there is more than one type of grievance procedure, depending on the particular GBP plan, to clarify the grievance procedures applicable for the different types of plans in the GBP and to provide more details regarding the grievance procedures. The amendments provide additional clarity regarding available grievance rights for participants whose claims are denied by administering firms or carriers in the GBP, clarify that participants with a denied claim in certain plans must request reconsideration from the carrier or administering firm prior to seeking grievance review by ERS, and reflect that the applicable plan documents set forth grievance procedures for denied claims.

Section 81.11, concerning Termination of Coverage, is amended by changing the title of the section to "Cancellation of Coverage and Sanctions," to make a distinction between sanctions and cancellation of coverage, which can be unrelated to sanctions. The amendments reorganize the rule for better clarity regarding the conditions and timeframes for cancellation of GBP coverage for participants.

One comment was received on the proposed rule amendments.

Comment. The Coalition for Nurses in Advanced Practice (CNAP) suggested adding certified nurse-midwife as practitioners who can certify the date of birth for a newborn natural child for purposes of eligibility for life and AD&D coverage in the GBP.

Agency Response: The agency agrees that the suggested change is acceptable because certified nurse-midwives are authorized by Texas law to certify the dates of birth for newborn natural children as long as the birth is within the scope of the certified nurse-midwife's practice.

The amendments are adopted under the Texas Insurance Code, §1551.052, which provides authorization for the ERS Board of Trustees to adopt rules necessary to carry out its statutory duties and responsibilities and under §1551.068, Texas Insurance Code, which authorizes the ERS Board of Trustees to modify, amend, or interpret rules to the extent necessary to comply with any applicable federal law.

§81.7. Enrollment and Participation.

(a) Enrollment Categories.

(1) Full-time employees and their dependents.

(A) A new employee:

(i) who is not subject to the health insurance waiting period and is eligible under the Act and as provided for in §81.5(a)(1) of this chapter (relating to Eligibility) for automatic insurance coverage, shall be enrolled in the basic plan unless the employee completes an enrollment form to elect other coverage or to waive GBP health coverage as provided in §81.8 of this chapter (relating to Waiver of Health Coverage). Coverage of an employee under the basic plan, and other coverage selected as provided in this paragraph, becomes effective on the date on which the employee begins active duty.

(ii) who is subject to the health insurance waiting period and is eligible under the Act and as provided for in §81.5(a)(1) of this chapter for automatic insurance coverage, shall be enrolled in the basic plan beginning on the first day of the calendar month following 60 days of employment unless, before this date, the employee completes an enrollment form to elect other coverage or to waive GBP health coverage as provided in §81.8 of this chapter.

(iii) who has existing, current, and continuous GBP health coverage as of the date the employee begins active duty is not subject to the health insurance waiting period and is eligible to enroll as a new employee in health insurance and additional coverage and plans which include optional coverage by completing an enrollment form before the first day of the calendar month after the date the employee begins active duty. Health and additional coverage selected before the first day of the calendar month after the date the employee begins active duty are effective the first day of the following month.

(B) Dependent enrollment and optional coverage:

(i) To enroll eligible dependents, to elect to enroll in an approved HMO, and to elect additional coverage and plans which include optional coverage, an employee not subject to the health insurance waiting period shall complete an enrollment form within 30 days after the date on which the employee begins active duty. Coverage selected within 30 days after the date on which the employee begins active duty becomes effective on the first day of the month following the date on which the enrollment form is completed. An enrollment form completed after the initial period for enrollment as provided in this paragraph is subject to the provisions of subsection (d) of this section.

(ii) To enroll eligible dependents or to elect to enroll in an approved HMO, an employee subject to the health insurance waiting period shall complete an enrollment form before the first day of the month following 60 days of employment. Coverage selected before the first day of the month following 60 days of employment becomes effective on the first day of the month following 60 days of employment. An employee completing an enrollment form after the initial period for enrollment as provided in this paragraph is subject to the provisions of subsection (d) of this section. The provisions of subparagraph (A)(ii) of this paragraph apply to the election of additional coverage and plans, which include optional coverage, for an employee subject to the health insurance waiting period.

(C) Except as otherwise provided in this section, an employee may not change coverage.

(D) An eligible employee who enrolls in the GBP is eligible to participate in premium conversion and shall be automatically enrolled in the premium conversion plan. The employee shall be automatically enrolled in the plan for subsequent plan years as long as the employee remains on active duty.

(E) Coverage for a newly eligible dependent, other than a dependent referred to in subparagraph (F) or (H) of this paragraph, will be effective on the first day of the month following the date the person becomes a dependent if an enrollment form is completed on or within 30 days after the date the person first becomes a dependent. If the enrollment form is completed and signed after the initial period for enrollment as provided in this paragraph, the enrollment form will be governed by the rules in subsection (d) of this section.

(F) A member's newborn natural child will be covered immediately and automatically for 30 days from the date of birth in the health plan in effect for the employee/retiree. A member's newly adopted child will be covered immediately and automatically from the date of placement for adoption for 30 days in the health plan in effect for the employee/retiree. To continue coverage for more than 30 days after the date of birth or placement for adoption, an enrollment form for GBP health coverage must be submitted by the member within 30 days after the date of birth or placement for adoption.

(G) The effective date of a newborn natural child's life and AD&D coverage will be the date of birth, if the child is born alive, as certified by an attending physician or a certified nurse-midwife. The effective date of a newly adopted child's life and AD&D coverage will be the date of placement for adoption. The effective date of all other

eligible dependents' life and AD&D coverage will be as stated in subparagraph (E) of this paragraph.

(H) GBP health coverage of a member's eligible child for whom a covered employee/retiree is court-ordered to provide medical support becomes effective on the date on which the member's benefits coordinator receives a valid copy of the qualified medical child support order.

(I) The effective date of GBP health coverage for an employee's/retiree's dependent, other than a newborn natural child or newly adopted child, will be as stated in subparagraph (E) of this paragraph.

(J) For purposes of this section, an enrollment form is completed when all information necessary to effect an enrollment has been transmitted to ERS in the form and manner prescribed by ERS.

(2) Part-time employees. A part-time employee or other employee who is not automatically covered must complete an application/enrollment form provided by ERS authorizing necessary deductions for insurance required contributions for elected coverage. All other rules for enrollment stated in paragraph (1) of this subsection, other than the rule as to automatic coverage, apply to such employee:

(A) If the employee is not subject to a health insurance waiting period, this form must be submitted to ERS either through ERS Online or through his/her benefits coordinator on, or within 30 days after, the date on which the employee begins active duty.

(B) If the employee is subject to a health insurance waiting period, this form must be submitted to ERS either through ERS Online or through his/her benefits coordinator before the first day of the month following 60 days of employment.

(C) If the employee has existing, current, and continuous GBP health coverage as of the date the employee begins active duty, the employee is not subject to the health insurance waiting period and is eligible to enroll as a new employee in health insurance and additional coverage and plans which include optional coverage by completing an enrollment form before the first day of the calendar month after the date the employee begins active duty. Health and additional coverage selected before the first day of the calendar month after the date the employee begins active duty are effective the first day of the following month.

(3) Retirees and their dependents.

(A) Provided the insurance required contributions are paid or deducted, an employee's GBP health, dental, vision and term life insurance coverage (including eligible dependent coverage) may be continued upon retirement as provided in §81.5(b) of this chapter. The life insurance will be reduced to the maximum amount which the retiree is permitted to retain under the insurance plan as a retiree. All other coverage in force for an active employee, but not available to a retiree, will automatically be discontinued concurrently with the commencement of retirement status. Except as provided in subparagraph (E) of this paragraph, if a retiree retires directly from active duty and is not covered as an active employee on the day before becoming an annuitant, the retiree may enroll in the basic plan.

(B) A retiree may enroll in GBP health, dental, vision and life insurance coverage for which the retiree is eligible as provided in §81.5(b) of this chapter, including dependent coverage, by completing an enrollment form as specified in clauses (i) - (iii) of this subparagraph. For the purposes of this subparagraph, the effective date of retirement of a retiree who is eligible to receive, but who has not yet received, an annuity is the date on which ERS receives written notice of the retirement. An application/enrollment form received after the initial period for enrollment as provided in this subparagraph, is subject to the provisions of subsection (d) of this section.

(i) A retiree who is not subject to the health insurance waiting period on the effective date of retirement as provided in §81.5(b) of this chapter, may enroll in GBP health, dental, vision and life insurance coverage or waive GBP health coverage as provided in §81.8 of this chapter for which the retiree is eligible, including dependent coverage, by completing an enrollment form or waiver of coverage as applicable before, on, or within 30 days after, the retiree's effective date of retirement.

(ii) A retiree who is subject to the health insurance waiting period on the effective date of retirement as provided in §81.5(b) of this chapter, may enroll in GBP health coverage or waive GBP health coverage as provided in §81.8 of this chapter for which the retiree is eligible, including dependent coverage, by completing an enrollment form or waiver of coverage as applicable, before the first day of the calendar month following 60 days after the date of retirement or before the first day of the calendar month after the retiree's 65th birthday, whichever is later as appropriate. The effective date for such coverage shall be the first day of the calendar month following 60 days after the date of retirement or the first day of the calendar month following the retiree's 65th birthday, whichever is later as appropriate.

(iii) A retiree who is ineligible for health insurance on the effective date of retirement as provided in §81.5(b) of this chapter, may enroll in GBP health coverage or waive GBP health coverage as provided in §81.8 of this chapter for which the retiree is eligible, including dependent coverage, by completing an enrollment form or waiver of coverage as applicable, before the first day of the calendar month after the retiree's 65th birthday. The effective date for such coverage shall be the first day of the calendar month following 60 days after the date of retirement or the first day of the calendar month following the retiree's 65th birthday, whichever is later.

(C) A retiree who becomes eligible for minimum retiree optional life insurance coverage or dependent life insurance coverage as provided in §81.5(b)(6) of this chapter, may apply for approval of such coverage by providing evidence of insurability acceptable to ERS.

(D) Enrollments in and applications to change coverage become effective as provided in subparagraph (B) of this paragraph unless other coverage is in effect at that time. If other coverage is in effect at that time, coverage or waiver of coverage becomes effective on the first day of the month following the date of approval of retirement by ERS; or, if cancellation of the other coverage preceded the date of approval of retirement, the first day of the month following the date the other coverage was canceled.

(E) A retiree who seeks enrollment in GBP health coverage after turning age 65 or is retired and enrolled in a health plan and turns age 65 will be automatically enrolled in the Medicare Advantage Plan unless the retiree opts out of the Medicare Advantage Plan and enrolls in other coverage by completing an enrollment form as specified in subparagraph (B)(i) - (iii) of this paragraph. If the retiree is determined to be ineligible for Medicare coverage, then he/she will be returned to the coverage in place immediately before turning 65.

(F) A Medicare-eligible retiree who seeks enrollment in GBP health coverage or is retired and enrolled in a health plan and becomes eligible for Medicare will be automatically enrolled in HealthSelect Medicare Rx. A retiree who declines HealthSelect Medicare Rx loses all GBP prescription drug coverage. If the retiree is determined to be ineligible for Medicare coverage, then he/she will be returned to the coverage in place immediately before turning 65.

(4) Medicare-eligible Dependents.

(A) A dependent as defined in §81.1 of this chapter (relating to Definitions) who becomes eligible for Medicare-primary coverage as specified in §81.1 of this chapter, either through disability, age, or other requirements as set forth by CMS, will be automatically enrolled in the Medicare Advantage Plan unless the retiree and his/her dependents opt out of the Medicare Advantage Plan and enroll in other coverage by completing an enrollment form as specified in paragraph (3)(B)(i) - (iii) of this subsection. If the dependent is determined to be ineligible for Medicare coverage, then he/she will be returned to the coverage in place immediately before turning 65.

(B) A Medicare-eligible dependent eligible for GBP health coverage will be automatically enrolled in HealthSelect Medicare Rx. A Medicare-eligible dependent who declines HealthSelect Medicare Rx loses all GBP prescription drug coverage. If the dependent is determined to be ineligible for Medicare coverage, then he/she will be returned to the coverage in place immediately before turning 65.

(5) Surviving dependents.

(A) Provided that the insurance required contributions are paid or deducted, the health, dental, and vision insurance coverage of a surviving dependent may be continued on the death of the deceased employee/retiree if the dependent is eligible for such coverage as provided by §81.5(e) of this chapter.

(B) A surviving spouse who is receiving an annuity shall make insurance required contribution payments by deductions from the annuity as provided in subsection (h)(7) of this section. A surviving spouse who is not receiving an annuity may make payments as provided in subsection (h)(7) of this section.

(C) A Medicare-eligible surviving dependent eligible for GBP health coverage will be automatically enrolled in the Medicare Advantage Plan unless the surviving dependent opts out of the Medicare Advantage Plan and enrolls in other coverage.

(D) A Medicare-eligible surviving dependent eligible for GBP health coverage will be automatically enrolled in HealthSelect Medicare Rx. A Medicare-eligible surviving dependent who declines HealthSelect Medicare Rx loses all GBP prescription drug coverage.

(6) Former COBRA unmarried children. A former COBRA unmarried child must provide an application to continue GBP health, dental and vision insurance coverage within 30 days after the date the notice of eligibility is mailed by ERS. Coverage becomes effective on the first day of the month following the month in which continuation coverage ends. Insurance required contribution payments must be made as provided in subsection (h)(1)(A) of this section.

(b) Premium conversion plans.

(1) An eligible employee participating in the GBP is deemed to have elected to participate in the premium conversion plan and to pay insurance required contributions with pre-tax dollars as long as the employee remains on active duty. The plan is intended to be qualified under the Internal Revenue Code, §79 and §106.

(2) Maximum benefit available. Subject to the limitations set forth in these rules and in the plan, to avoid discrimination, the maximum amount of flexible benefit dollars which a participant may receive in any plan year for insurance required contributions under this section shall be the amount required to pay the participant's portion of the insurance required contributions for coverage under each type of insurance included in the plan.

(c) Special rules for additional coverage and plans which include optional coverage.

(1) Only an employee/retiree or a former officer or employee specifically authorized to join the GBP may apply for additional coverage and plans. An employee/retiree may apply for or elect additional coverage and plans for which he/she is eligible without concurrent enrollment in GBP health coverage provided by the GBP. Additional coverage and plans, as determined by the Board of Trustees, may include:

(A) dental coverage;

(B) optional term life;

(C) dependent term life;

(D) short- and long-term disability;

(E) voluntary accidental death and dismemberment;

(F) long-term care;

(G) health care and dependent care reimbursement;

(H) commuter spending account;

(I) vision;

(J) limited purpose flexible spending account; or

(K) health savings account.

(2) An eligible member in the GBP and eligible dependents may participate in an approved HMO if they reside in the approved service area of the HMO and are otherwise eligible under the terms of the contract with the HMO.

(3) An eligible member in the GBP electing additional coverage and plans and/or Consumer Directed HealthSelect, HMO or Medicare Advantage coverage in lieu of the basic plan is obligated for the full payment of insurance required contributions. If the insurance required contributions are not paid, all coverage not fully funded by the state contribution will be canceled. A person eligible for the state contribution will retain member-only GBP health coverage as a member provided the state contribution is sufficient to cover the insurance required contribution for such coverage. If the state contribution is not sufficient for member-only coverage in the health plan selected by the member employee/retiree, the member employee/retiree will be enrolled in the basic plan or the Medicare Advantage Plan, as applicable, except as provided for in subsection (g)(2)(B) of this section.

(4) An eligible member in the GBP enrolled in an HMO and the HMO's contract is not renewed for the next fiscal year will be eligible to make one of the following elections:

(A) change to another approved HMO for which the member is eligible by completing an enrollment form during the annual enrollment period. The effective date of the change in coverage will be September 1;

(B) enroll in HealthSelect of Texas, Consumer Directed HealthSelect, or a Medicare Advantage Plan (if eligible) by completing an enrollment form during the annual enrollment period. The effective date of the change in coverage will be September 1; or

(C) if the member does not make one of the elections, as defined in subparagraphs (A) or (B) of this paragraph, the member and covered eligible dependents will automatically be enrolled in the basic plan or the Medicare Advantage Plan, as applicable.

(5) A member enrolled in an HMO whose contract with ERS is terminated during the fiscal year or that fails to maintain compliance with the terms of its contract, as determined by ERS, will be eligible to make one of the following elections:

(A) change to another approved HMO for which the member is eligible. The effective date of the change in coverage will be determined by ERS; or

(B) enroll in HealthSelect of Texas, Consumer Directed HealthSelect, or a Medicare Advantage Plan (if eligible). The effective date of the change in coverage will be determined by ERS.

(d) Changes in coverage after the initial period for enrollment.

(1) Changes for a qualifying life event.

(A) Subject to the provisions of paragraphs (3) and (4) of this subsection, a member shall be allowed to change coverage during a plan year within thirty (30) days of a qualifying life event that occurs as provided in this paragraph if the change in coverage is consistent with the qualifying life event.

(B) A qualifying life event occurs when a participant experiences one of the following changes:

(i) change in marital status;

(ii) change in dependent status;

(iii) change in employment status;

(iv) change of address that results in loss of benefits eligibility;

(v) change in Medicare or Medicaid status, or CHIP status;

(vi) significant cost of benefit or coverage change imposed by a third party provider; or

(vii) change in coverage ordered by a court.

(C) A member who loses benefits eligibility as a result of a change of address shall change coverage as provided in paragraphs (6) - (9) of this subsection.

(D) A member may apply to change coverage on, or within 30 days after, the date of the qualifying life event, provided, however, a change in election due to CHIP or Medicaid status under subparagraph (B) of this paragraph may be submitted on, or within 60 days after, the change in CHIP or Medicaid status.

(E) Except as otherwise provided in subsection (a)(1)(F) and (H) of this section, the change in coverage is effective on the first day of the month following the date on which the enrollment form is completed.

(F) Documentation may be required in support of the qualifying life event.

(G) Following a qualifying life event, a member may change applicable coverage, drop or add an eligible dependent if the change is consistent with the qualifying life event.

(2) Effects of change in cost of benefits to the premium conversion plan. There shall be an automatic adjustment in the amount of premium conversion plan dollars used to purchase optional benefits in the event of a change, for whatever reason, during an applicable period of coverage, of the cost of providing such optional benefit to the extent permitted by applicable law and regulation. The automatic adjustment shall be equal to the increase or decrease in such cost. A participant shall be deemed by virtue of participation in the plan to have consented to the automatic adjustment.

(3) An eligible member who wishes to add or increase optional coverage after the initial period for enrollment must make application for approval by providing evidence of insurability acceptable to ERS, if required. Unless not in compliance with paragraph (1) of this subsection, coverage will become effective on the first day of the month following the date approval is received by ERS, if the applicant is a retiree or an individual in a direct pay status. If the applicant is an employee whose coverage was canceled while the employee was on LWOP, the approved change in coverage will become effective on the date the employee returns to active duty if the employee returns to active duty within 30 days of the approval letter. If the date the employee returns to active duty is more than 30 days after the date on the approval letter, the approval is null and void; and a new application shall be required. An employee/retiree may withdraw the application at any time prior to the effective date of coverage by submitting a written notice of withdrawal.

(4) The evidence of insurability provision applies only to:

(A) employees who wish to enroll in Elections III or IV optional term life insurance, except as otherwise provided in subsection (f) of this section;

(B) employees who wish to enroll in or increase optional term life insurance, dependent life insurance, or disability income insurance after the initial period for enrollment;

(C) employees enrolled in the GBP whose coverage was waived, dropped or canceled, except as otherwise provided in subsection (f) of this section; and

(D) retirees who wish to enroll in minimum optional life insurance or dependent life insurance as provided in subsection (a)(3)(C) of this section.

(5) An employee/retiree who wishes to add eligible dependents to the employee's/retiree's HMO coverage may do so:

(A) during the annual enrollment period; or

(B) upon the occurrence of a qualifying life event as provided in paragraph (1) of this subsection.

(6) A member who is enrolled in an approved HMO and who permanently moves out of the HMO service area shall make one of the following elections, to become effective on the first day of the month following the date on which the member moves out of the HMO service area:

(A) enroll in another approved HMO for which the member and all covered dependents are eligible; or

(B) if the member and all covered dependents are not eligible to enroll in an approved HMO; either:

(i) enroll in HealthSelect of Texas or Consumer Directed HealthSelect; or

(ii) enroll in an approved HMO if the member is eligible, and drop any ineligible covered dependent, unless not in compliance with §81.11(c)(3) of this chapter (relating to Cancellation of Coverage and Sanctions).

(7) When a covered dependent of a member permanently moves out of the member's HMO service area, the member shall make one of the following elections, to become effective on the first day of the month following the date on which the dependent moves out of the HMO service area:

(A) drop the ineligible dependent, unless not in compliance with §81.11(c)(3) of this chapter;

(B) enroll in an approved HMO if the member and all covered dependents are eligible; or

(C) enroll in HealthSelect of Texas or Consumer Directed HealthSelect, provided the eligible member and all dependents enroll in the same health plan at that time.

(8) An eligible member will be allowed an annual opportunity to make changes in coverage.

(A) Subject to other requirements of this section, a member will be allowed to:

(i) change or enroll themselves and any eligible dependents in an eligible health, dental or vision plan;

(ii) enroll themselves and their eligible dependents in an eligible health, dental or vision plan from a waived or canceled status;

(iii) add, decrease or cancel eligible coverage, unless prohibited by §81.11(c)(3) of this chapter;

(iv) apply for coverage as provided in paragraph (3) of this subsection; and

(v) waive any or all GBP coverage including health as provided in §81.8 of this chapter.

(B) Surviving dependents and former COBRA unmarried children are not eligible to add dependents to coverage through annual enrollment. A surviving dependent or former COBRA unmarried child may enroll an eligible dependent in dental or vision insurance coverage if the dependent is enrolled in health insurance coverage.

(C) Annual enrollment opportunities will be scheduled each year at times announced by ERS.

(9) A participant who is a retiree or a surviving dependent, or who is in a direct pay status, may decrease or cancel any coverage at any time unless such coverage is health insurance coverage ordered by a court as provided in §81.5(c) of this chapter.

(10) A member and his/her dependents who are enrolled in the Medicare Advantage Plan may collectively enroll in HealthSelect of Texas, Consumer Directed HealthSelect or an HMO.

(A) Such opportunity will be scheduled on at least an annual basis each year, at times announced by ERS.

(B) Additional opportunities will occur each month prior to an annual enrollment period. Coverage selected during these opportunities will be effective on the first of the month following processing by CMS.

(11) If a member drops coverage for his/her dependent because the dependent gained other coverage effective the first day of a month, then the effective date of the qualifying life event can be either the last day of the month preceding the gained coverage or on the first day of the month in which the gained coverage is effective.

(e) Special provisions relating to term life benefits

(1) An employee or annuitant who is enrolled in the group term life insurance plan may file a claim for an accelerated life benefit for himself or his covered dependent in accordance with the terms of the plan in effect at that time. An accelerated life benefit paid will be deducted from the amount that would otherwise be payable under the plan.

(2) An employee or annuitant who is enrolled in the group term life insurance plan may make, in conjunction with receipt of a viatical settlement, an irrevocable beneficiary designation in accordance with the terms of the plan in effect at that time.

(f) Re-enrollment in the GBP.

(1) The provisions of subsection (a)(1) of this section shall apply to the enrollment of an employee who terminates employment and returns to active duty within the same fiscal year, who transfers from one employer to another, or who returns to active duty after a period of LWOP during which coverage is canceled.

(2) An employee to whom paragraph (1) of this subsection applies shall be subject to the same requirements as a newly hired employee to re-enroll in the coverage in which the employee was previously enrolled. Provided that all applicable preexisting conditions exclusions were satisfied on the date of termination, transfer, or cancellation, no new preexisting conditions exclusions will apply. If not, any remaining period of preexisting conditions exclusions must be satisfied upon re-enrollment.

(3) If an employee is a member of the Texas National Guard or any of the reserve components of the United States armed forces, and the employee's coverage is canceled during a period of LWOP or upon termination of employment as the result of an assignment to active military duty, the period of active military duty shall be applied toward satisfaction of any period of preexisting conditions exclusions remaining upon the employee's return to active employment.

(g) Continuing coverage in special circumstances.

(1) Continuation of coverage for terminating employees. A terminating employee is eligible to continue all coverage through the last day of the month in which employment is terminated.

(2) Continuation of coverage for employees on LWOP status.

(A) An employee in LWOP status may continue the coverage in effect on the date the employee entered that status for the period of leave, but not more than 12 months. The employee must pay insurance required contributions directly as provided in subsection (h)(1)(A) of this section.

(B) An employee whose LWOP is a result of the Family and Medical Leave Act of 1993 will continue to receive the state contribution during such period of LWOP. The employee must pay insurance required contributions directly as defined in subsection (h)(1)(A) of this section. Failure to make the payment of insurance required contributions by the due date will result in the cancellation of all coverage except for member-only health and basic life coverage. The employee will continue in the health plan in which he/she was enrolled immediately prior to the cancellation of all other coverage.

(3) Continuation of coverage for a former member or employee of the Legislature. Provided that the insurance required contributions are paid, the GBP health, dental, vision and life insurance coverage of a former member or employee of the Legislature may be continued on conclusion of the term of office or employment.

(4) Continuation coverage for a former board member. Provided that the insurance required contributions are paid, the GBP health, dental, vision and life insurance coverage of a former member of a board or commission, or of the governing body of an institution of higher education, as both are described in §1551.109 of the Act, may be continued on conclusion of service if no lapse in coverage occurs after the term of office. Life insurance will be reduced to the maximum amount for which the former board member is eligible.

(5) Continuation of coverage for a former judge. A former state of Texas judge, who is eligible for judicial assignments and who does not serve on judicial assignments during a period of one calendar month or longer, may continue the coverage that was in effect during the calendar month immediately prior to the month in which the for-

mer judge did not serve on judicial assignments. This coverage may continue for no more than 12 continuous months during which the former judge does not serve on judicial assignments as long as, during the period, the former judge continues to be eligible for assignment.

(6) Continuation of coverage for a surviving spouse and/or dependent child/children of a deceased employee/retiree. The surviving spouse and/or dependent child/children of a deceased employee/retiree, who, in accordance with §81.5(j)(1) of this chapter, elects to continue coverage may do so by submitting the required election notification and enrollment forms to ERS. The enrollment form, including all insurance required contributions due for the election/enrollment period, must be postmarked or received by ERS on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the employee/retiree dies, provided all insurance required contributions due for the month in which the employee/retiree died and for the election/enrollment period have been paid in full.

(7) Continuation of coverage for a covered employee whose employment has been terminated, voluntarily or involuntarily (other than for gross misconduct), whose work hours have been reduced such that the employee is no longer eligible for the GBP as an employee, or whose coverage has ended following the maximum period of LWOP as provided in paragraph (2)(A) of this subsection. An employee, his/her spouse and/or dependent child/children, who, in accordance with §81.5(j)(2) of this chapter, elect to continue GBP health, dental and vision coverage may do so by submitting the required election notification and enrollment forms to ERS. The enrollment form, including all insurance required contributions due for the election/enrollment period, must be postmarked or received by ERS on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the employee's coverage ends, provided all insurance required contributions due for the month in which the coverage ends and for the election/enrollment period have been paid in full.

(8) Continuation of coverage for a spouse who is divorced from a member and/or the spouse's dependent child/children. The divorced spouse and/or the spouse's dependent child/children of an employee/retiree who, in accordance with §81.5(j)(4) of this chapter, elect to continue coverage may do so by submitting the required election notification and enrollment forms to ERS. The enrollment form, including all insurance required contributions due for the election/enrollment period, must be postmarked or received by ERS on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the divorce decree is signed, provided all insurance required contributions due for the month in which the divorce decree is signed and for the election/enrollment period have been paid in full.

(9) Continuation of coverage for a dependent child who has attained 26 years of age. A 26-year-old dependent child (not provided for by §81.5(c) of this chapter) of a member who, in accordance with §81.5(j)(5) of this chapter, elects to continue coverage may do so by submitting the required election notification and enrollment forms to ERS. The enrollment form, including all insurance required contributions due for the election/enrollment period, must be postmarked or received by ERS on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the dependent child of the member attains 26 years of age, provided all insurance required contributions due for the month in which the dependent child attained age 26 and for the election/enrollment period have been paid in full.

(10) Extension of continuation of coverage for certain dependents of former employees who are continuing coverage under the provisions of paragraph (6) of this subsection.

(A) The surviving dependent of a deceased former employee, who, in accordance with §81.5(j)(6)(A) of this chapter, elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to ERS. The enrollment form, including all insurance required contributions due for the election/enrollment period, must be postmarked or received by ERS on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the former employee died.

(B) A spouse who is divorced from a former employee and/or the divorced spouse's dependent child/children, who, in accordance with §81.5(j)(6)(B) of this chapter, elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to ERS. The enrollment form, including all insurance required contributions due for the election/enrollment period, must be postmarked or received by ERS on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the divorce decree was signed.

(C) A dependent child who has attained 26 years of age, who, in accordance with §81.5(j)(6)(C) of this chapter, elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to ERS. The enrollment form, including all insurance required contributions due for the election/enrollment period, must be postmarked or received by ERS on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the dependent child attained age 26.

(11) Continuation coverage defined. Continuation coverage as provided for in paragraphs (6) - (10) of this subsection means the continuation of only GBP health, dental and vision coverage which meets the following requirements.

(A) Type of benefit coverage. The coverage shall consist of only the GBP health, dental and vision coverage, which, as of the time the coverage is being provided, are identical to the GBP health, dental and vision coverage provided for a similarly situated person for whom a cessation of coverage event has not occurred.

(B) Period of coverage. The coverage shall extend for at least the period beginning on the first day of the month following the date of the cessation of coverage event and ending not earlier than the earliest of the following:

(i) in the case of loss of coverage due to termination of an employee's employment for other than gross misconduct, reduction in work hours, or end of maximum period of LWOP, the last day of the 18th calendar month of the continuation period;

(ii) in the case of loss of coverage due to termination of an employee's employment for other than gross misconduct, reduction in work hours, or end of maximum period of LWOP, if the employee, spouse, or dependent child has been certified by the Social Security Administration as being disabled as provided in §81.5(j)(3) of this chapter, up to the last day of the 29th calendar month of the continuation period;

(iii) in any case other than loss of coverage due to termination of an employee's employment for other than gross misconduct, reduction in work hours, or end of maximum period of LWOP, the last day of the 36th calendar month of the continuation period;

(iv) the date on which the employer ceases to provide any group health plan to any employee/retiree;

(v) the date on which coverage ceases under the plan due to failure to make timely payment of any insurance required contribution as provided in subsection (h) of this section;

(vi) the date on which the participant, after the date of election, becomes covered under any other group health plan under which the participant is not subject to a preexisting conditions limitation or exclusion; or

(vii) the date on which the participant, after the date of election, becomes entitled to benefits under the Social Security Act, Title XVIII.

(C) Insurance required contribution costs. The insurance required contribution for a participant during the continuation coverage period will be 102% of the employee's/retiree's GBP health, dental and vision coverage rate and is payable as provided in subsection (h) of this section.

(i) The insurance required contribution for a participant eligible for 36 months of coverage will be 102% of the employee's/retiree's GBP health, dental and vision coverage rate and is payable as provided in subsection (h)(1)(A) of this section.

(ii) The insurance required contribution for a participant eligible for 29 months of coverage will increase to 150% of the employee's/retiree's GBP health, dental and vision coverage rate for the 19th through 29th months of coverage and is payable as provided in subsection (h)(1)(A) of this section.

(D) No requirement of insurability. No evidence of insurability is required for a participant who elects to continue GBP health coverage under the provisions of §81.5(j)(1) - (6) of this chapter.

(E) Conversion option. An option to enroll under the conversion plan available to employees/retirees is also available to a participant who continues GBP coverage for the maximum period as provided in subparagraph (B)(i) - (iii) of this paragraph. The conversion notice will be provided to a participant during the 180-day period immediately preceding the end of the continuation period.

(h) Payment of Insurance Required Contributions.

(1) A member whose monthly cost of coverage is greater than the combined amount contributed by the state or employer for the member's coverage must pay a monthly contribution in an amount that exceeds the combined monthly contributions of the state or the employer. A member shall pay his/her monthly insurance required contributions through deductions from monthly compensation or annuity payments or by direct payment, as provided in this paragraph.

(A) A member who is not receiving a monthly compensation or an annuity payment, or is receiving a monthly compensation or annuity payment that is less than the member's monthly insurance required contribution, shall pay his/her monthly insurance required contribution under this subparagraph.

(i) An employee whose monthly compensation is less than the employee's monthly insurance required contribution shall pay his/her monthly insurance required contribution through his/her employer. A non-salaried board member of an employer shall pay his/her monthly insurance required contributions through the employer for which he/she sits as a board member.

(ii) A retiree whose monthly annuity payment is less than the retiree's monthly insurance required contribution shall pay his/her monthly insurance required contributions directly to ERS.

(B) If the member does not comply with subparagraph (A) of this subsection by the due date required, ERS will cancel all coverage not fully funded by the state contribution. If the state contribution is sufficient to cover the required insurance contribution for such coverage, the member will retain member-only health and basic life coverage. If the state contribution is not sufficient to cover the member-only coverage in the health plan selected, the member will be enrolled in the basic plan except as provided for in paragraph (2)(B) of this subsection.

(2) An institution of higher education may contribute a portion or all of the insurance required contribution for its part-time employees described by §1551.101(e)(2) of the Act, if:

(A) the institution of higher education pays the contribution with funds that are not appropriated from the general revenue fund;

(B) the institution of higher education electing to pay the contribution for its part-time employees does so for all similarly situated eligible part-time employees; and

(C) the contribution paid as provided in this paragraph is paid beginning on the first day of the month following the part-time employee's completion of any applicable waiting period.

(3) A participant who continues GBP health, dental and vision coverage under COBRA as provided in §81.5(j) of this chapter (relating to Eligibility) must pay his/her monthly insurance contributions on the first day of each month covered.

(A) A participant's monthly insurance required contribution is 102% of the monthly amount charged for other participants in the same coverage category and in the same plan. All insurance required contributions due for the election/enrollment period must be postmarked or received by ERS on or before the date indicated on the continuation of coverage enrollment form. Subsequent insurance required contributions are due on the first day of each month of the participant's coverage and must be postmarked or received by ERS within 30 days of the due date to avoid cancellation of coverage.

(B) A participant's monthly insurance required contribution for continuing coverage as provided in §81.5(j))(3) of this chapter is increased after the 18th month of coverage to 150% of the monthly amount charged for other participants in the same coverage category and in the same plan. The participant's monthly insurance required contribution is due on the first day of each month covered, and must be postmarked or received by ERS within 30 days of the due date.

(4) The full cost for GBP health, dental and vision coverage is required to be paid for a member's unmarried child who is over 26 years of age, whose coverage under COBRA expired, and who has reinstated coverage in the GBP pursuant to §1551.158 of the Act. No state contribution is paid for this coverage.

(5) Survivors of a paid law enforcement officer employed by the state or a custodial employee of the institutional division of the Texas Department of Criminal Justice who suffers a death in the line of duty as provided by Chapter 615, Government Code, are eligible for GBP coverage as provided in subparagraphs (A) - (C) of this paragraph.

(A) The insurance required contribution due under this paragraph for a surviving spouse's GBP coverage is the same amount as a member-only contribution. The state contribution applicable to member-only coverage is applied to the surviving spouse's contribution for the coverage.

(B) The insurance required contribution due under this paragraph for GBP coverage for a surviving spouse with dependent children is the same amount as the member-with-children contribution.

The state contribution applicable to member-with-children coverage is applied to the contribution of the surviving spouse with dependent children for the coverage.

(C) The insurance required contribution due under this paragraph for a surviving dependent child's GBP coverage, when there is no surviving spouse, is the same amount as member-only contribution. The state contribution applicable to member-only coverage is applied to the surviving dependent child's contribution for the coverage.

(D) The surviving spouse or surviving dependent child must timely pay his/her insurance required contributions for the GBP coverage. The survivor's contribution must be either deducted by ERS from the survivor's annuity payment, if any, or submitted to ERS via direct payment. Any applicable state contribution will be paid directly to ERS by the employer that employed the deceased law enforcement officer or custodial employee.

(6) If a retiree whose eligibility for health insurance is based on §§1551.102(i), 1551.111(e) or 1551.112(c) of the Act, obtains interim health insurance as provided in §1551.323 of the Act, the retiree must pay the total contribution for such coverage for as long as the retiree wants the coverage or until the first day of the month following the retiree's 65th birthday. The amount of contribution shall be determined by the Board of Trustees based on an actuarial determination, as recommended by ERS' consulting actuary for insurance, of the estimated total claims costs for individuals eligible for such coverage. If a retiree who is eligible for coverage under this paragraph is also eligible for COBRA coverage, then COBRA coverage should be exhausted, if possible, before applying for the coverage under this paragraph.

(7) A member's surviving spouse or surviving dependent who is receiving an annuity shall authorize deductions for insurance required contributions from the annuity as provided in paragraph (1) of this subsection. A member's surviving spouse or surviving dependent who is not receiving an annuity may make payments as provided in paragraph (1)(A) of this subsection.

(i) The amount of state contribution for certain retirees is determined in accordance with §1551.3196 of the Act.

(1) An individual is grandfathered at the time of retirement and not subject to §1551.3196 of the Act, if on or before September 1, 2014, the individual has served in one or more positions for at least five years for which the individual was eligible to participate in the GBP as an employee.

(2) Records of ERS shall be used to determine whether or not an individual meets the grandfathering requirements specified in paragraph (1) of this subsection. ERS may, in its sole discretion, require an individual to provide additional documentation satisfactory to ERS that the individual meets the grandfathering requirements specified in paragraph (1) of this subsection.

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 August 16, 2016.

TRD-201604195
Paula A. Jones
Deputy Executive Director and General Counsel
Employees Retirement System of Texas
Effective date: September 5, 2016
Proposal publication date: July 8, 2016
For further information, please call: (877) 275-4377

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CHAPTER 85. FLEXIBLE BENEFITS

34 TAC §85.4

The Employees Retirement System of Texas (ERS) adopts an amendment to 34 Texas Administrative Code (TAC) Chapter 85, concerning Flexible Benefits, §85.4 (Separate Plans), without changes to the proposed text as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4982). The amendment was approved by the ERS Board of Trustees at its August 16, 2016, meeting. This section will not be republished.

Section 85.4(c) is amended to update a numerical reference to the subsection regarding the Insurance Premium Conversion Plan described in Chapter 81. The reference needs to be updated to conform with proposed amendments to Chapter 81.

No comments were received on the proposed rule amendment.

The amendment is adopted under the Texas Insurance Code, §1551.052, which provides authorization for the ERS Board of Trustees to adopt rules necessary to carry out its statutory duties and responsibilities and under §1551.068, Texas Insurance Code, which authorizes the ERS Board of Trustees to modify, amend, or interpret rules to the extent necessary to comply with any applicable federal law.

No other statutes are affected by the proposed amendment.

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 August 16, 2016.

TRD-201604196
Paula A. Jones
Deputy Executive Director and General Counsel
Employees Retirement System of Texas
Effective date: September 5, 2016
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.39

The Texas Board of Criminal Justice adopts amendments to §163.39, concerning Residential Services, with non-substantive grammatical changes to the proposed text as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4986).

The adopted amendments are necessary to conform the rule to updated health care regulations and standards.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013, §509.003.

Cross Reference to Statutes: None.

§163.39. Residential Services.

(a) General Administration.

(1) Purpose. Residential facilities and contract residential beds funded by the Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CJAD) shall provide the courts with a sentencing alternative for the purpose of:

(A) Providing residential placement of offenders on community supervision and others who are eligible in accordance with statutes;

(B) Providing sanctions, services, and programs to modify criminal behavior, deter criminal activity, protect the public, restore victims of crime, and provide offenders with resources to lead productive lives;

(C) Strengthening and expanding the options available to judges to impose alternatives other than imprisonment for offenders; and

(D) Reducing the offender's likelihood of a technical violation or subsequent arrest, and recidivism.

(2) Feasibility Studies. A judicial district interested in establishing a residential community corrections facility (CCF) shall first conduct and prepare a feasibility study in accordance with the TDCJ CJAD Feasibility Study Guidelines-Community Corrections Facility. The product and results of such feasibility study shall be submitted to the TDCJ CJAD. After receipt by the TDCJ CJAD of the initial feasibility study related to a proposed CCF, the community supervision and corrections department (CSCD) may be required to provide supplemental information or additional materials for further review and consideration.

(3) Notice of Construction or Operation of a CCF.

(A) If a CSCD or private vendor operating under a contract with a CSCD or judicial district proposes to construct or operate a CCF within 1,000 feet of a residential area, a primary or secondary school, property designated as a public park or public recreation area by the state or a political subdivision of the state, or a church, synagogue, or other place of worship, the CSCD shall prominently post an outdoor sign at the proposed location of the facility. The sign shall be at least 24 by 36 inches in size written in lettering at least two inches in size. The sign shall state that a correctional or rehabilitation facility is intended to be located on the premises, and provide the name and business address of the CSCD. The municipality or county in which the CCF is to be located may require the sign to be both in English and a language other than English, if it is likely that a substantial number of the residents in the area speak a language other than English as their familiar language.

(B) The CSCD shall provide notice of the proposed location of the facility to the commissioners court of the county or governing body of the municipality where the facility is intended to be located no later than 60 days before the CSCD begins construction or operation of the facility. The notice shall contain the following:

(i) A statement of the entity's intent to construct or operate a correctional or rehabilitation facility in an area;

(ii) A description of the proposed location of the facility; and

(iii) A statement that Texas Local Government Code §§244.001 - .026 governs the procedure for notice of and consent to the facility.

(4) Public Meetings. A CSCD or private vendor having a contract with a CSCD or judicial district shall not establish a CCF unless the CSCD has held a public meeting before the action is taken. In addition, a CSCD may not expend funds provided by the TDCJ CJAD to lease or purchase real property, construct buildings, or use a facility or real property acquired or improved with state funds for a CCF unless the CSCD has held a public meeting before the action is taken. The public meeting shall be held at a site as close as practicable to the location at which the proposed action is to be taken. The meeting shall not be held on a Saturday, Sunday, or legal holiday. The meeting shall begin after 6:00 p.m. More than 30 days before the date of the meeting, the department that the facility is to serve, or a vendor proposing to operate a facility, at a minimum shall:

(A) Publish by advertisement a notice that is no less than three and one-half inches by five inches of the date, hour, place, and subject of the hearing as required in subsection (a)(4) of this rule in three consecutive issues of a newspaper of, or in newspapers that collectively have, general circulation in the county in which the proposed facility is to be located. The notice shall specifically state the address of the facility or property on which a proposed action is to be taken and provide a description of the proposed action.

(B) Mail a copy of the notice to each police chief, sheriff, city council member, mayor, county commissioner, county judge, school board member, state representative, and state senator who serves or represents the area.

(5) Maximum Resident Capacity and Facility Utilization. The maximum resident capacity of a CCF shall be defined as the total number of residents who can be housed at the facility at any given time as delineated by the operating agency in the most current community justice plan and approved by the TDCJ CJAD director. CCFs funded through TDCJ CJAD shall reach 90% capacity within the first six months of operation and maintain a minimum of 90% thereafter, using appropriate and eligible placements only. Any revisions to the maximum and minimum resident capacities for the CCF shall be subject to approval by the TDCJ CJAD through the community justice plan amendment process.

(6) Contract Residential Services. Business entities, agencies, or persons contracting with CSCDs or judicial districts for residential services shall comply with all applicable competitive bidding and other laws and regulations. CSCDs or judicial districts contracting with business entities, agencies, or persons for residential services shall comply with any applicable competitive bidding and other laws and regulations. The CSCD director shall monitor, audit, and inspect the performance and compliance of the service provider and vendor with the terms and conditions of the contract with the CSCD and with applicable laws and regulations.

(7) Mission Statement. The CSCD director and facility director shall prepare and maintain a mission statement that describes the general purposes and overall goals of the facility's programs.

(b) Personnel.

(1) Screening for Tuberculosis (TB) Infection. The CSCD director or facility director shall ensure that as soon as practicable but no later than seven calendar days of assuming any duties within a CCF, all staff undergo a screening for TB infection. Follow-up screening for TB infection shall be conducted on all staff, at a minimum, once every year from the anniversary date of the initial screening. The results of all screenings shall be maintained on file.

(2) Required Personnel.

(A) Each facility with an employment component shall have a designated employment coordinator whose duties and responsibilities include assisting residents in obtaining and maintaining employment. The employment coordinator shall be responsible for addressing other employment issues for residents such as résumé development, interviewing skills and techniques, and appropriate dress for job interviews.

(B) Every facility shall have a designated staff member whose duties and responsibilities include facilitating or ensuring the required cognitive and other facility programs are accomplished.

(3) Criminal Histories and Arrest Records. Prior to employment and on at least an annual or more frequent basis thereafter, criminal histories and arrest records shall be obtained from both the Texas Department of Public Safety (DPS) and National Crime Information Center on each of the CCF's employees, contract vendor staff, if applicable, and volunteers. This requirement shall apply to both vendor contracts and the CSCD operated CCFs. Upon verification that no new conviction(s) have occurred, an entry documenting such shall be made in the personnel file. The criminal history document and other arrest record documentation shall then be destroyed. Employees who have access to criminal histories must meet DPS criteria for accessing the Texas Law Enforcement Telecommunication System operated by the DPS or files containing a copy of an employee's or resident's criminal history.

(4) Residential Officer Certification. Governed by §163.33(f) of this title.

(5) Residential Personnel Training. Initial Training Requirements and Defensive Driving are governed by §163.33(j) of this title. Training Requirements for Monitoring Self-Administration of Medications are set forth in subsection (n)(10) of this rule.

(c) Building, Safety, Sanitation, and Health Codes.

(1) Compliance. The CSCD director and facility director shall ensure that the facility's construction, maintenance, and operations complies with all applicable state, federal, and local laws, building codes, and regulations related to safety, sanitation, and health. Records of compliance inspections, audits, or written reports by internal and external sources shall be kept on file for examination and review by the TDCJ CJAD and other governmental agencies and authorities from program inception forward. The CSCD director and facility director shall promptly notify the TDCJ CJAD in writing of any circumstances wherein the facility or its operations do not maintain such compliance.

(2) Water Supply. The CSCD director or designee shall ensure that the facility's potable water source and supply is sanitary and approved by an independent, qualified agency or individual in compliance with the applicable governmental laws and regulations.

(3) Sanitation. The facility shall conform to the applicable sanitation and health regulations and codes.

(4) Waste. The liquid and solid wastes related to the facility shall be collected, stored, and disposed of in accordance with a plan approved by the regulatory authority, agency, or department.

(5) Physical Plant. The facility's buildings, including the improvements, fixtures, electric and heating, and air conditioning, shall conform to all applicable building codes of federal, state, and local laws, ordinances, regulations, and minimum guidelines established by the TDCJ CJAD for physical plants and facilities housing residents.

(6) Fires. The facility, its furnishings, fire protection equipment, and alarm system shall comply with the regulations of the fire authority having jurisdiction. Fire drills are to be conducted at least quarterly. There shall be a written evacuation plan to be used in the event of a fire. The plan is to be certified by an independent qualified governmental agency or department or individual trained in the application of national and state fire safety codes. Such plan shall be reviewed annually, updated if necessary, and reissued to the local fire jurisdiction. The facility shall conduct fire inspections at least quarterly or at intervals approved by the fire authority having jurisdiction. Fire safety equipment located at the facility shall be tested as specified by the manufacturer or the fire authority, whichever is more frequent. An annual inspection of the facility shall be conducted by the fire authority having jurisdiction or other qualified person(s).

(7) Emergency Plan. There shall be a written emergency plan for the facility and its operations, which includes an evacuation plan, to be used in the event of a major flood, storm, or other emergencies. This plan shall be reviewed annually and updated, if necessary. Evacuation drills shall be conducted at least three times yearly. Each shift at least yearly shall conduct an evacuation drill when the majority of residents are present. All facility personnel shall be trained in the implementation of the written emergency plan. The evacuation plan shall specify preferred evacuation routes, subsequent dispositions, temporary housing of residents, and provisions for access to medical care or hospital transportation for injured residents and staff. The facility's emergency plan shall be distributed to local authorities such as law enforcement, state police, and civil defense to keep them informed of their roles in the event of an emergency. The emergency plan shall include the following:

(A) Location of buildings and room floor plans;

(B) Use of exit signs and directional arrows that are easily seen and read; and

(C) Location(s) of publicly posted plan.

(d) Separate Offender Housing. The CSCD director and facility director shall ensure that a facility that is part of or attached to a detention facility or a correctional institution shall house CCF residents separately from the offenders incarcerated in the detention facility. At no time shall the CCF residents be co-mingled with these incarcerated offenders.

(e) Program and Service Areas.

(1) Space and Furnishings. The facility shall have space and furnishings to accommodate activities such as group meetings, private counseling, classroom activities, visitation, and recreation.

(2) Housekeeping and Maintenance. The CSCD director and facility director shall ensure the facility is clean and in good repair, and housekeeping and maintenance plan is in effect.

(3) Other Physical Environment and Facilities Issues. In each facility:

(A) Space shall be provided for janitor closets which are equipped with cleaning implements;

(B) There shall be storage areas in the facility for clothing, bedding, and cleaning supplies;

(C) There shall be clean, usable bedding, linens, and towels for new residents with provision for exchange or laundering on at least a weekly basis;

(D) On an emergency or indigent basis, the facility shall provide personal hygiene articles;

(E) There shall be adequate control of vermin and pests;

(F) There shall be timely trash and garbage removal; and

(G) Sanitation and safety inspections of all internal and external areas and equipment shall be performed and documented on a routine basis to protect the health and safety of all residents, staff, and visitors.

(f) Supervision.

(1) Operations Manual. An operations manual shall be prepared for and used by each CCF which shall contain information and specify procedures and policies for resident census, contraband, supervision, physical plant inspection, and emergency procedures, including detailed implementation instructions. The operations manual shall be accessible to all employees and volunteers. The operations manual shall include, at a minimum, the matters set forth in the Guidelines for the Policies and Procedures of the TDCJ CJAD Funded Residential Facilities. The operations manual shall be submitted to the TDCJ CJAD director for review and approval. The manual shall be approved by the TDCJ CJAD director at least 60 days prior to the acceptance of any residents into the facility. The CSCD director and facility director shall ensure that the operations manual is reviewed at least every two years, and new or revised policies and procedures are made available, including all changes, to designated staff and volunteers prior to implementation. This manual shall be submitted to the TDCJ CJAD upon request or for auditing purposes.

(2) Staffing Availability. The CSCD director and facility director shall ensure that the facility has the staff needed to provide coverage of designated security posts, surveillance of residents, and to perform ancillary functions. The facility shall have at least one staff member on duty that is the same gender as the resident population.

(3) Activity Log. The CSCD director and facility director shall ensure that CCF staff maintain an activity log and prepare shift reports that record, at a minimum, emergency situations, unusual situations and incidents, and all absences of residents from a facility.

(4) Use of Force. The CSCD director and facility director shall ensure that a CCF has written policies, procedures, and practices that restrict the use of physical force to instances of self-protection, protection of residents or others, or prevention of property damage. In no event shall the use of physical force against a resident be justifiable as punishment. A written report shall be prepared following all uses of force, and promptly submitted to the CSCD director and facility director for review and follow-up. The application of restraining devices, aerosol sprays, and chemical agents shall only be accomplished by an individual who is properly trained in the use of such devices and only in an emergency situation for self-protection, protection of others, or other circumstances as described previously.

(5) Use of Firearms. The CSCD director and facility director shall ensure that the possession of firearms by staff is banned and the use of firearms is prohibited in or on facility property except in the execution of official duties by certified peace officers or other duly licensed law enforcement personnel.

(6) Access to Facility. The facility shall be secured to prevent unrestricted access by the general public or others without proper authorization.

(7) Control of Contraband and Searches. All facilities shall incorporate into the facility operations manual a list of authorized items offenders are allowed to possess while a resident of the facility. All incoming residents shall receive a copy of this list during the intake or orientation process, along with a written explanation of the provisions of Texas Penal Code §38.114, which states that any resident found to possess any item not provided by, or authorized by the facility director, or any item authorized or provided by the facility that has been altered to accommodate a use other than the originally intended use, may be charged with a Class C misdemeanor. Any employee or volunteer who provides contraband to a resident of a CCF may be charged with a Class B misdemeanor. There shall also be policies defining facility shakedowns, strip searches, and pat searches of residents to control contraband and provide for its disposal.

(8) Levels of Security. The CSCD director and facility director shall ensure that appropriate levels of security are maintained for the population served by the facility at all times. These levels of security shall create, at a minimum, a monitored and structured environment in which a resident's interior and exterior movements and activities can be supervised by specific destination and time. At the discretion of the facility director or designee, residents may be granted exterior movements. Exterior movements include, but are not limited to, employment programs, community service restitution, support and treatment programs, and programmatic incentives. The following minimum requirements shall be met for all exterior movements:

(A) The facility director or designee approves the exterior movement;

(B) A staff member orally advises the resident of the conditions and limitations of the exterior movement;

(C) The resident acknowledges in writing an understanding of the conditions and limitations of the exterior movement; and

(D) Exterior movements involving programmatic incentives may only be granted if the following additional requirements are met:

(i) The resident meets all established requirements for the programmatic incentive, as determined by the supervisor of the program, and submits a written request for the exterior movement;

(ii) The requested absence will not exceed 72 hours unless there are unusual circumstances;

(iii) The resident provides an itinerary for the absence including method of travel, departure and arrival times, and locations during the exterior movement;

(iv) The facility director or designee approves the itinerary and establishes the conditions of the exterior movement involving programmatic incentives; and

(v) A staff member shall make random announced or unannounced personal or telephone contacts with the resident to verify the location of the resident during the exterior movement.

(9) Emergency Furloughs. At the discretion of the facility director or designee, a resident may be granted an emergency furlough for the purpose of allowing a resident to attend a funeral, visit a critically ill person, obtain medical treatment, or attend to other exceptional business. Emergency furloughs may only be granted if the following conditions are met:

(A) The resident submits a written request for the emergency furlough;

(B) The facility director or designee verifies through an independent source including, but not limited to a physician, Red Cross representative, minister, rabbi, priest, or other spiritual leader that the presence of the resident is appropriate;

(C) The resident provides a proposed itinerary including method of travel, departure and arrival times, and locations during the emergency furlough;

(D) The requested absence shall not exceed 72 hours unless there are unusual circumstances;

(E) The court of original jurisdiction approves the travel if the resident will depart the state of Texas;

(F) The facility director or designee approves the itinerary and establishes the conditions of the emergency furlough; and

(G) The facility director or designee provides by email or fax the approved itinerary to the CSCD director and the court of the original or sending jurisdiction prior to the date that the emergency furlough is approved to begin.

(10) Supervision Process. Governed by §163.5(c) of this title.

(11) The CCF shall ensure that Spanish language assistance and the translation of selected documents are provided for Spanish-speaking residents who cannot speak or read English.

(g) Resident Abuse, Neglect, and Exploitation. The facility shall protect the residents from abuse, neglect, and exploitation. In accordance with the Prison Rape Elimination Act, 28 C.F.R. §115.31, all CCFs shall establish a zero tolerance standard for the incidence of sexual abuse and sexual harassment. Each facility shall make prevention of offender sexual abuse and sexual harassment a top priority. The CCFs shall have policies and procedures in accordance with national standards published by the attorney general of the United States. These policies and procedures shall include, but not be limited to the following:

(1) Detection, prevention, reduction, and punishment of offender sexual assault;

(2) Standardized definitions to record accurate data regarding the incidence of offender sexual assault; and

(3) A disciplinary process for facility staff who fail to take appropriate action to detect, prevent, and reduce sexual assaults, to punish residents guilty of sexual assault, and to protect the Eighth Amendment rights of all facility residents.

(h) Rules and Discipline. There shall be documentation of program rule violations and the disciplinary process.

(1) Rules of Conduct. All incoming residents and staff shall receive written rules of conduct which specify acts prohibited within the facility and penalties that can be imposed for various degrees of violation.

(2) Limitations of Corrective Actions. Specific limits on corrective actions and summary punishment shall be established and strictly adhered to in an effort to reduce the potential of staff participating in abusive behavior towards participants. Limits shall include:

(A) No physical contact by staff shall be made on a resident;

(B) No profane, sexual, or racial comments shall be directed at residents by staff;

(C) Residents shall not be used to impose corrective actions on other residents;

(D) The severity of the corrective action shall be commensurate with the severity of the infraction; and

(E) The duration of corrective action shall be limited to the minimum time necessary to achieve effectiveness.

(3) Grievance Procedure. A grievance procedure shall be available to all residents in a CCF. The grievance procedure shall include at least one level of appeal and shall be evaluated at least annually to determine its efficiency and effectiveness.

(4) Spanish translations of the disciplinary rules and procedures shall be provided for Spanish-speaking residents who cannot speak or read English.

(i) Incident Notification. Within 24 hours of occurrence, the CSCD director and facility director shall notify and report by telephone or fax all serious or unusual events pertaining to the facility's operations and staff to the district judge, or if applicable, the judge designated to perform administrative duties for the district courts trying criminal cases, the TDCJ Emergency Action Center (EAC) in Huntsville, Texas (phone number (936) 437-6600; fax number (936) 437-8996), and if applicable, the CSCD director of the original or sending jurisdiction if the incident involves a resident from that sending jurisdiction. The TDCJ EAC shall notify the TDCJ CJAD director and appropriate CJAD management staff. Such serious and unusual events for this purpose shall include, but are not limited to, the following:

(1) The death of a resident or staff member while at the facility;

(2) Any incident which results in life threatening or serious bodily injury to a resident or staff member while at the facility or on assignment, including emergency furloughs or programmatic incentives, away from the facility;

(3) Major disturbance or riot at the facility or in its vicinity; and

(4) Any incident involving serious misconduct by facility staff, which may result in the filing of criminal charges or civil action;

(5) Any incidence of absconding by a resident convicted of an offense as identified in Title 5 of the Texas Penal Code (Title 5) and placed in the facility for such offense; and

(6) Any incidence of absconding by a resident who is suspected of committing a felony offense during the course of absconding from the facility or within 24 hours after leaving the facility.

(j) Residents' Rights. Residents shall be granted access to courts and any attorney licensed in the United States or a legal aid society (an organization providing legal services to residents or other persons) contacting the resident in order to provide legal services. Such contacts include, but are not limited to: confidential telephone communications, uncensored correspondence, and confidential visits.

(k) Resident Eligibility. A CSCD or other governmental entity that operates a residential facility, contracts for the operation of a residential facility, or contracts for beds or services shall define a specific target population of medium to high risk/needs offenders to be served. Placement of offenders in a CCF shall only be by an order of the court, which may include a pretrial agreement signed by the judge presiding over an established drug court. Applicable screening shall be conducted to include screening for substance abuse, medical and mental health issues, and minimum eligibility criteria as outlined in this rule.

(1) CCFs shall accept only those offenders who meet the target population criteria as defined by the facility and are physically and mentally capable of participating in any program offered at the facility, if participation in the program is required of all residents in the facility. Exceptions to this requirement:

(A) Placement is prohibited by statute;

(B) The offender matches the profile of offenders historically committed to county jail or prison from the jurisdiction; or the offender has high risk/needs, who, if supervised at a lower supervision level would have an increased likelihood of violating the conditions of community supervision;

(C) The local jurisdiction may house offenders convicted under Title 5 and in accordance with statute, in the CCF if Title 5 offenders are included in the facility's program proposal within the community justice plan approved by the local judiciary. In currently operating facilities where the jurisdiction desires to add Title 5 offenders to the target population, a public meeting shall be held, in accordance with the law and TDCJ CJAD standards and policy, to advise the public of the types of offenders and offenses who will potentially be placed in the facility. Public support shall be considered by the TDCJ CJAD for final approval of the change in offender population to be targeted. If a jurisdiction has documentation that this requirement was previously met, it can provide that documentation to the TDCJ CJAD for review and possible exemption from having an additional public meeting. If a facility is approved to house Title 5 offenders, the CSCD director and the facility director shall comply with all applicable provisions contained in Texas Government Code §76.016, Victim Notification; Texas Code of Criminal Procedure art. 56.01 - .93, Rights of Crime Victims; and Texas Code of Criminal Procedure art. 42.21, Notice of Release of Family Violence Offenders; and

(D) Prior to or within 30 days after admission to the facility, the offender shall undergo a screening process to include a substance abuse screening instrument to determine the offender's appropriateness for placement. The process shall be documented and maintained in the supervision case file. Should the offender not meet the facility defined eligibility criteria, the offender may be referred back to the court of original jurisdiction.

(2) Courtesy Supervision. CCFs shall, on a space available basis, accept eligible adult offenders needing residential services on courtesy supervision from other jurisdictions. CSCDs that manage CCFs are responsible for the direct supervision of all residents in the CCF while in residential placement.

(l) Denying Admission or Continued Placement. If an offender is placed into a CCF, and by statute or standard is an inappropriate placement, or does not meet eligibility criteria of the TDCJ CJAD approved facility, the CSCD or facility director shall notify, in writing, the court of original jurisdiction. If a CCF facility has reached capacity at the time of the eligible offender's placement to that facility, such offender may be placed on a waiting list for that facility and returned to the court of original jurisdiction for further instructions or an alternative sanction.

(m) Food Service. The food preparation and dining area shall provide space for meal service based on the population size and need.

(1) Dietary Allowances. Meals shall be approved and reviewed annually by a registered dietician, licensed nutritionist, registered nurse with a minimum of a Bachelor of Science degree in nursing, physician assistant, or physician to ensure that the meals meet the nationally recommended allowances for basic nutrition.

(2) Special Diets. Each facility shall provide special diets as prescribed by appropriate medical or dental personnel.

(3) Food Service Management. Food service operations shall be supervised by a staff member who is experienced in institutional food preparation or mass food management. Food services staff, including residents assigned to work in the facility kitchen, shall meet all requirements established by local health authorities.

(4) Exclusion as Discipline. The use of food as a disciplinary measure is prohibited.

(5) Meal Requirements. The CSCD director or facility director shall ensure that at least three meals, including two hot meals, are provided during each 24-hour period. Variations may be allowed based on weekend and holiday food service demands, or in the event of emergency or security situations, provided basic nutritional goals are met.

(n) Health Care.

(1) Access to Care.

(A) Residents shall have unimpeded access to health care and to a system for processing complaints regarding health care.

(B) The facility shall have a designated health authority with responsibility for health care pursuant to a written agreement, contract, or job description. The health authority may be a physician, health administrator, or health agency. In the event that the designated health authority is a free community health clinic, one which provides services to everyone in the community regardless of ability to pay, then the CCF is not required to enter into a written contract or agreement. A copy of the mission statement of the free community health clinic and a copy of the criteria for admission shall be on file in lieu of a contract between the two agencies.

(C) Each CCF shall have a policy defining the level, if any, of financial responsibility to be incurred by the resident who receives the medical or dental services.

(2) Emergency Health Care.

(A) Twenty-four hour emergency health care shall be provided for residents, to include arrangements for the following:

(i) On site emergency first aid and crisis intervention;

(ii) Emergency evacuation of the resident from the facility;

(iii) Use of an emergency vehicle;

(iv) Use of one or more designated hospital emergency rooms or other appropriate health facilities;

(v) Emergency on-call services from a physician, advanced practice nurse, physician assistant, dentist, and a mental health professional when the emergency health facility is not located in a nearby community; and

(vi) Security procedures providing for the immediate transfer of residents, when appropriate.

(B) A training program for direct care personnel shall be established by a recognized health authority in cooperation with the facility director that includes the following:

(i) Signs, symptoms, and action required in potential emergency situations;

(ii) Administration of first aid and cardiopulmonary resuscitation;

(iii) Methods of obtaining assistance;

(iv) Signs and symptoms of mental illness, retardation, and chemical dependency; and

(v) Procedures for patient transfers to appropriate medical facilities or health care providers.

(C) First aid kits shall be available in designated areas of the facility. Contents and locations shall be approved by the health authority.

(3) Health Screening and Medical Examinations. Medical, dental, and mental health screening shall be performed by qualified health care personnel on all offenders within 10 working days prior to or after admission to the facility. The purpose of the screening is to determine if the offender has any disease, illness, or condition that precludes admission. The health screening shall include the following:

(A) Questionnaires for health screening shall be established to document inquiries into and observations of the following:

(i) Current illness and health problems, including sexually transmitted and other infectious diseases;

(ii) Dental problems;

(iii) Mental health problems, including suicide attempts or ideation;

(iv) Use of alcohol and other drugs, which includes types of drugs used, mode of use, amounts used, frequency of use, date or time of last use, and a history of problems that may have occurred after ceasing use, for example, convulsions; and

(v) Other health problems designated by the responsible health authority.

(B) Observation by qualified health care personnel of:

(i) Behavior, which includes state of consciousness, mental status, appearance, conduct, tremor, and sweating;

(ii) Body deformities, ease of movement, and so forth; and

(iii) Conditions of skin, including trauma markings, bruises, lesions, jaundice, rashes, infestations, and needle marks or other indications of drug abuse.

(C) Medical Examinations.

(i) A new resident admitted to the facility who was not transferred from a jail or other correctional facility shall have a medical history and physical examination completed within 10 working days prior to or after admission to the facility.

(ii) TB screening of residents shall be completed within seven calendar days of admission into the residential facility and repeated annually thereafter. If a resident was confined in a jail or other correctional facility immediately prior to admission to a CCF, a TB screening test that was completed no more than 30 days prior to transfer to a residential facility may be accepted, provided that a TB questionnaire is completed and filed with the TB screening test results.

(iii) Medical examinations shall be conducted for any employee or resident suspected of having a communicable disease.

(4) Serious and Infectious Diseases.

(A) The facility shall provide for the management of serious and infectious diseases.

(B) The CCFs shall have policies and procedures to direct actions to be taken by employees concerning residents who have been diagnosed with human immunodeficiency virus (HIV), including, at a minimum, the following:

(i) When and where residents shall be tested;

(ii) Appropriate safeguards for staff and residents;

(iii) Staff and resident training;

(iv) Issues of confidentiality; and

(v) Counseling and support services.

(5) Dental Care. Access to dental care shall be made available to each resident.

(6) Medications--General Guidelines.

(A) Staff who dispense medication shall have the proper training and credentials. Staff who supervise self-administration of medication shall be appropriately trained to perform the task.

(B) Policy and procedure shall direct the possession and use of controlled substances, prescribed medications, supplies, and over-the-counter (OTC) drugs. Prescribed medications shall be dispensed according to the directions of the prescribing physician, advanced practice nurse, or physician assistant.

(C) Each residential facility shall have a written policy in place that sets forth required procedural guidelines for the administration, documentation, storage, management, accountability of all resident medication, inventory, disposal of medications, handling medication errors, and adverse reactions.

(D) If medications are distributed by facility staff, records shall be maintained and audited monthly and shall include, but not be limited to the date, time, name of the resident receiving the medication, and the name of the staff distributing the medication.

(E) Each facility shall ensure that the phone number of a pharmacy and a comprehensive drug reference source is readily available to the staff.

(7) Medication Storage.

(A) Prescription and OTC medications shall be kept in locked storage and accessible only by staff who are authorized to provide medication. Syringes, needles, and other medical supplies shall also be kept in locked storage.

(B) All controlled/scheduled medications shall be stored under double lock and key.

(C) Each facility shall ensure that all medications, syringes, and needles are stored in the original container.

(D) Medications labeled as internal and external use only shall not be stored together in the same medication box or medication drawer.

(E) Sample prescription medications provided by physicians shall be stored with proper labeling information that includes the name of the medication; name of the prescribing physician, advanced practice nurse, or physician assistant; date prescribed; and dosage instructions.

(F) Medications that require refrigeration shall be stored in a refrigerator designated for medications only. A thermometer shall be maintained inside the refrigerator with the temperature checked and recorded daily on a temperature log.

(G) The facility shall have a written policy approved by the local medical authority that states the acceptable temperature range for the medication refrigerator, and a written policy for what actions shall be taken by staff in the event the refrigerator temperature is above or below the approved temperature range.

(H) Medications that are discontinued, have expired dates, or are no longer in use shall be stored in a separate locked container or drawer until destroyed.

(I) Facilities that allow residents to keep medications in the resident's possession shall have written guidelines specific for keep-on-person medications. Staff shall ensure that authorized residents keep medication on their person or safely stored and inaccessible to other residents.

(8) Medication Inventory and Disposal.

(A) Facility staff shall conduct an inventory count of all controlled/scheduled medications daily, at a minimum, once per 24-hour period. The count shall be conducted and witnessed by one other staff member. Documentation of inventory counts shall be maintained for a minimum of three years.

(B) The facility shall conduct a monthly inventory of all prescription and OTC drugs provided to or purchased by the resident. The monthly audit shall be conducted by a staff member who is not responsible for conducting the daily inventory counts.

(C) A monthly audit shall be conducted of all medication administration records to verify the accuracy of recorded information. The monthly audit of medication administration records shall be conducted by a staff member who is not responsible for the documentation of medication administration records.

(D) When a discrepancy is noted between the medication administration record and the monthly inventory count, documentation explaining the reason for the discrepancy and action taken to correct it shall be recorded. In the event an inventory count reveals unaccounted for controlled/scheduled medication, an investigation shall be conducted and a summary report written detailing the steps taken to resolve the matter. Until the discrepancy is resolved, an inventory count shall be conducted three times daily, after each shift. The summary report shall be maintained for a minimum of three years. If misapplication, misuse, or misappropriation of controlled/scheduled medication leads to an investigation by law enforcement, such information shall be reported pursuant to subsection (i) of this rule.

(E) Discontinued and outdated medications shall be removed from the current medication storage, stored in a separate locked container, and disposed of within 30 days. The drugs designated for disposal shall be recorded on a drug disposal form.

(F) Methods used for drug disposal shall prevent medication from being retrieved, salvaged, or used in any way. The disposal of drugs shall be conducted, documented, and the process witnessed by one other staff member. The documentation shall include:

(i) Name of the resident and date of disposal;

(ii) Name and strength of the medication;

(iii) Prescription number, sample, or OTC lot numbers;

(iv) Amount disposed, reason for disposal, and the method of disposal; and

(v) Signatures of the two staff members who disposed of the drug and witnessed the disposal.

(9) Administration of Medication for Non-Medical Model Facilities.

(A) Prescription medications shall be dispensed only by licensed nurses or other staff who are trained and have the appropriate documented medication certification to dispense medications while under the supervision of a physician or registered nurse. Facilities that do not have licensed nurses or other credentialed staff to dispense medications, non-medical model facilities, shall implement the practice of self-administration of medications.

(B) If medications are dispensed through the practice of self-administration in a non-medical model program, staff trained by a qualified health professional to supervise residents in the self-administration of medications shall monitor the residents during the self-administration process.

(C) Each dose of prescription medication received by the resident shall be documented on the prescription medication administration record and maintained in the resident's medical file. The prescription medication record shall include:

(i) Name of the resident receiving the medication;

(ii) Drug allergies or the absence of known drug allergies;

(iii) Name, strength of medication, and route of administration;

(iv) Instructions for taking the medication, the amount taken, and the route of administration;

(v) Date and time the medication was provided;

(vi) Prescription number, or lot number for sample drugs, and the initial amount of medication received;

(vii) Prescribing physician, advanced practice nurse or physician assistant, and the name of the pharmacy;

(viii) Signature of the resident receiving the medication and the staff member supervising the self-administration of medication;

(ix) The remaining amount of medication after each dose dispensed; and

(x) Comment section for recording a variance, discrepancy, or change.

(D) Each dose of OTC medication received by the resident shall be documented on the OTC medication administration record and maintained in the resident's medical file. The OTC drugs purchased by the resident or supplied for the resident in quantities larger than single dose packages shall be recorded on the OTC drug record. The OTC drug record shall include:

(i) The resident's name;

(ii) The name and strength of the medication dispensed;

(iii) Drug allergies or the absence of known drug allergies;

(iv) The dosage instructions and route of administration;

(v) The initial amount received, OTC lot number, and the expiration date;

(vi) The date and time the medication was dispensed;

(vii) The amount dispensed and the ending count after each dose;

(viii) Comment section for recording reason for OTC drug or other notations; and

(ix) The signature of the resident and the employee who supervised each dose dispensed.

(E) Facility Stock OTC Drugs. Multiple OTC stock drugs supplied in single dose packaging may be recorded on the same form. The medication drug record for facility stock OTC drugs shall include:

(i) The resident's name;

(ii) The name, strength, and route of administration;

(iii) Drug allergies or the absence of known drug allergies;

(iv) The date, time, amount dispensed, and the lot number on the container;

(v) Comment section to record the reason the OTC drug was requested; and

(vi) The signature of the resident and the employee who supervised each dose dispensed.

(10) Training for Monitoring Self-Administration of Medications. All residential employees responsible for supervising residents in self-administration of medication, who do not have credentials to dispense medication, shall complete required training before performing this task.

(A) The initial training for new employees shall be four hours in length.

(B) Employees shall complete a minimum of two hours of review training annually thereafter.

(C) The training shall be provided by a physician, pharmacist, physician assistant, or registered nurse before supervising self-administration of medications. A licensed vocational nurse or paramedic, under supervision, may teach the course from an established curriculum. Topics to be covered shall include:

(i) Prescription labels;

(ii) Medical abbreviations;

(iii) Routes of administration;

(iv) Use of drug reference materials;

(v) Monitoring and observing insulin preparation and administration;

(vi) Storage, maintenance, handling, and destruction of medication;

(vii) Transferring information from prescription labels to the medication administration record and documentation requirements, including sample medications; and

(viii) Procedures for medication errors, adverse reactions, and side effects.

(11) Female Residents. If female residents are housed, access to pregnancy management services shall be available.

(12) Mental Health. Access to mental health services shall be available to residents.

(13) Suicide Prevention. Each facility shall have a written suicide prevention and intervention program reviewed and approved by a qualified medical or mental health professional. All staff with resident supervision responsibilities shall be trained in the implementation of the suicide prevention program.

(14) Personnel.

(A) If treatment is provided to residents by health care personnel other than a physician, psychiatrist, dentist, psychologist, optometrist, podiatrist, or other independent provider, such treatment shall be performed pursuant to written standing or direct orders by personnel authorized by law to give such orders.

(B) If the facility provides medical treatment, personnel who provide health care services to residents shall be qualified and appropriately licensed. Verification of current credentials and job descriptions shall be on file in the facility. Appropriate state and federal licensure, certification or registration requirements, and restrictions apply.

(15) Informed Consent.

(A) If the facility provides medical treatment, the facility shall ensure residents are provided information to make medical decisions with informed consent. All informed consent standards in the jurisdiction shall be observed and documented for resident care.

(B) If the facility provides medical treatment and a resident makes an informed decision to refuse any medical procedure or treatment, the facility shall ensure that written documentation of the resident's refusal is maintained in the resident's medical record.

(16) Participation in Research. Residents shall not participate in medical, pharmaceutical, or cosmetic experiments. This does not preclude individual treatment of a resident based on resident's need for a specific medical procedure that is not generally available.

(17) Notification. Individuals designated by the resident shall be notified in case of critical illness or injury.

(18) Health Records. If medical treatment is provided by the facility:

(A) Accurate health records for residents shall be maintained separately and confidentially;

(B) The method of recording entries in the records, the form and format of the records, and the procedures for maintenance and safekeeping shall be approved by the health authority; and

(C) For the residents being transferred to other facilities, summaries or copies of the medical history record shall be forwarded to the receiving facility prior to or at arrival.

(o) Discharge From Residential Facilities.

(1) Victim Notification. The CSCD director and facility director shall ensure there are procedures, policies, and practices that comply with Texas Government Code §76.016, Texas Code of Criminal Procedure art. 42.21(a) and other applicable laws as to the notifications made to certain crime victims of offenders who are residents in its facilities or subject to its programs.

(2) Discharge. Discharge from residential facilities shall be based on the following criteria:

(A) The resident has made sufficient progress towards meeting the objectives of the supervision plan and program requirements;

(B) The resident has satisfied a sentence of confinement;

(C) The resident has satisfied a period of placement as a condition of community supervision or satisfied the conditions of a pretrial agreement signed by a judge presiding over an established drug court;

(D) The resident has demonstrated non-compliance with program criteria or court order;

(E) The resident manifests a non-emergency medical problem that prohibits participation in or completion of the residential program requirements;

(F) The resident displays symptoms of a psychological disorder that prohibits participation in or completion of the residential program requirements; or

(G) The resident is identified as inappropriate or ineligible for participation in the residential program as defined by facility eligibility criteria, statute, or standard.

(3) Discharge Report. The CSCD director and facility director shall ensure a report is prepared at the termination of program participation that reviews the resident's performance. A copy of the report shall be provided to the receiving CSCD community supervision officer.

(p) Basic Services and Programs.

(1) Each facility shall, at a minimum, provide programs in the following areas which shall include, but not be limited to:

(A) Education programs;

(B) Rehabilitation programs based on the mission of the facility;

(C) Community service restitution or work detail;

(D) Recreational programs; and

(E) Cognitive based programs.

(2) Facilities serving other jurisdictions shall have a procedure in place designed to assist the resident in obtaining employment in the jurisdiction to which the resident will be released. At a minimum, an aftercare or supervision plan shall be provided to the original jurisdiction and shall outline aftercare or supervision strategies best designed to sustain progress.

(3) Each facility shall have a family support program designed to educate family members in the goals of the facility and resident, as well as to incorporate family assistance during and after residency.

(4) Each facility incorporating an employment component shall provide an initial programming phase of no less than 30 days prior to work release. A longer period of programming shall be provided depending upon documented risk/needs assessment and program progress.

(q) Mail, Telephone, and Visitation. The CSCD director and facility director shall have written policies, procedures, and practices which govern the facility's mail, telephone, and visitation privileges for residents, including mail inspection, public phone use, and routine and special visits. The policies shall address compelling circumstances in which a resident's mail both incoming and outgoing may be opened, but not read, to inspect for contraband.

(r) Religious Programs.

(1) The CSCD director and facility director shall have written policies that govern religious programs for residents. The policies, procedures, and practices shall provide that residents have the opportunity to voluntarily practice the requirements of a resident's religious faith, have access to worship and religious services and the use or contact with community religious resources, when appropriate.

(2) Under Texas Civil Practice & Remedies Code §§110.001 - .012, a CSCD or CCF may not substantially burden a resident's free exercise of religion except with the least restrictive measures in furtherance of a compelling interest. Pursuant to Texas Government Code §76.018, there is a presumption that a policy or practice that applies to a resident in the custody of a CCF is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. The presumption may be rebutted with evidence provided by the resident.

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 August 22, 2016.

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TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Texas Workforce Commission

Rule Duplication

Senate Bill (SB) 208, passed by the 84th Texas Legislature, Regular Session (2015), abolishes the Department of Assistive and Rehabilitative Services (DARS). Section 25 of the bill amends Title 4 of the Labor Code to add new Subtitle C, including new §351.002. Per §351.002(b)(1), beginning September 1, 2016, the Texas Workforce Commission (TWC) shall begin administering the following services and programs operated by DARS before that date under the federal Rehabilitation Act of 1973 (29 U.S.C. sections 720 through 751): the vocational rehabilitation program for individuals with visual impairments; the vocational rehabilitation program for individuals with other disabilities; the Independent Living Services program for older individuals who are blind; and the Criss Cole Rehabilitation Center. Per §351.002(b)(2), beginning on September 1, 2016, TWC shall also administer the program for vending facilities operated by blind persons under Chapter 355, including the Business Enterprises Program under the Randolph-Sheppard Act (20 U.S.C. Section 107 et seq.), that DARS operated prior to September 1, 2016.

Per Section 33(b) of the bill, after a transfer of services and program occurs under the bill, a rule that relates to a transferred service or program is a rule of TWC and remains in effect until altered by TWC. Under SB 208, the transfer of services and programs becomes effective September 1, 2016.

However, certain rules are shared by programs which are transferred to TWC under SB 208, as well as programs which are remaining at DARS, as part of the Health and Human Services Commission (HHSC). A wholesale transfer of rules, particularly joint procedural rules shared by multiple programs, would detrimentally affect agency operations. Accordingly, to comply with SB 208, TWC requests that the Texas Register administratively duplicate the relevant chapters and rules identified in the following chart, to ensure full program continuity at each respective agency, and place into new TWC chapters:

Figure: 40 TAC Part 20

TRD-201604366

Figure: 40 TAC Part 20

Current Rules – Department of Aging and Rehabilitative Services Title 40, Part 2				Duplicated Rules – Texas Workforce Commission Title 40, Part 20			
Chapter 101. Administrative Rules and Procedures				Chapter 850. Vocational Rehabilitation Services Administrative Rules and Procedures			
Subch	Div	Rule Number	Heading	Subch	Div	Heading	Rule Number
Subchapter A. General Rules				Subchapter A. Vocational Rehabilitation General Rules			
A		§101.101	Purpose	A		Purpose	§850.1
A		§101.103	Legal Authority	A		Legal Authority	§850.2
A		§101.105	Definitions	A		Definitions	§850.3
A		§101.107	Opportunities for Citizen Participation	A		Opportunities for Citizen Participation	§850.4
A		§101.109	Complaints	A		Complaints	§850.5
A		§101.111	Cooperation with Other Public Agencies	A		Cooperation with Other Public Agencies	§850.6
A		§101.113	Criminal History Information on Applicants for Employment	A		Criminal History Information on Applicants for Employment	§850.7
A		§101.115	Use of Criminal History in Contracting	A		Use of Criminal History in Contracting	§850.8
A		§101.117	Fees for Department Publications	A		Fees for Department Publications	§850.9
A		§101.119	Gifts and Donations to DARS	A		Gifts and Donations to TWC	§850.10
A		§101.121	Qualified Vocational Rehabilitation Counselor (QVRC)	A		Qualified Vocational Rehabilitation Counselor (QVRC)	§850.11
Subchapter B. Historically Underutilized Businesses				Subchapter B. Historically Underutilized Businesses			
B		§101.201	Purpose	B		Purpose	§850.20
B		§101.203	Legal Authority	B		Legal Authority	§850.21
B		§101.205	Definitions	B		Definitions	§850.22
B		§101.207	Adoption of Rules	B		Adoption of Rules	§850.23
Subchapter C. Councils, Boards and Committees				Subchapter C. Councils, Boards and Committees			
C	Division 1. Rehabilitation Council of Texas			C	Division 1. Rehabilitation Council of Texas		
C	1	§101.301	Purpose	C	1	Purpose	§850.30
C	1	§101.303	Legal Authority	C	1	Legal Authority	§850.31
C	1	§101.305	Definitions	C	1	Definitions	§850.32
C	1	§101.307	Tasks	C	1	Tasks	§850.33
C	1	§101.309	Reports	C	1	Reports	§850.34
C	1	§101.311	Funding	C	1	Funding	§850.35
C	Division 5. BET Elected Committee of Managers (ECM)			C	Division 2. BET Elected Committee of Managers (ECM)		
C	5	§101.701	Purpose	C	2	Purpose	§850.40
C	5	§101.703	Legal Authority	C	2	Legal Authority	§850.41
C	5	§101.705	Definitions	C	2	Definitions	§850.42
C	5	§101.707	Substantive Rules	C	2	Substantive Rules	§850.43
Subchapter D. Privacy and Confidentiality				Subchapter D. Privacy and Confidentiality			
D		§101.807	Privacy Policies	D		Privacy Policies	§850.50
D		§101.809	Confidentiality of Consumer Information in VR Program	D		Confidentiality of Consumer Information in Vocational Rehabilitation Services Program	§850.51

Current Rules – Department of Aging and Rehabilitative Services Title 40, Part 2				Duplicated Rules – Texas Workforce Commission Title 40, Part 20			
Subchapter E. Appeals and Hearing Procedures				Subchapter E. Vocational Rehabilitation Services Appeals and Hearing Procedures			
E	Division 1. General Rules			E	Division 1. General Rules		
E	1	§101.901	Purpose	E	1	Purpose	§850.60
E	1	§101.903	Legal Authority	E	1	Legal Authority	§850.61
E	1	§101.905	Definitions	E	1	Definitions	§850.62
E	1	§101.907	Filing a Request for Review	E	1	Filing a Request for Review	§850.63
E	1	§101.909	Time for Hearing	E	1	Time for Hearing	§850.64
E	1	§101.911	Assignment of Impartial Hearing Officer	E	1	Assignment of Impartial Hearing Officer	§850.65
E	1	§101.913	Powers and Duties of Impartial Hearing Officer	E	1	Powers and Duties of Impartial Hearing Officer	§850.66
E	1	§101.915	Substitution of Impartial Hearing Officer	E	1	Substitution of Impartial Hearing Officer	§850.67
E	1	§101.917	Reasonable Accommodations	E	1	Reasonable Accommodations	§850.68
E	1	§101.919	Appearance of Parties at Hearings; Representation	E	1	Appearance of Parties at Hearings; Representation	§850.69
E	1	§101.921	Failure to Attend Hearing and Default	E	1	Failure to Attend Hearing and Default	§850.70
E	1	§101.923	Witness Fees	E	1	Witness Fees	§850.71
E	1	§101.925	Prehearing Conferences	E	1	Prehearing Conferences	§850.72
E	1	§101.927	Dismissal Without Hearing	E	1	Dismissal Without Hearing	§850.73
E	1	§101.929	Conduct of Hearing	E	1	Conduct of Hearing	§850.74
E	1	§101.931	Order of Proceedings	E	1	Order of Proceedings	§850.75
E	1	§101.933	Rules of Evidence	E	1	Rules of Evidence	§850.76
E	1	§101.935	Transcription of Proceedings	E	1	Transcription of Proceedings	§850.77
E	1	§101.937	Prepared Testimony	E	1	Prepared Testimony	§850.78
E	1	§101.939	Pleadings	E	1	Pleadings	§850.79
E	1	§101.941	Continuance	E	1	Continuance	§850.80
E	1	§101.943	Motion for Reconsideration	E	1	Motion for Reconsideration	§850.81
E	1	§101.945	Civil Action	E	1	Civil Action	§850.82
E	1	§101.947	Mediation Procedures	E	1	Mediation Procedures	§850.83
E	1	§101.949	Computation of Time	E	1	Computation of Time	§850.84
E	Division 2. DBS and DRS			E	Division 2. Division for Blind Services and Division for Rehabilitation Services		
E	2	§101.1001	Purpose	E	2	Purpose	§850.100
E	2	§101.1003	Legal Authority	E	2	Legal Authority	§850.101
E	2	§101.1005	Definitions	E	2	Definitions	§850.102
E	2	§101.1007	Filing a Request for Review	E	2	Filing a Request for Review	§850.103
E	2	§101.1009	Filings	E	2	Filings	§850.104
E	2	§101.1011	Discovery and Mandatory Disclosures	E	2	Discovery and Mandatory Disclosures	§850.105
E	2	§101.1013	Documentary Evidence and Official Notice	E	2	Documentary Evidence and Official Notice	§850.106
E	2	§101.1015	Impartial Hearing Officer Decision	E	2	Impartial Hearing Officer Decision	§850.107
E	2	§101.1017	Finality of the Hearing Officer's Decision	E	2	Finality of the Hearing Officer's Decision	§850.108
E	2	§101.1019	Implementation of Final Decision	E	2	Implementation of Final Decision	§850.109
E	2	§101.1021	Motion for Reconsideration	E	2	Motion for Reconsideration	§850.110

Current Rules – Department of Aging and Rehabilitative Services Title 40, Part 2				Duplicated Rules – Texas Workforce Commission Title 40, Part 20			
E	2	§101.1023	Appeal of Final Decision	E	2	Appeal of Final Decision	§850.111
Subchapter F. Memorandum of Understanding				**Subchapter F. Memorandum of Understanding**			
F		§101.1307	Memorandum of Understanding Regarding Continuity of Care for Physically Disabled Inmates	F		Memorandum of Understanding Regarding Continuity of Care for Physically Disabled Inmates	§850.130
F		§101.1309	Memorandum of Understanding Regarding the Exchange and Distribution of Public Awareness Information	F		Memorandum of Understanding Regarding the Exchange and Distribution of Public Awareness Information	§850.131
F		§101.1311	Memorandum of Understanding Concerning Coordination of Services to Disabled Persons	F		Memorandum of Understanding Concerning Coordination of Services to Disabled Persons	§850.132
Chapter 102. Purchase of Goods and Services by the Department of Assistive and Rehabilitative Services				**Chapter 852. Purchase of Medical Goods and Services by the Texas Workforce Commission-Vocational Rehabilitation Services**			
Subch	**Div**	**Rule Number**	**Heading**	**Subch**	**Div**	**Heading**	**Rule Number**
Subchapter A. Purchase of Goods and Services				**Subchapter A. Purchase of Goods and Services**			
A		§102.213	Alternative Purchasing Methods-Rates for Medical Services	A		Alternative Purchasing Methods-Rates for Medical Services	§852.1
Chapter 106. Division for Blind Services				**Chapter 854. Division for Blind Services**			
Subch	**Div**	**Rule Number**	**Heading**	**Subch**	**Div**	**Heading**	**Rule Number**
Subchapter A. Criss Cole Rehabilitation Center				**Subchapter A . Criss Cole Rehabilitation Center**			
A		§106.101	Purpose	A		Purpose	§854.1
A		§106.103	Legal Authority	A		Legal Authority	§854.2
A		§106.105	Definitions	A		Definitions	§854.3
A		§106.107	Eligibility	A		Eligibility	§854.4
A		§106.109	Services	A		Services	§854.5
A		§106.111	Consumer Participation and Comparable Services and Benefits	A		Consumer Participation and Comparable Services and Benefits	§854.6
A		§106.113	Payment of Shift Differentials	A		Payment of Shift Differentials	§854.7
Subchapter B. Vocational Rehabilitation Program				**Subchapter B. Vocational Rehabilitation Program**			
B	**Division 1. Program and Subchapter Purpose**			**B**	**Division 1. Program and Subchapter Purpose**		
B	1	§106.201	Purpose	B		Purpose	§854.20
B	1	§106.203	Legal Authority	B		Legal Authority	§854.21
B	1	§106.205	Definitions	B		Definitions	§854.22
B	**Division 2. Eligibility**			**B**	**Division 2. Eligibility**		
B	2	§106.307	Application	B		Application	§854.23
B	2	§106.309	Eligibility	B		Eligibility	§854.24
B	2	§106.311	Prohibited Factors	B		Prohibited Factors	§854.25
B	2	§106.313	Eligibility Determination Time Frame	B		Eligibility Determination Time Frame	§854.26
B	2	§106.315	Determination of Ineligibility	B		Determination of Ineligibility	§854.27
B	2	§106.317	Case Closure	B		Case Closure	§854.28
B	**Division 3. Provision of Vocational Rehabilitation Services**			B	**Division 3. Provision of Vocational Rehabilitation Services**		
B	3	§106.407	Provision of Services	B		Provision of Services	§854.40
B	3	§106.409	Assessment for Determining Eligibility, Vocational Rehabilitation Needs, and Rehabilitation Technology Needs	B		Assessment for Determining Eligibility, Vocational Rehabilitation Needs, and Rehabilitation Technology Needs	§854.41

Current Rules – Department of Aging and Rehabilitative Services Title 40, Part 2				Duplicated Rules – Texas Workforce Commission Title 40, Part 20			
B	3	§106.411	Physical and Mental Restoration Services	B		Physical and Mental Restoration Services	§854.42
B	3	§106.413	Vocational and Other Training Services	B		Vocational and Other Training Services	§854.43
B	3	§106.415	Maintenance	B		Maintenance	§854.44
B	3	§106.417	Transportation	B		Transportation	§854.45
B	3	§106.419	Services to Family Members	B		Services to Family Members	§854.46
B	3	§106.421	Interpreter Services and Note-Taking Services for Consumers Who Are Deaf and Tactile Interpreting for Consumers Who Are Deafblind	B		Interpreter Services and Note-Taking Services for Consumers Who Are Deaf and Tactile Interpreting for Consumers Who Are Deafblind	§854.47
B	3	§106.423	Reader Services and Rehabilitation Teaching Services	B		Reader Services and Rehabilitation Teaching Services	§854.48
B	3	§106.425	Employment Assistance	B		Employment Assistance	§854.49
B	3	§106.427	Post-Employment Services	B		Post-Employment Services	§854.50
B	3	§106.429	Occupational Licenses, Tools, Equipment, and Initial Stocks and Supplies	B		Occupational Licenses, Tools, Equipment, and Initial Stocks and Supplies	§854.51
B	3	§106.431	Assistive Technology Devices	B		Assistive Technology Devices	§854.52
B	3	§106.433	Individualized Plan for Employment (IPE)	B		Individualized Plan for Employment (IPE)	§854.53
B	**Division 4. Consumer Participation**			**B**	**Division 4. Consumer Participation**		
B	4	§106.501	Purpose of Consumer Participation	B		Purpose of Consumer Participation	§854.60
B	4	§106.507	Scope of Consumer Participation	B		Scope of Consumer Participation	§854.61
B	4	§106.509	Refusal to Disclose Economic Resources	B		Refusal to Disclose Economic Resources	§854.62
B	**Division 5. Comparable Benefits**			**B**	**Division 5. Comparable Benefits**		
B	5	§106.607	Comparable Services and Benefits	B		Comparable Services and Benefits	§854.70
B	**Division 6. Methods of Administration of Vocational Rehabilitation**			**B**	**Division 6. Methods of Administration of Vocational Rehabilitation**		
B	6	§106.707	Application of an Order of Selection			Application of an Order of Selection	§854.80
B	**Division 7. Certificate of Blindness for Tuition Waiver**			**B**	**Division 7. Certificate of Blindness for Tuition Waiver**		
B	7	§106.801	Purpose	B		Purpose	§854.90
B	7	§106.803	Legal Authority	B		Legal Authority	§854.91
B	7	§106.805	Definitions	B		Definitions	§854.92
B	7	§106.807	Eligibility	B		Eligibility	§854.93
B	7	§106.809	Certificate of Blindness for Tuition Waiver	B		Certificate of Blindness for Tuition Waiver	§854.94
Subchapter D. Independent Living Services for Older Adults who are Blind				**Division D. Independent Living Services for Older Adults who are Blind**			
D	**Division 1. General Rules**			**D**	**Division 1. General Rules**		
D	1	§106.901	Purpose	D		Purpose	§854.110
D	1	§106.903	Legal Authority	D		Legal Authority	§854.111
D	1	§106.905	Definitions	D		Definitions	§854.112
D	**Division 2. Allocation of Funds**			**D**	**Division 2. Allocation of Funds**		
D	2	§106.1001	Allocation of Funds	D		Allocation of Funds	§854.120
D	**Division 3. Independent Living Services for Older Individuals Who Are Blind**			**D**	**Division 3. Independent Living Services for Older Individuals Who Are Blind**		
D	3	§106.1101	Purpose	D		Purpose	§854.130

Current Rules – Department of Aging and Rehabilitative Services Title 40, Part 2				Duplicated Rules – Texas Workforce Commission Title 40, Part 20			
D	3	§106.1105	Eligibility	D		Eligibility	§854.131
D	3	§106.1107	Independent Living Plan	D		Independent Living Plan	§854.132
D	3	§106.1109	Waiting List	D		Waiting List	§854.133
D	3	§106.1111	Scope of Services	D		Scope of Services	§854.134
D	**Division 4. Consumer Participation**			**D**	**Division 4. Consumer Participation**		
D	4	§106.1201	Consumer Participation System	D		Consumer Participation System	§854.140
D	4	§106.1203	Fee Schedule Amount	D		Fee Schedule Amount	§854.141
D	4	§106.1205	Insurance Payments	D		Insurance Payments	§854.142
D	**Division 5. Consumer Rights**			**D**	**Division 5. Consumer Rights**		
D	5	§106.1301	Rights of Consumers	D		Rights of Consumers	§854.150
D	5	§106.1303	Complaint Process	D		Complaint Process	§854.151
D	**Division 6. Technical Assistance and Training**			**D**	**Division 6. Technical Assistance and Training**		
D	6	§106.1351	Administering Agency's Role In Providing Technical Assistance	D		Administering Agency's Role In Providing Technical Assistance	§854.160
D	**Division 7. Referrals**			**D**	**Division 7. Referrals**		
D	7	§106.1371	Expectations of Administering Agency's Employees	D		Expectations of Administering Agency's Employees	§854.170
Subchapter N. Business Enterprises of Texas				**Subchapter N. Business Enterprises of Texas**			
N		§106.1901	Purpose			Purpose	§854.200
N		§106.1903	Legal Authority			Legal Authority	§854.201
N		§106.1905	Definitions			Definitions	§854.202
N		§106.1907	General Policies			General Policies	§854.203
N		§106.1909	BET Administration			BET Administration	§854.204
N		§106.1911	Training of Potential Applicants and Licensees			Training of Potential Applicants and Licensees	§854.205
N		§106.1913	BET Licenses			BET Licenses	§854.206
N		§106.1915	Initial and Career Advancement Assignment Procedures			Initial and Career Advancement Assignment Procedures	§854.207
N		§106.1917	Fixtures, Furnishings, and Equipment; Initial Inventory; and Expendables			Fixtures, Furnishings, and Equipment; Initial Inventory; and Expendables	§854.208
N		§106.1919	Set-Aside Fees			Set-Aside Fees	§854.209
N		§106.1921	Duties and Responsibilities of Managers			Duties and Responsibilities of Managers	§854.210
N		§106.1923	Responsibilities of the Department of Assistive and Rehabilitative Services, Division for Blind Services			Responsibilities of the Texas Workforce Commission, Division for Blind Services	§854.211
N		§106.1925	BET Elected Committee of Managers			BET Elected Committee of Managers	§854.212
N		§106.1927	Termination of License for Reasons Other Than Unsatisfactory Performance			Termination of License for Reasons Other Than Unsatisfactory Performance	§854.213
N		§106.1929	Administrative Action Based on Unsatisfactory Performance			Administrative Action Based on Unsatisfactory Performance	§854.214
N		§106.1931	Procedures for Resolution of Manager's Dissatisfaction			Procedures for Resolution of Manager's Dissatisfaction	854.215
N		§106.1933	Establishing and Closing Facilities			Establishing and Closing Facilities	854.216
N		§106.1935	Forms			Forms	854.217
Chapter 107. Division for Rehabilitation Services				**Chapter 856. Division for Rehabilitation Services**			

Current Rules – Department of Aging and Rehabilitative Services Title 40, Part 2				Duplicated Rules – Texas Workforce Commission Title 40, Part 20			
Subch	Div	Rule Number	Heading	Subch	Div	Heading	Rule Number
Subchapter A. Vocational Rehabilitation Service Program				Subchapter A. Vocational Rehabilitation Service Program			
A	Division 1. Program and Subchapter Purpose				Division 1. Program and Subchapter Purpose		
A	1	§107.101	Purpose	A	1	Purpose	§856.1
A	1	§107.103	Legal Authority	A	1	Legal Authority	§856.2
A	1	§107.105	Definitions	A	1	Definitions	§856.3
A	1	§107.107	Statewideness	A	1	Statewideness	§856.4
A	1	§107.109	Consultation Regarding the Administration of the State Plan	A	1	Consultation Regarding the Administration of the State Plan	§856.5
A	Division 2. Eligibility				Division 2. Eligibility		
A	2	§107.207	Eligibility	A	2	Eligibility	§856.20
A	2	§107.209	Prohibited Factors	A	2	Prohibited Factors	§856.21
A	2	§107.211	Extended Evaluation	A	2	Extended Evaluation	§856.22
A	2	§107.213	Determination of Ineligibility	A	2	Determination of Ineligibility	§856.23
A	2	§107.215	Case Closure	A	2	Case Closure	§856.24
A	Division 3. Provision of Vocational Rehabilitation Services				Division 3. Provision of Vocational Rehabilitation Services		
A	3	§107.307	Provision of Services	A	3	Provision of Services	§856.40
A	3	§107.309	Assessment	A	3	Assessment	§856.41
A	3	§107.311	Counseling, Guidance, and Referral	A	3	Counseling, Guidance, and Referral	§856.42
A	3	§107.313	Physical Restoration Services	A	3	Physical Restoration Services	§856.43
A	3	§107.315	Mental Restoration Services	A	3	Mental Restoration Services	§856.44
A	3	§107.317	Vocational and Other Training Services	A	3	Vocational and Other Training Services	§856.45
A	3	§107.319	Maintenance	A	3	Maintenance	§856.46
A	3	§107.321	Transportation	A	3	Transportation	§856.47
A	3	§107.323	Interpreter Services for the Deaf and Hard of Hearing	A	3	Interpreter Services for the Deaf and Hard of Hearing	§856.48
A	3	§107.325	Job Development, Placement and Retention	A	3	Job Development, Placement and Retention	§856.49
A	3	§107.327	Post-Employment Services	A	3	Post-Employment Services	§856.50
A	3	§107.329	Occupational Licenses, Tools, Equipment, and Training Supplies	A	3	Occupational Licenses, Tools, Equipment, and Training Supplies	§856.51
A	3	§107.331	Individualized Plan for Employment (IPE)	A	3	Individualized Plan for Employment (IPE)	§856.52
A	3	§107.333	Consumers Determined to Have Achieved Employment Outcome	A	3	Consumers Determined to Have Achieved Employment Outcome	§856.53
A	Division 4. Consumer Participation			A	Division 4. Consumer Participation		
A	4	§107.407	Basic Living Requirements (BLR)	A	4	Basic Living Requirements (BLR)	§856.60
A	Division 5. Comparable Benefits			A	Division 5. Comparable Benefits		
A	5	§107.507	Comparable Services and Benefits	A	5	Comparable Services and Benefits	§856.70
A	5	§107.509	Availability of Comparable Services and Benefits	A	5	Availability of Comparable Services and Benefits	§856.71
A	Division 6. Methods of Administration of Vocational Rehabilitation			A	Division 6. Methods of Administration of Vocational Rehabilitation		
A	6	§107.607	Statewide Studies and Program Evaluation	A	6	Statewide Studies and Program Evaluation	§856.80
A	6	§107.609	Annual Evaluation	A	6	Annual Evaluation	§856.81

Current Rules – Department of Aging and Rehabilitative Services Title 40, Part 2				Duplicated Rules – Texas Workforce Commission Title 40, Part 20			
A	6	§107.611	Order of Selection	A	6	Order of Selection	§856.82
Chapter 391. Purchase of Goods and Services by the Texas Health and Human Services Commission				Chapter 857. Purchase of Goods and Services for Vocational Rehabilitation Services by Texas Workforce Commission			
Chapter 392. Purchase of Goods and Services for Specific Health and Human Services Commission Programs				Chapter 858. Vocational Rehabilitation Services Contract Management			
Subch	Div	Rule Number	Heading	Subch	Div	Heading	Rule Number
B		§391.205	Noncompetitive Procurement			Noncompetitive Procurement	§857.1
Subchapter D. DARS Contract Management Requirement				Subchapter D. Vocational Rehabilitation Services Contract Management Requirement			
D		§392.301	Purpose and Applicability	D		Purpose and Applicability	§858.1
D		§392.303	Definitions	D		Definitions	§858.2
D		§392.305	General Requirements for Contracting	D		General Requirements for Contracting	§858.3
D		§392.307	Complaints	D		Complaints	§858.4
D		§392.309	Record Requirements	D		Record Requirements	§858.5
D		§392.311	Access to Contractor Facilities and Records	D		Access to Contractor Facilities and Records	§858.6
D		§392.313	Contract Monitoring	D		Contract Monitoring	§858.7
D		§392.315	Corrective Action Plan	D		Corrective Action Plan	§858.8
D		§392.317	Adverse Actions	D		Adverse Actions	§858.9
D		§392.319	Debarment and Suspension of Current and Potential Contractor Rights	D		Debarment and Suspension of Current and Potential Contractor Rights	§858.10
D		§392.321	Causes and Conditions of Debarment	D		Causes and Conditions of Debarment	§858.11
D		§392.323	Causes and Conditions of Suspension	D		Causes and Conditions of Suspension	§858.12
D		§392.325	Evidence for Debarment or Suspension	D		Evidence for Debarment or Suspension	§858.13
D		§392.327	Notice for Debarment or Suspension	D		Notice for Debarment or Suspension	§858.14
D		§392.329	Appeals	D		Appeals	§858.15
D		§392.331	Request for Reconsideration	D		Request for Reconsideration	§858.16

Review Of Agency Rules

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 76, Water Well Drillers and Pump Installers. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted by mail to Neta Lamas, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to *erule.comments@tdlr.texas.gov.* The deadline for comments is 30 days after publication in the *Texas Register.*

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rules Section of the *Texas Register.* The proposed rules will be open for public comment prior to final adoption or repeal by the Department in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§76.1 Purpose of Rules

§76.10 Definitions

§76.20 Licensing Requirements--General

§76.21 Requirements for Issuance of a Driller or Pump Installer License

§76.22 Applications for Licenses and Renewals

§76.23 Examinations

§76.24 License Renewal

§76.25 Continuing Education

§76.26 A Person Assisting Licensed Driller or Licensed Pump Installers

§76.27 Registration for Driller and/or Pump Installer Apprenticeship.

§76.28 Standards of Conduct--Apprentice and Supervising Licensee

§76.30 Exemptions

§76.62 Responsibilities of the Department--Injurious Water or Constituents

§76.65 Advisory Council

§76.70 Responsibilities of the Licensee--State Well Reports

§76.71 Responsibilities of the Licensee--Reporting Injurious Water or Constituents

§76.72 Responsibilities of the Licensee and Landowner--Well Drilling, Completion, Capping and Plugging

§76.73 Responsibilities of the Licensee--Standards of Completion for Public Water System Wells

§76.74 Responsibilities of the Licensee--Marking Vehicles and Equipment

§76.75 Responsibilities of the Licensee--Representations

§76.76 Responsibilities of the Licensee--Unauthorized Practice

§76.78 Responsibilities of the Licensee--Adherence to Manufacturer's Recommended Well Construction Materials and Equipment

§76.80 Fees

§76.90 Disciplinary Actions

§76.100 Technical Requirements--Locations and Standards of Completion for Wells

§76.101 Technical Requirements--Standards of Completion for Water Wells Encountering Water Injurious to Vegetation, Land or Other Water

§76.102 Technical Requirements--Standards for Wells Producing Water Injurious to Vegetation, Land or Other Water

§76.103 Technical Requirements--Re-completions

§76.104 Technical Requirements--Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Injurious Water Zones

§76.105 Technical Requirements--Standards for Water Wells (Drilled before June 1, 1983)

§76.106 Technical Requirements--Water Distribution and Delivery Systems

§76.107 Technical Requirements--Chemical Injection, Chemigation, and Foreign Substance Systems

§76.108 Technical Requirements--Pump Installation

§76.109 Technical Requirements--Variances--Alternative Procedures

§76.110 Appeals--Variances

§76.111 Memorandum of Understanding between the Texas Department of Licensing and Regulation and the Texas Commission on Environmental Quality

TRD-201604224

William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: August 17, 2016

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 7 TAC §25.3(c)(2)(B)

Cash Advance Items not included in Guaranteed Services & Merchandise.

To use this form: You must reproduce the narrative of this form exactly as written and place it on the bottom of PAGE ONE of the contract. The form is in Arial 9pt fonts.

Unless specified in the Guaranteed Services and Merchandise itemized ABOVE, the Provider will charge and require payment for any of these items shown below, which may be selected at the time of the funeral.

Initial here to confirm You have read this: ☐

Embalming Due to Autopsy
Embalming Due to Organ/Tissue Donor
Funeral Home Overtime Fees (e.g. holiday service)
Donation of Body to Hospital/Medical School
Special-need Cosmetic Procedures
Unforeseen Expenses

Cemetery Set-up (tent-chairs-carpet)
Cemetery Opening/Closing Fee
Cemetery Property
Cemetery Overtime Fees
Crematory Fees
Outside Facility Rental

Clergy Honorarium
Death Certificates
Flowers
Newspaper Notices
Musicians and Singers
Police Escorts
Public Transportation

Figure: 7 TAC §85.413(e)(6)

Pledgor Disclosure:
Lost or Damaged Goods

You have attempted to claim your pledged goods or to renew or extend your loan. Your pledged goods have been lost or damaged by the pawnshop.

- The pawnshop is required to repair or replace your lost or damaged item. Replacements are required to be with a like kind item. Repair of a damaged item shall return the item to the condition in which it was received by the pawnshop. A pawnshop may, but is not required to, offer you a cash settlement as an alternative.

- Do NOT pay the pawnshop until your item or an acceptable replacement item is available. No additional pawn service charge will be added beyond today, when you attempted to redeem, renew, or extend your loan.

- You may file a complaint with the Office of Consumer Credit Commissioner. A complaint form is available at: http://occc.texas.gov/consumers/complaint-resolution

- All replacements of pledged goods are subject to review by the Office of Consumer Credit Commissioner if you believe that a review is necessary for an equitable settlement. If you cannot reach a suitable settlement with the pawnshop, you must seek the Commissioner's review before pursuing a remedy in court. If the Commissioner does not approve a replacement before the 91st day after the date the Commissioner receives your complaint concerning the lost or damaged goods, or if you do not accept the Commissioner's determination, you may seek a remedy in court.

- If multiple items are pledged on a single loan, some of the items may be redeemed. The pawnshop may negotiate for a partial payment to redeem the balance of the pledged goods.

Office of Consumer Credit Commissioner

2601 N. Lamar Blvd.
Austin, TX 78705
occc.texas.gov
consumer.complaints@occc.texas.gov

(800) 538-1579 — Consumer Helpline
(512) 936-7600 — Phone
(512) 936-7610 — Fax

Figure: 19 TAC §109.1001(e)(2)

School FIRST - Rating Worksheet Dated August 2016 for Rating Year 2015-2016

Fiscal Year Ended June 30, ____, or August 31, ____

County-District # _____-_____

School District Name: _____

Indicator number	School FIRST: 2015-2016 Rating based on Fiscal Year 2015 data	Select the appropriate box below	
	Critical Indicators	**Pass**	**Fail**
1	Was the complete annual financial report (AFR) and data submitted to the TEA within 30 days of the November 27 or January 28 deadline depending on the school district's fiscal year end date of June 30 or August 31, respectively?	Yes	No
2	Review the AFR for an unmodified opinion and material weaknesses. The school district must pass 2.A to pass this indicator. The school district fails indicator number 2 if it responds "No" to indicator 2.A. or to both indicators 2.A **and** 2.B.		
2.A	Was there an unmodified opinion in the AFR on the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.)	Yes	No
2.B	Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds? (The AICPA defines material weakness.)	Yes	No
3	Was the school district in compliance with the payment terms of all debt agreements at fiscal year end? (If the school district was in default in a prior fiscal year, an exemption applies in following years if the school district is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (= person, company, etc. that owes money) and their creditors, which includes a plan for paying back the debt.)	Yes	No
4	Did the school district make timely payments to the Teachers Retirement System (TRS), Texas Workforce Commission (TWC), Internal Revenue Service (IRS), and other government agencies?	Yes	No
5	Was the total unrestricted net asset balance (Net of the accretion of interest for capital appreciation bonds) in the governmental activities column in the Statement of Net Assets greater than zero? (If the school district's change of students in membership over 5 years was 10 percent or more, then the school district passes this indicator.)	Yes	No

	Solvency Indicators	Points
6	Was the number of days of cash on hand and current investments in the general fund for the school district sufficient to cover operating expenditures (excluding facilities acquisition and construction)? (See ranges below.)	10
7	Was the measure of current assets to current liabilities ratio for the school district sufficient to cover short-term debt? (See ranges below.)	10
8	Was the ratio of long-term liabilities to total assets for the school district sufficient to support long-term solvency? (If the school district's change of students in membership over 5 years was 10 percent or more, then the school district passes this indicator.) (See ranges below.)	10
9	Did the school district's general fund revenues equal or exceed expenditures (excluding facilities acquisition and construction)? If not, was the school district's number of days of cash on hand greater than or equal to 60 days?	10
10	Was the debt service coverage ratio sufficient to meet the required debt service? (See ranges below.)	10
11	Was the school district's administrative cost ratio equal to or less than the threshold ratio? (See ranges below.)	10
12	Did the school district **not** have a 15 percent decline in the students to staff ratio over 3 years (total enrollment to total staff)? (If the student enrollment did not decrease, the school district will automatically pass this indicator.)	10

	Financial Competence Indicators	Points
13	Did the comparison of Public Education Information Management System (PEIMS) data to like information in the school district's AFR result in a total variance of less than 3 percent of all expenditures by function?	10
14	Did the external independent auditor indicate the AFR was free of any instance(s) of material noncompliance for grants, contracts, and laws related to local, state, or federal funds? (The AICPA defines material noncompliance.)	10
15	Did the school district **not** receive an adjusted repayment schedule for more than one fiscal year for an overallocation of Foundation School Program (FSP) funds as a result of a financial hardship?	10

Maximum possible points	100

School FIRST Determination of Points

Indicator number	10	8	6	4	2	0
6	≥ 90	< 90 ≥ 75	< 75 ≥ 60	< 60 ≥ 45	< 45 ≥ 30	< 30
7	≥ 3	< 3 ≥ 2.5	< 2.5 ≥ 2	< 2 ≥ 1.5	< 1.5 ≥ 1	< 1
8	≤ 0.60	> 0.60 ≤ 0.70	> 0.70 ≤ 0.80	> 0.80 ≤ 0.90	> 0.90 ≤ 1.00	> 1.00
9	≥ 0%	10 points are awarded if the school district has at least 60 days cash on hand as determined in indicator #6.				< 0%
10	≥ 1.20	< 1.20 ≥ 1.15	< 1.15 ≥ 1.10	< 1.10 ≥ 1.05	< 1.05 ≥ 1.00	< 1.00

Indicator number	10	8	6	4	2	0
11	Threshold Ratio (based on ADA size)					
ADA Size						
10,000 and Above	≤ 0.0855	> 0.0855 ≤ 0.1105	> 0.1105 ≤ 0.1355	> 0.1355 ≤ 0.1605	> 0.1605 ≤ 0.1855	> 0.1855
5,000 to 9,999	≤ 0.1000	> 0.1000 ≤ 0.1250	> 0.1250 ≤ 0.1500	> 0.1500 ≤ 0.1750	> 0.1750 ≤ 0.2000	> 0.2000
1,000 to 4,999	≤ 0.1151	> 0.1151 ≤ 0.1401	> 0.1401 ≤ 0.1651	> 0.1651 ≤ 0.1901	> 0.1901 ≤ 0.2151	> 0.2151
500 to 999	≤ 0.1311	> 0.1311 ≤ 0.1561	> 0.1561 ≤ 0.1811	> 0.1811 ≤ 0.2061	> 0.2061 ≤ 0.2311	> 0.2311
Less than 500	≤ 0.2404	> 0.2404 ≤ 0.2654	> 0.2654 ≤ 0.2904	> 0.2904 ≤ 0.3154	> 0.3154 ≤ 0.3404	> 0.3404
Sparse	≤ 0.3364	> 0.3364 ≤ 0.3614	> 0.3614 ≤ 0.3864	> 0.3864 ≤ 0.4114	> 0.4114 ≤ 0.4364	> 0.4364

Indicator number	10	0
12	Yes	No
13	Yes	No
14	Yes	No
15	Yes	No

Determination of School District Rating	
Did the school district fail any of the critical indicators 1, 3, 4, 5, or 2.A? If so, the school district's rating is F for Substandard Achievement regardless of points earned.	
Determine the rating by the applicable number of points.	**Points**
A = Superior	70 through 100
B = Above Standard	50 through 69
C = Meets Standard	31 through 49
F = Substandard Achievement *(The school district receives an F if it scores below the minimum passing score, if it failed any critical indicator 1, 3, 4, 5, or 2.A, if the AFR or the data were not both complete, or if either the AFR or the data were not submitted on time for FIRST analysis.)*	0 through 30
No Rating = A school district receiving territory that annexes with a school district ordered by the commissioner under TEC 13.054, or consolidation under Subchapter H, Chapter 41. No rating will be issued for the school district receiving territory until the third year after the annexation/consolidation.	

For questions, call Financial Accountability at (512) 463-9095
Completed by _____

19 TAC §109.1001(e)(2)

School FIRST - Rating Worksheet Calculations Dated August 2016 for Rating Year 2015-2016		
	Indicator	**Calculation Defined**
1	Was the complete annual financial report (AFR) and data submitted to the TEA within 30 days of the November 27 or January 28 deadline depending on the school district's fiscal year end date of June 30 or August 31, respectively?	No Calculation Involved
2	Review the AFR for an unmodified opinion and material weaknesses. The school district must pass 2.A to pass this indicator. The school district fails indicator number 2 if it responds "No" to indicator 2.A. or to both indicators 2.A and 2.B.	The school district must pass 2.A
2.A	Was there an unmodified opinion in the AFR on the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.)	No Calculation Involved
2.B	Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds? (The AICPA defines material weakness.)	No Calculation Involved
3	Was the school district in compliance with the payment terms of all debt agreements at fiscal year end? (If the school district was in default in a prior fiscal year, an exemption applies in following years if the school district is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (= person, company, etc. that owes money) and their creditors, which includes a plan for paying back the debt.)	No Calculation Involved
4	Did the school district make timely payments to the Teachers Retirement System (TRS), Texas Workforce Commission (TWC), Internal Revenue Service (IRS), and other government agencies? (Payments to the TRS and TWC are considered timely if a warrant hold that was issued in connection to the untimely payment was cleared within 30 days from the date the warrant hold was issued.)	For TRS and TWC, if not cleared within 30 days. For the IRS and other governmental agencies there is no calculation involved. The agency will use the AFR, warrant holds, information from the IRS and other sources to make a determinations of timely payments.
5	Was the total unrestricted net asset balance (Net of the accretion of interest for capital appreciation bonds) in the governmental activities column in the Statement of Net Assets greater than zero? (If the school district's change of students in membership over 5 years was 10 percent or more, then the school district passes this indicator.)	$(A - B) / B \geq C$ OR $(D + E + F) > 0$, where A = Number of students in membership in year 5 from base year; B = Number of students in membership in base year; C = Threshold for 5 year percent change in students in membership, which = 10%; D = Total unrestricted net asset balance in the governmental activities column in Exhibit A-1 (Statement of Net Assets) in the annual financial report; E = Accretion of interest for capital appreciation bonds; F = Pension Expense and Net Pension Liability (NPL), as applicable
6	Was the number of days of cash on hand and current investments in the general fund for the school district sufficient to cover operating expenditures (excluding facilities acquisition and construction)?	$[(A + B) / (C - D)] * 365$, where A = Cash & Equivalents; B = Current Investments; C = Total Expenditures; D = Facilities Acquisition and Construction
7	Was the measure of current assets to current liabilities ratio for the school district sufficient to cover short-term debt?	A / B, where A = Current Assets B = Current Liabilities

8	Was the ratio of long-term liabilities to total assets for the school district sufficient to support long-term solvency? (If the school district's change of students in membership over 5 years was 10 percent or more, then the school district passes this indicator.)	A - B / C, where A = Long Term Liabilities B = Pension Expense and NPL, as applicable C = Total Assets
9	Did the school district's general fund revenues equal or exceed expenditures (excluding facilities acquisition and construction)? If not, was the school district's number of days of cash on hand greater than or equal to 60 days?	[A / (B - C) - 1] > 0, where A = Total Revenue B = Total Expenditures C = Facilities Acquisition and Construction
10	Was the debt service coverage ratio sufficient to meet the required debt service?	(A - B + C + D + E) /C, where A = Total Revenue; B = Total Expenditures; C = Debt Service (function codes 71, 72, and 73) D = Fund Code 599 (Debt Service fund balance) E = Capital Outlay (function code 81)
11	Was the school district's administrative cost ratio equal to or less than the threshold ratio?	A > B, where A = Acceptable administrative cost ratio; B = Administrative cost ratio of the school district, which = (sum of amounts for function codes 21 and 41) / (sum of amounts for function codes 11, 12, 13, and 31) *Includes object codes 61XX-64XX in fund code 199, except 6144
12	Did the school district **not** have a 15 percent decline in the students to staff ratio over 3 years (total enrollment to total staff)? (If the student enrollment did not decrease, the school district will automatically pass this indicator.)	(A / B) - 1 > -0.15 or C - D > 0, where A = Student to Staff ratio in the year under review; B = Student to Staff ratio 3 years prior to the year under review; C = Enrollment in year under review; D = Enrollment 3 years prior to the year under review
13	Did the comparison of Public Education Information Management System (PEIMS) data to like information in the school district's AFR result in a total variance of less than 3 percent of all expenditures by function?	(A / B) < C, where A = Sum of the absolute values of all differences in expenditures (determined by function) between Exhibit C-2 (Statement of Revenues, Expenditures, and Changes in Fund Balance) and PEIMS, by function in Fund Code 199; B = Sum of expenditures in PEIMS by function in fund code 199; C = Threshold level variance, which = 3%
14	Did the external independent auditor indicate the AFR was free of any instance(s) of material noncompliance for grants, contracts, and laws related to local, state, or federal funds? (The AICPA defines material noncompliance.)	No Calculation Involved
15	Did the school district **not** receive an adjusted repayment schedule for more than one fiscal year for an overallocation of Foundation School Program (FSP) funds as a result of a financial hardship?	No Calculation Involved

Figure: 19 TAC §109.1001(e)(3)

School FIRST - Rating Worksheet Dated August 2016 for Rating Year 2016-2017

Fiscal Year Ended June 30, ____, or August 31, ____

County-District # _____-_____

School District Name: _____

Indicator number	School FIRST: 2016-2017 Rating based on Fiscal Year 2016 data	Select the appropriate box below	
	Critical Indicators	**Pass**	**Fail**
1	Was the complete annual financial report (AFR) and data submitted to the TEA within 30 days of the November 27 or January 28 deadline depending on the school district's fiscal year end date of June 30 or August 31, respectively?	Yes	No
2	Review the AFR for an unmodified opinion and material weaknesses. The school district must pass 2.A to pass this indicator. The school district fails indicator number 2 if it responds "No" to indicator 2.A. or to both indicators 2.A **and** 2.B.		
2.A	Was there an unmodified opinion in the AFR on the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.)	Yes	No
2.B	Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds? (The AICPA defines material weakness.)	Yes	No
3	Was the school district in compliance with the payment terms of all debt agreements at fiscal year end? (If the school district was in default in a prior fiscal year, an exemption applies in following years if the school district is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (= person, company, etc. that owes money) and their creditors, which includes a plan for paying back the debt.)	Yes	No
4	Did the school district make timely payments to the Teachers Retirement System (TRS), Texas Workforce Commission (TWC), Internal Revenue Service (IRS), and other government agencies?	Yes	No
5	Was the total unrestricted net asset balance (Net of the accretion of interest for capital appreciation bonds) in the governmental activities column in the Statement of Net Assets greater than zero? (If the school district's change of students in membership over 5 years was 10 percent or more, then the school district passes this indicator.)	Yes	No

	Solvency Indicators	Points
6	Was the number of days of cash on hand and current investments in the general fund for the school district sufficient to cover operating expenditures (excluding facilities acquisition and construction)? (See ranges below.)	10
7	Was the measure of current assets to current liabilities ratio for the school district sufficient to cover short-term debt? (See ranges below.)	10
8	Was the ratio of long-term liabilities to total assets for the school district sufficient to support long-term solvency? (If the school district's change of students in membership over 5 years was 10 percent or more, then the school district passes this indicator.) (See ranges below.)	10
9	Did the school district's general fund revenues equal or exceed expenditures (excluding facilities acquisition and construction)? If not, was the school district's number of days of cash on hand greater than or equal to 60 days?	10
10	Was the debt service coverage ratio sufficient to meet the required debt service? (See ranges below.)	10
11	Was the school district's administrative cost ratio equal to or less than the threshold ratio? (See ranges below.)	10
12	Did the school district **not** have a 15 percent decline in the students to staff ratio over 3 years (total enrollment to total staff)? (If the student enrollment did not decrease, the school district will automatically pass this indicator.)	10

	Financial Competence Indicators	Points
13	Did the comparison of Public Education Information Management System (PEIMS) data to like information in the school district's AFR result in a total variance of less than 3 percent of all expenditures by function?	10
14	Did the external independent auditor indicate the AFR was free of any instance(s) of material noncompliance for grants, contracts, and laws related to local, state, or federal funds? (The AICPA defines material noncompliance.)	10
15	Did the school district **not** receive an adjusted repayment schedule for more than one fiscal year for an overallocation of Foundation School Program (FSP) funds as a result of a financial hardship?	10

Maximum possible points	100

School FIRST Determination of Points

Indicator number	10	8	6	4	2	0
6	≥ 90	< 90 ≥ 75	< 75 ≥ 60	< 60 ≥ 45	< 45 ≥ 30	< 30
7	≥ 3	< 3 ≥ 2.5	< 2.5 ≥ 2	< 2 ≥ 1.5	< 1.5 ≥ 1	< 1
8	≤ 0.60	> 0.60 ≤ 0.70	> 0.70 ≤ 0.80	> 0.80 ≤ 0.90	> 0.90 ≤ 1.00	> 1.00
9	≥ 0%	10 points are awarded if the school district has at least 60 days cash on hand as determined in indicator #6.				< 0%
10	≥ 1.20	< 1.20 ≥ 1.15	< 1.15 ≥ 1.10	< 1.10 ≥ 1.05	< 1.05 ≥ 1.00	< 1.00

Indicator number	10	8	6	4	2	0
11	Threshold Ratio (based on ADA size)					
ADA Size						
10,000 and Above	≤ 0.0855	> 0.0855 ≤ 0.1105	> 0.1105 ≤ 0.1355	> 0.1355 ≤ 0.1605	> 0.1605 ≤ 0.1855	> 0.1855
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Less than 500	≤ 0.2404	> 0.2404 ≤ 0.2654	> 0.2654 ≤ 0.2904	> 0.2904 ≤ 0.3154	> 0.3154 ≤ 0.3404	> 0.3404
Sparse	≤ 0.3364	> 0.3364 ≤ 0.3614	> 0.3614 ≤ 0.3864	> 0.3864 ≤ 0.4114	> 0.4114 ≤ 0.4364	> 0.4364

Indicator number	10	0
12	Yes	No
13	Yes	No
14	Yes	No
15	Yes	No

Determination of School District Rating	
Did the school district fail any of the critical indicators 1, 3, 4, 5, or 2.A? If so, the school district's rating is F for Substandard Achievement regardless of points earned.	
Determine the rating by the applicable number of points.	**Points**
A = Superior	70 through 100
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F = Substandard Achievement *(The school district receives an F if it scores below the minimum passing score, if it failed any critical indicator 1, 3, 4, 5, or 2.A, if the AFR or the data were not both complete, or if either the AFR or the data were not submitted on time for FIRST analysis.)*	0 through 30
No Rating = A school district receiving territory that annexes with a school district ordered by the commissioner under TEC 13.054, or consolidation under Subchapter H, Chapter 41. No rating will be issued for the school district receiving territory until the third year after the annexation/consolidation.	

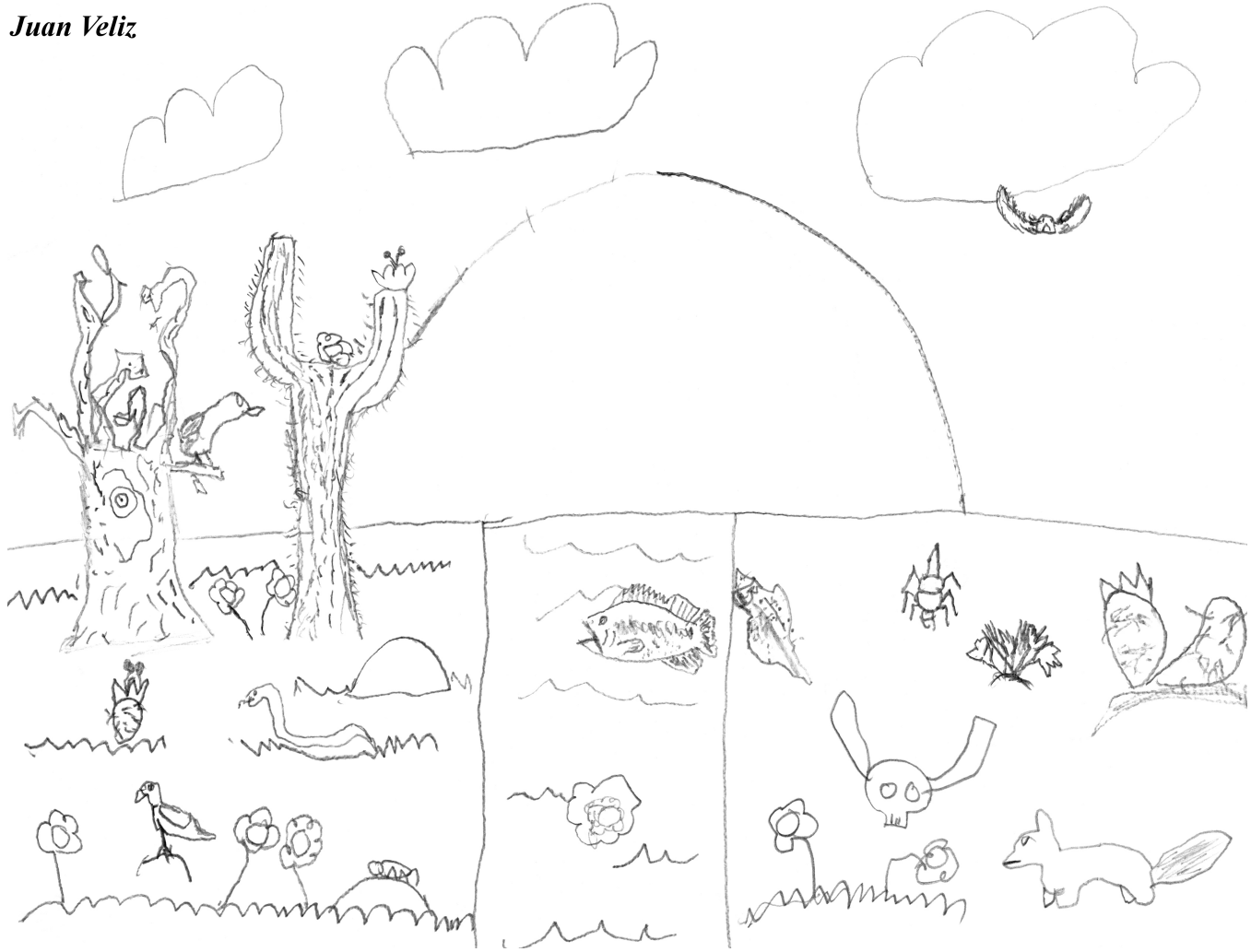
For questions, call Financial Accountability at (512) 463-9095
Completed by _____

19 TAC §109.1001(e)(3)

School FIRST - Rating Worksheet Calculations Dated August 2016 for Rating Year 2016-2017		
	Indicator	**Calculation Defined**
1	Was the complete annual financial report (AFR) and data submitted to the TEA within 30 days of the November 27 or January 28 deadline depending on the school district's fiscal year end date of June 30 or August 31, respectively?	No Calculation Involved
2	Review the AFR for an unmodified opinion and material weaknesses. The school district must pass 2.A to pass this indicator. The school district fails indicator number 2 if it responds "No" to indicator 2.A. or to both indicators 2.A and 2.B.	The school district must pass 2.A
2.A	Was there an unmodified opinion in the AFR on the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.)	No Calculation Involved
2.B	Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds? (The AICPA defines material weakness.)	No Calculation Involved
3	Was the school district in compliance with the payment terms of all debt agreements at fiscal year end? (If the school district was in default in a prior fiscal year, an exemption applies in following years if the school district is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (= person, company, etc. that owes money) and their creditors, which includes a plan for paying back the debt.)	No Calculation Involved
4	Did the school district make timely payments to the Teachers Retirement System (TRS), Texas Workforce Commission (TWC), Internal Revenue Service (IRS), and other government agencies? (Payments to the TRS and TWC are considered timely if a warrant hold that was issued in connection to the untimely payment was cleared within 30 days from the date the warrant hold was issued.)	For TRS and TWC, if not cleared within 30 days. For the IRS and other governmental agencies there is no calculation involved. The agency will use the AFR, warrant holds, information from the IRS and other sources to make a determinations of timely payments.
5	Was the total unrestricted net asset balance (Net of the accretion of interest for capital appreciation bonds) in the governmental activities column in the Statement of Net Assets greater than zero? (If the school district's change of students in membership over 5 years was 10 percent or more, then the school district passes this indicator.)	(A - B) / B ≥ C OR (D + E + F) > 0, where A = Number of students in membership in year 5 from base year; B = Number of students in membership in base year; C = Threshold for 5 year percent change in students in membership, which = 10%; D = Total unrestricted net asset balance in the governmental activities column in Exhibit A-1 (Statement of Net Assets) in the annual financial report; E = Accretion of interest for capital appreciation bonds; F = Pension Expense and Net Pension Liability (NPL), as applicable
6	Was the number of days of cash on hand and current investments in the general fund for the school district sufficient to cover operating expenditures (excluding facilities acquisition and construction)?	[(A + B) / (C - D)] * 365, where A = Cash & Equivalents; B = Current Investments; C = Total Expenditures; D = Facilities Acquisition and Construction
7	Was the measure of current assets to current liabilities ratio for the school district sufficient to cover short-term debt?	A / B, where A = Current Assets B = Current Liabilities

8	Was the ratio of long-term liabilities to total assets for the school district sufficient to support long-term solvency? (If the school district's change of students in membership over 5 years was 10 percent or more, then the school district passes this indicator.)	A - B / C, where A = Long Term Liabilities B = Pension Expense and NPL, as applicable C = Total Assets
9	Did the school district's general fund revenues equal or exceed expenditures (excluding facilities acquisition and construction)? If not, was the school district's number of days of cash on hand greater than or equal to 60 days?	[A / (B - C) - 1] > 0, where A = Total Revenue B = Total Expenditures C = Facilities Acquisition and Construction
10	Was the debt service coverage ratio sufficient to meet the required debt service?	(A - B + C + D + E) /C, where A = Total Revenue; B = Total Expenditures; C = Debt Service (function codes 71, 72, and 73) D = Fund Code 599 (Debt Service fund balance) E = Capital Outlay (function code 81)
11	Was the school district's administrative cost ratio equal to or less than the threshold ratio?	A > B, where A = Acceptable administrative cost ratio; B = Administrative cost ratio of the school district, which = (sum of amounts for function codes 21 and 41) / (sum of amounts for function codes 11, 12, 13, and 31) *Includes object codes 61XX-64XX in fund code 199, except 6144
12	Did the school district **not** have a 15 percent decline in the students to staff ratio over 3 years (total enrollment to total staff)? (If the student enrollment did not decrease, the school district will automatically pass this indicator.)	(A / B) - 1 > -0.15 or C - D > 0, where A = Student to Staff ratio in the year under review; B = Student to Staff ratio 3 years prior to the year under review; C = Enrollment in year under review; D = Enrollment 3 years prior to the year under review
13	Did the comparison of Public Education Information Management System (PEIMS) data to like information in the school district's AFR result in a total variance of less than 3 percent of all expenditures by function?	(A / B) < C, where A = Sum of the absolute values of all differences in expenditures (determined by function) between Exhibit C-2 (Statement of Revenues, Expenditures, and Changes in Fund Balance) and PEIMS, by function in Fund Code 199; B = Sum of expenditures in PEIMS by function in fund code 199; C = Threshold level variance, which = 3%
14	Did the external independent auditor indicate the AFR was free of any instance(s) of material noncompliance for grants, contracts, and laws related to local, state, or federal funds? (The AICPA defines material noncompliance.)	No Calculation Involved
15	Did the school district **not** receive an adjusted repayment schedule for more than one fiscal year for an overallocation of Foundation School Program (FSP) funds as a result of a financial hardship?	No Calculation Involved

Juan Veliz



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Biofuel Infrastructure Partnership Request for Applications

Statement of Purpose and Authority

Pursuant to Texas Agriculture Code, §12.002, the Texas Department of Agriculture (TDA) hereby requests applications for the Biofuel Infrastructure Partnership designed to increase consumption of biofuel in the form of ethanol. The Biofuel Infrastructure Partnership (BIP) is authorized under Sections 5(b) and 5(e) of the Commodity Credit Corporation (CCC) Charter Act (15 U.S.C. 714c(b) and 714c(e)).

Eligibility

Texas is seeking additional fueling station partners to expand the infrastructure for renewable fuels derived from agricultural products produced in the United States. Each grant will fund a portion of the costs related to the installation of fuel pumps and related infrastructure dedicated to the distribution of higher ethanol blends, for example "E15" and "E85," at vehicle fueling locations, including, but not limited to, local fueling stations, convenience stores (CS), hypermarket fueling stations (HFS), or fleet facilities in Texas.

Funding Parameters

Applications must be complete and have all required documentation to be considered. Applications missing documentation or otherwise deemed incomplete will not be considered for funding until sufficient information has been received by TDA within a timeframe set forth by the agency.

Federal funds made available under BIP may only be used for infrastructure to support higher ethanol blend utilization, including:

Blender pumps that can dispense a range of ethanol blends including E85 (new pumps or retrofit of existing pumps), capped at 50 percent federal share per pump;

Dedicated E15 or E85 pumps (new pumps or retrofit of existing pumps), capped at 50 percent federal share per pump; and

New storage tanks and related equipment associated with new facilities or additional capacity (replacement is not included), capped at 25 percent federal share per tank.

Application Requirements

Applications must be submitted on the form provided by TDA. The application is available on TDA's website at *www.TexasAgriculture.gov,* under the "Grants & Services" tab, Biofuel Infrastructure Partnership program web page, or available upon request from TDA by calling (512) 463-6616.

Deadline for Submission of Responses

Applications must be submitted electronically via email to *Grants@TexasAgriculture.gov.*

Applicants must submit one complete, signed application. Applications will be accepted until all funds made available through USDA have been allocated.

For questions regarding submission of the proposal and/or TDA requirements, please contact TDA's Grants Office, at (512) 463-6616, or by email at *Grants@TexasAgriculture.gov.*

TRD-201604362
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Filed: August 24, 2016

♦ ♦ ♦

Comptroller of Public Accounts

Notice of Contract Awards

Pursuant to Chapter 403, Chapter 2254, Subchapter A of the Texas Government Code, and Chapter 111, Subchapter A, §111.0045 of the Texas Tax Code, Texas Comptroller of Public Accounts ("Comptroller") announces this notice of contract awards.

Comptroller's Request for Qualifications 216d ("RFQ") related to these contract awards was published in the April 8, 2016, issue of *Texas Register* (41 TexReg 2607).

The examiners will provide Professional Contract Examination Services as authorized by Subchapter A, Chapter 111, §111.0045 of the Texas Tax Code as described in the Comptroller's RFQ.

Comptroller announces that twenty-six (26) contracts were awarded as follows:

Fabian Avina, 1106 Knights Cross Drive, San Antonio, Texas 78258. Examinations will be assigned in $60,000 - $90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2016 through August 31, 2017 with two (2) one (1) year options to renew.

Marina Roy Buenaventura, CPA, 4042 Cheena Drive, Houston, Texas 77025-4702. Examinations will be assigned in $60,000 - $90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2016 through August 31, 2017 with two (2) one (1) year options to renew.

Jean Chan, 6119 Jereme Trail, Dallas, Texas 75252. Examinations will be assigned in $60,000 - $90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2016 through August 31, 2017 with two (2) one (1) year options to renew.

Cherise D. Collins, 17011 Driver Lane, Sugar Land, Texas 77498. Examinations will be assigned in $60,000 - $90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is

September 1, 2016 through August 31, 2017 with two (2) one (1) year options to renew.

D Smith Consulting, 418 Sonora Drive, Garland, Texas 75043. Examinations will be assigned in $60,000 - $90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2016 through August 31, 2017 with two (2) one (1) year options to renew.

Dibrell P. Dobbs dba State Tax Consulting Group, 2906 Timber Gardens Court, Arlington, Texas 76016. Examinations will be assigned in $60,000 - $90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2016 through August 31, 2017 with two (2) one (1) year options to renew.

Dana W. Foote, 8622 Upshur Lane, Houston, Texas 77064-5255. Examinations will be assigned in $60,000 - $90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2016 through August 31, 2017 with two (2) one (1) year options to renew.

Garrett State Tax Service, Inc., 2461 County Road 1342, Pittsburgh, Texas 75686. Examinations will be assigned in $60,000 - $90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2016 through August 31, 2017 with two (2) one (1) year options to renew.

Ramiro J. Garza, 913 Rio Grande Drive, Mission, Texas 78572. Examinations will be assigned in $60,000 - $90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2016 through August 31, 2017 with two (2) one (1) year options to renew.

Paul Hernandez, 1938 Crisfield Drive, Sugar Land, Texas 77479. Examinations will be assigned in $60,000 - $90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2016 through August 31, 2017 with two (2) one (1) year options to renew.

Terra Hillman, 1121 Hodges Street, Lake Charles, Louisiana 70601. Examinations will be assigned in $60,000 - $90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2016 through August 31, 2017 with two (2) one (1) year options to renew.

Stephanie (Clark) Jackson dba The Ann Group, 6618 Honeyridge Lane, San Antonio, Texas 78239. Examinations will be assigned in $60,000 - $90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2016 through August 31, 2017 with two (2) one (1) year options to renew.

Art Koenings, Jr., CPA, 15712 Spillman Ranch Loop, Austin, Texas 78738-6576. Examinations will be assigned in $60,000 - $90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2016 through August 31, 2017 with two (2) one (1) year options to renew.

Brenda Maldonado, 2095 Savannah Trail, Beaumont, Texas 77706. Examinations will be assigned in $60,000 - $90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2016 through August 31, 2017 with two (2) one (1) year options to renew.

Mario A. Mandujano, 1711 Ayleth Avenue, San Antonio, Texas 78213-3966. Examinations will be assigned in $60,000 - $90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2016 through August 31, 2017 with two (2) one (1) year options to renew.

Ronnie E. Marsh, 301 Gage Road, Big Sandy, Texas 75755. Examinations will be assigned in $60,000 - $90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2016 through August 31, 2017 with two (2) one (1) year options to renew.

Dan A. Northern, 2201 Woodland Hills Lane, Weatherford, Texas 76087. Examinations will be assigned in $60,000 - $90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2016 through August 31, 2017 with two (2) one (1) year options to renew.

Dora Irma Ortiz, 1200 South Calvin, Monahans, Texas 79756. Examinations will be assigned in $60,000 - $90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2016 through August 31, 2017 with two (2) one (1) year options to renew.

Wayne A. Powe, 5501 Independence Pkwy., Suite 107, Plano, Texas 75023. Examinations will be assigned in $60,000 - $90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2016 through August 31, 2017 with two (2) one (1) year options to renew.

Ruzicka-Reed Partnership, 1555 Glenhill Lane, Lewisville, Texas 75077. Examinations will be assigned in $60,000 - $90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2016 through August 31, 2017 with two (2) one (1) year options to renew.

Vernice Seriale, Jr., 11612 Cross Spring Drive, Pearland, Texas 77584. Examinations will be assigned in $60,000 - $90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is

September 1, 2016 through August 31, 2017 with two (2) one (1) year options to renew.

Stacie G. Sims, CPA, 205 Rolling Hill Drive, La Grange, Texas 78945. Examinations will be assigned in $60,000 - $90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2016 through August 31, 2017 with two (2) one (1) year options to renew.

Stites Pybus, LLC, 2925 Cuero Cove, Round Rock, Texas 78681. Examinations will be assigned in $60,000 - $90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2016 through August 31, 2017 with two (2) one (1) year options to renew.

Sullivan State Tax Group, LLC, 4530 Brookren Court, Pearland, Texas 77584-8690. Examinations will be assigned in $60,000 - $90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2016 through August 31, 2017 with two (2) one (1) year options to renew.

Paul D. Underwood, 6130 Coralridge Drive, Corpus Christi, Texas 78413. Examinations will be assigned in $60,000 - $90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2016 through August 31, 2017 with two (2) one (1) year options to renew.

Homer Max Wiesen, CPA, 1009 Panhandle Street, Denton, Texas 76201-2841. Examinations will be assigned in $60,000 - $90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2016 through August 31, 2017 with two (2) one (1) year options to renew.

The twenty-six (26) contracts above are the final awards that the Comptroller will make under this RFQ.

TRD-201604353
Cynthia Stapper
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: August 24, 2016

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/29/16 - 09/04/16 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/29/16 - 09/04/16 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 09/01/16 - 09/30/16 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 09/01/16 - 09/30/16 is 5.00% for commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201604323
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 23, 2016

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Deep East Texas Council of Governments

Vacant Lots for Sale by Sealed Bid

Deep East Texas Council of Governments and Economic Development District

210 Premier Drive, Jasper, Texas 75951, (409) 384-5704, Fax (409) 384-5390, TDD (409) 384-5975

VACANT LOTS FOR SALE BY SEALED BID

DEADLINE FOR RECEIVING BIDS: SEPTEMBER 15, 2016, AT 9:00 A.M.

The Deep East Texas Council of Governments (DETCOG) is soliciting sealed bids for the sale of four vacant lots. The lots are being sold individually. Bids should be mailed or delivered to: Sealed Bid for Lot, c/o Executive Director, Deep East Texas Council of Governments, 210 Premier Drive, Jasper, Texas 75951. Bids must be RECEIVED by 9:00 a.m. on September 15, 2016. Lots included in the sale are:

VACANT LOT LOCATED IN CITY OF NACOGDOCHES, TEXAS: 0.408 acre located at 2002 E. Main Street, Nacogdoches, Texas. Zoned B2 (General Business). Appraised value $16,000.00.

VACANT LOT LOCATED IN CITY OF DIBOLL, TEXAS: 0.215 acre located at 201 Pine Street, Diboll, Texas. Zoned residential. Appraised value $5,000.00.

VACANT LOT LOCATED IN CITY OF WOODVILLE, TEXAS: 0.82 acre located at 908 S. Pecan Street, Woodville, Texas. Zoned residential. Appraised value $4,500.00.

VACANT LOT LOCATED IN CITY OF JASPER, TEXAS: 0.395 acre located at 508 Dennis Drive, Jasper, Texas. Zoned residential. Appraised value $1,500.00.

TRD-201604354
Lonnie Hunt
Executive Director
Deep East Texas Council of Governments
Filed: August 24, 2016

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Texas Education Agency

Request for Applications (RFA) Concerning Generation Twenty-Two Open-Enrollment Charter Application (RFA #701-16-106)

Filing Authority. Texas Education Code, §12.101 and §12.152

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-16-106 from eligible entities to operate open-enrollment charter schools. Eligible entities include public institutions of higher education, private or independent institutions of higher education, organizations exempt from taxation under the Internal Revenue Code of 1986 (26 United States Code, §501(c)(3)), or governmental entities. At least one member of the governing board of the group requesting the charter must attend one required applicant information session. Sessions are scheduled for Tuesday, September 13, 2016, and Monday, September 19, 2016, in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494. Failure to attend one of the sessions will disqualify an applicant from submitting a complete application for an open-enrollment charter.

Description. The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter school offers flexibility and choice for educators, parents, and students. An approved open-enrollment charter school may be located in a facility of a commercial or nonprofit entity or in a school district facility. If the open-enrollment charter school is to be located in a school district facility, it must be operated under the terms established by the board of trustees or governing body of the school district in an agreement governing the relationship between the charter school and the district.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade levels as provided by the charter. An open-enrollment charter school must be nonsectarian in its programs, admissions, policies, employment practices, and all other operations and may not be affiliated with a sectarian school or religious institution. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in the Texas Education Code (TEC), §12.1056, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school or charter holder is immune from liability and suit to the same extent as a school district, and the employees and volunteers of the open-enrollment charter school or charter holder are immune from liability and suit to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability and suit to the same extent as a school district trustee. The TEC, §12.1057, states that an employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

Dates of Project. The completed application must be received by the TEA by 5:00 p.m. (Central Time), Monday, December 5, 2016, to be eligible for review.

Project Amount. The TEC, §12.106, specifies the following.

(a) Effective September 1, 2017, a charter holder is entitled to receive for the open-enrollment charter school funding under the TEC, Chapter 42, equal to the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a), to which the charter holder would be entitled for the school under the TEC, Chapter 42, if the school were a school district without a tier one local share for purposes of the TEC, §42.253.

(a-1) In determining funding for an open-enrollment charter school under subsection (a), adjustments under the TEC, §§42.102, 42.103, 42.104, and 42.105, are based on the average adjustment for the state.

(a-2) In addition to the funding provided by subsection (a), a charter holder is entitled to receive for the open-enrollment charter school enrichment funding under the TEC, §42.302, based on the state average tax effort.

The TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from the TEA or the commissioner of education in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. In addition, the TEC, Chapter 12, states that an open-enrollment charter school may not charge tuition and must admit students based on a lottery if more students apply for admission than can be accommodated. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. However, a charter school that specializes in the performing arts may require an applicant to audition. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, juvenile court adjudication, or a discipline problem under the TEC, Chapter 37, Subchapter A.

Selection Criteria. A complete description of selection criteria is included in the RFA.

The commissioner may approve open-enrollment charter schools as provided in the TEC, §12.101 and §12.152. There are currently 180 charters approved under the TEC, §12.101, and 6 charters approved under the TEC, §12.152. There is a cap of 255 charters approved under the TEC, §12.101, and no cap on the number of charters approved under the TEC, §12.152. The commissioner is scheduled to consider awards under RFA #701-16-106 in June 2017.

The commissioner may approve applicants to ensure representation of urban, suburban, and rural communities; various instructional settings; innovative programs; diverse student populations and geographic regions; and various eligible entities. The commissioner will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school. The commissioner may also consider the history of the sponsoring entity and the credentials and background of its board members. The commissioner may not award a charter to an entity that has within the preceding 10 years had a charter revoked, non-renewed, or surrendered. The commissioner will not consider an application submitted by an individual that is substantially related to an entity that has within the preceding 10 years had a charter revoked, non-renewed, or surrendered.

Requesting the Application. An application must be submitted under commissioner guidelines to be considered. A complete copy of the publication Generation Twenty-Two Open-Enrollment Charter Application (RFA #701-16-106), which includes an application and procedures, may be obtained on the TEA website at http://tea.texas.gov/Texas_Schools/Charter_Schools/.

Further Information. For clarifying information about the open-enrollment charter school application, contact the Division of Charter School Administration, Texas Education Agency, at (512) 463-9575 or *charterschools@tea.texas.gov.*

TRD-201604351

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: August 24, 2016

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Request for Applications (RFA) Concerning Public College or University Open-Enrollment Charter Guidelines and Application (RFA #701-16-107)

Filing Date. August 24, 2016

Filing Authority. Texas Education Code, §12.152

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-16-107 from eligible entities to operate open-enrollment charter schools. Eligible entities are limited to Texas public colleges or universities and Texas public junior colleges.

Representatives from the institution applying for a charter must attend one required applicant information session. Sessions are scheduled for Tuesday, September 13, 2016, and Monday, September 19, 2016, in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494. Failure to attend one of the sessions will disqualify an applicant from submitting a complete application for an open-enrollment charter. Representatives from the business, educational, financial, and legal offices of the college or university and any other persons involved in the design and planning of the proposed school should attend.

Description. The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter school offers flexibility and choice for educators, parents, and students. As stated in the Texas Education Code (TEC), §12.152, in matters related to location, a college, university, or junior college open-enrollment charter school may operate on a campus of the college, university, or junior college or at another location in any county in the state as deemed appropriate by the commissioner of education after considering the number of existing charters in the area and the needs of the community.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade levels as provided by the charter. A charter school must be non-sectarian in its programs, admissions, policies, employment practices, and all other operations and may not be affiliated with a sectarian school or religious institution. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in the TEC, §12.1056, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school or charter holder is immune from liability and suit to the same extent as a school district, and the employees and volunteers of the open-enrollment charter school or charter holder are immune from liability and suit to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability and suit to the same extent as a school district trustee. The TEC, §12.1057, states that an employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

Dates of Project. The completed application must be received by the TEA by 5:00 p.m. (Central Time), Monday, December 5, 2016, to be eligible for review.

Project Amount. The TEC, §12.106, specifies the following.

(a) Effective September 1, 2017, a charter holder is entitled to receive for the open-enrollment charter school funding under the TEC, Chapter 42, equal to the amount of funding per student in weighted average daily attendance, excluding enrichment funding under TEC, §42.302(a), to which the charter holder would be entitled for the school under the TEC, Chapter 42, if the school were a school district without a tier one local share for purposes of the TEC, §42.253.

(a-1) In determining funding for an open-enrollment charter school under subsection (a), adjustments under the TEC, §§42.102, 42.103, 42.104, and 42.105, are based on the average adjustment for the state.

(a-2) In addition to the funding provided by subsection (a), a charter holder is entitled to receive for the open-enrollment charter school enrichment funding under the TEC, §42.302, based on the state average tax effort.

The TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from the TEA or the commissioner in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding In addition, the TEC, Chapter 12, states that an open-enrollment charter school may not charge tuition and must admit students based on a lottery if more students apply for admission than can be accommodated. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. However, a charter school that specializes in the performing arts may require an applicant to audition. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, a juvenile court adjudication, or a discipline problem under the TEC, Chapter 37, Subchapter A.

Selection Criteria. A complete description of selection criteria is included in the RFA.

The commissioner may approve open-enrollment charter schools as provided in the TEC, §12.101 and §12.152. There is a cap of 255 charters approved under the TEC, §12.101, and no cap on the number of charters approved under the TEC, §12.152.

The commissioner of education will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school. The commissioner may not award a charter to an entity that has within the preceding 10 years had a charter revoked, non-renewed, or surrendered. The commissioner will not consider an application submitted by an individual that is substantially related to an entity that has within the preceding 10 years had a charter revoked, non-renewed, or surrendered.

Requesting the Application. An application must be submitted under commissioner guidelines to be considered. A complete copy of the publication *College or University Open-Enrollment Charter Application* (RFA #701-16-107), which includes an application and procedures, may be obtained on the TEA web-

site at http://tea.texas.gov/Texas_Schools/Charter_Schools/Charter_Schools_-_Subchapter_E_Charters/.

Further Information. For clarifying information about the open-enrollment charter school application, contact the Division of Charter School Administration, Texas Education Agency, at (512) 463-9575 or charterschools@tea.texas.gov.

TRD-201604350
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: August 24, 2016

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Request for Applications Concerning the 2016-2018 INDUSTRY CLUSTER NAME Innovative Academy--the Next Generation of Early College High Schools (ECHS) Grant

Filing Date. August 24, 2016

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-16-108 is authorized by the Texas Education Code, §29.908.

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-16-108 from all Texas independent school districts, public junior colleges, public technical institutes, and public universities. To be eligible for the 2016-2018 INDUSTRY CLUSTER NAME Innovative Academy Early College High School (ECHS) Grant, the eligible entity must demonstrate its capacity to provide students with opportunities to earn post-secondary course credit prior to high school graduation combined with applied learning opportunities in high-demand occupations within targeted industry clusters, including opportunities for internships, externships, apprenticeships, mentorship programs, and career counseling. Both existing ECHS campuses and new ECHS campuses are eligible for this grant funding.

Description. The 2016-2018 INDUSTRY CLUSTER NAME Innovative Academy ECHS Grant will support districts and charters in forming partnerships with business and industry to raise industry and career awareness and increase meaningful career and post-secondary programs that lead to opportunities in high-demand occupations.

Dates of Project. The 2016-2018 INDUSTRY CLUSTER NAME Innovative Academy ECHS Grant will be implemented beginning in the 2016-2017 school year. Applicants should plan for a starting date of no earlier than February 1, 2017, and an ending date of no later than August 31, 2018.

Project Amount. Approximately $7.2 million is available in state and federal funds for the 2016-2018 INDUSTRY CLUSTER NAME Innovative Academy ECHS Grant. This project is funded 42 percent from state funds and 58 percent from federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The announcement letter and complete RFA will be posted on the TEA website at http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Lauren Dwiggins, Texas Education Agency, (512) 463-9581. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in the Program Guidelines of the RFA. All questions and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), November 1, 2016, to be eligible to be considered for funding.

TRD-201604349
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: August 24, 2016

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is October 3, 2016. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas

78711-3087 and must be received by 5:00 p.m. on October 3, 2016. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: 5 STAR INNOVATIONS INCORPORATED dba Sunrise Grocery and AYNA INTERNATIONAL, LLC dba Sunrise Grocery; DOCKET NUMBER: 2016-0758-PST-E; IDENTIFIER: RN102408614; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $4,875; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: AMERICALF, LLC, Joe Mendes Borges, and Mary Francis Borges; DOCKET NUMBER: 2016-0766-AGR-E; IDENTIFIER: RN101519395; LOCATION: Lingleville, Erath County; TYPE OF FACILITY: dairy feed lot; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1) and §321.40(k)(3), and Texas Pollutant Discharge Elimination System Permit Number WQ0004208000, Part VII, Pollution Prevention Plan Requirements, §A.8.(c)(2), by failing to cease application of wastewater to a land management unit when extractable phosphorus levels were greater than 200 parts per million in zone one of a Land Management Unit and a Nutrient Utilization Plan had not been developed; PENALTY: $2,125; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Circle W RV Ranch LLC; DOCKET NUMBER: 2016-0648-PWS-E; IDENTIFIER: RN102320272; LOCATION: Rockport, Aransas County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(l)(4) and (5), by failing to comply with site specific design, operation, maintenance, and reporting requirements for an issued exception; 30 TAC §290.42(l), by failing to develop and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.43(c), (c)(1) and (3), by failing to provide a ground storage tank that is designed, fabricated, erected, tested, and disinfected, in strict accordance with American Water Works Association standards; 30 TAC §290.42(m) §290.43(e), and by failing to provide all ground storage tanks and pressure maintenance facilities in a lockable building or enclosed by an intruder-resistant fence with lockable gates; 30 TAC §290.43(d)(2), by failing to provide all pressure tanks with a pressure release device and an easily readable pressure gauge; 30 TAC §290.45(b)(1)(F)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a minimum well capacity of 0.6 gallons per minute per connection; 30 TAC §290.45(b)(1)(F)(ii) and THSC, §341.0315(c), by failing to provide a minimum storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(F)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.46(f)(2), (3)(A)(i)(III), (iii), and (B)(iii), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's two ground storage tanks annually; 30 TAC §290.46(m)(1)(B), by failing to inspect the facility's three pressure tanks annually; 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank at the facility; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a licensed water works operator who holds a Class D or higher license; and 30 TAC §290.110(d)(1), by failing to have the color comparator in a good working condition; PENALTY: $4,985; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(4) COMPANY: City of Hawk Cove; DOCKET NUMBER: 2015-0206-MWD-E; IDENTIFIER: RN104265848; LOCATION: Greenville, Hunt County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.0301(a), 30 TAC §30.350(d) and §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014522001, Other Requirements Number 1, by failing to employ or contract one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid license or registration; 30 TAC §305.125(1) and (5), and TPDES Permit Number WQ0014522001, Operational Requirements Number 1, by failing to ensure that the facility and all its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and TPDES Permit Number WQ0014522001, Monitoring and Reporting Requirements Number 7.c, by failing to report in writing effluent violations which deviate from the permitted limit by more than 40% to the TCEQ Dallas/Fort Worth Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance; 30 TAC §305.125(1) and TPDES Permit Number WQ0014522001, Other Requirements Number 10, by failing to notify the TCEQ Dallas/Fort Worth Regional Office as soon as becoming aware that the third party contract operator or operations company gives notice that it wishes to terminate that contract with the Respondent, or if for any reason the third party is no longer servicing the permitted facility; 30 TAC §305.125(1) and (9)(A) and TPDES Permit Number WQ0014522001, Monitoring and Reporting Requirements Numbers 7.a and 7.b(i), by failing to notify the TCEQ Dallas/Fort Worth Regional Office within 24 hours of becoming aware of any noncompliance, orally or by facsimile transmission and submit written notification of the noncompliance to the TCEQ Dallas/Fort Worth Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance; and TWC, §26.121(a)(2), 30 TAC §305.125(1) and (5), and TPDES Permit Number WQ0014522001, Permit Conditions Number 2.g and Operational Requirements Number 1, by failing to prevent the unauthorized discharge of other waste from the facility into or adjacent to water in the state; PENALTY: $44,850; Supplemental Environmental Project offset amount of $32,437; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of Kenedy; DOCKET NUMBER: 2016-0084-PWS-E; IDENTIFIER: RN101428274; LOCATION: Kenedy, Karnes County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3)(C) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.010 milligrams per liter for arsenic based on a running annual average; and 30 TAC §290.117(i)(6) and (j), by failing to mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failing to submit to the

TCEQ a copy of the consumer notification and certification that the consumer notification has been distributed to the persons served at the locations in a manner consistent with TCEQ requirements for the June 1, 2015 - September 30, 2015, monitoring period; PENALTY: $1,027; Supplemental Environmental Project offset amount of $1,027; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: City of Mount Vernon; DOCKET NUMBER: 2015-1326-MWD-E; IDENTIFIER: RN102962230; LOCATION: Mount Vernon, Franklin 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 WQ0011122002, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $10,650; Supplemental Environmental Project offset amount of $8,520; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: City of Olney; DOCKET NUMBER: 2016-0042-MLM-E; IDENTIFIER: RN101610335; LOCATION: Olney, Young County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (4), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010050001, Effluent Limitations and Monitoring Requirements Number 4, and Permit Conditions Number 2.d., by failing to prevent the discharge of sludge into or adjacent to any water in the state; 30 TAC §305.125(1) and TPDES Permit Number WQ0010050001, Monitoring and Reporting Requirements Number 5, by failing to accurately calibrate all automatic flow measuring or recording devices and all totalizing meters for measuring flows by a trained person at facility start-up and as often thereafter as necessary to ensure accuracy, but not less often than annually unless authorized by the executive director for a longer period; 30 TAC §305.125(1) and (11)(C), and §319.7(a), and TPDES Permit Number WQ0010050001, Monitoring and Reporting Requirements Number 3.c., by failing to properly record monitoring activities; 30 TAC §305.125(1) and §319.9(d), and TPDES Permit Number WQ0010050001, Monitoring and Reporting Requirements Number 1, by failing to follow quality assurance requirements for wastewater analyses; 30 TAC §305.125(1) and (17), and TPDES Permit Number WQ0010050001, Sludge Provisions, by failing to timely submit a complete annual sludge report for the monitoring period ending July 31, 2015; 30 TAC §210.36(a)(1)(C) and Authorization Number R 10050-001, Part V. Record Keeping and Reporting (a)(1)(C), by failing to maintain records of the volume of reclaimed water delivered to each reclaimed water user per delivery; and 30 TAC §305.125(1) and (9)(A) and TPDES Permit Number WQ0010050001, Monitoring and Reporting Requirements Number 7.c., by failing to report any effluent violation which deviates from the permitted effluent limitation by more than 40% in writing to the Abilene Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance; PENALTY: $12,700; Supplemental Environmental Project offset amount of $10,160; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(8) COMPANY: DANAM ENTERPRISES INCORPORATED dba Hildebrand Grocery; DOCKET NUMBER: 2016-0850-PST-E; IDENTIFIER: RN101851400; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator - Class A, Class B, and Class C for the Facility; PENALTY: $5,688; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: Downstream Environmental, L.L.C.; DOCKET NUMBER: 2016-0439-IWD-E; IDENTIFIER: RN101662617; LOCATION: Houston, Harris County; TYPE OF FACILITY: Type V grease and grit disposal plant; RULES VIOLATED: TWC, §26.121(a)(2) and 30 TAC §305.65 and §305.125(2), by failing to maintain authorization to treat and discharge storm water associated with industrial activities; PENALTY: $38,000; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Dynasty Enterprises, LLC; DOCKET NUMBER: 2016-0302-MLM-E; IDENTIFIER: RN101693547; LOCATION: Kenedy, Karnes County; TYPE OF FACILITY: fuel and lubricant retail store and warehouse; RULES VIOLATED: 30 TAC §324.1 and 40 Code of Federal Regulations (CFR) §279.22(c), by failing to mark or clearly label used oil storage containers with the words "Used Oil"; 30 TAC §324.7(3)(A), by failing to post and maintain a durable and legible sign identifying the site as a household used oil collection center; 30 TAC §334.75(a)(1) and §334.129(a), by failing to contain and immediately clean up a spill or overfill, report the spill or overfill to the agency within 24 hours and begin corrective action; 30 TAC §334.127(d), by failing to provide an amended registration for any change or additional information regarding the above ground storage tanks within 30 days from the date of occurrence of the change or addition; TWC, §26.121(a)(1) and 30 TAC §330.15(a)(1), by failing to not cause, suffer, allow, or permit the unauthorized disposal of diesel fuel into the environment; and 30 TAC §§335.62, 335.503(a), and 335.504 and 40 CFR §262.11, by failing to conduct hazardous waste determinations and waste classifications; PENALTY: $55,500; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: Evergreen A and F LLC dba Lucky Travel 2; DOCKET NUMBER: 2016-0879-PST-E; IDENTIFIER: RN101573392; LOCATION: Bridgeport, Wise County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(4) and TWC, §26.3475(d), by failing to ensure that corrosion protection is provided to all underground metal components of an underground storage tank (UST) system which are designed or used to convey, contain, or store regulated substances; 30 TAC §115.222(3) and Texas Health and Safety Code, §382.085(b), by failing to ensure no avoidable gasoline leaks, as detected by sight, sound, or smell exist anywhere in the liquid transfer or vapor balance system; 30 TAC §334.51(a)(6) and TWC, §26.3475(c)(2), by failing to ensure that all spill and overfill prevention devices are maintained in good operating condition; 30 TAC §334.48(a) and (b), by failing to ensure the UST system is operated, maintained, and managed in a manner that will prevent releases of regulated substances; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; PENALTY: $14,439; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Fritcher Utilities, LP; DOCKET NUMBER: 2016-1014-AIR-E; IDENTIFIER: RN107791733; LOCATION: Tyler, Smith County; TYPE OF FACILITY: rock crusher; RULES VIO-

LATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to operating a source of air contaminants; PENALTY: $1,625; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(13) COMPANY: Idalia Sanchez dba Blanco A and S; DOCKET NUMBER: 2016-0819-PST-E; IDENTIFIER: RN102260460; LOCATION: Von Ormy, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.605(a), by failing to ensure that a certified Class A and Class B operator is re-trained within three years of their last training date; PENALTY: $5,529; ENFORCEMENT COORDINATOR: Jessica Bland, (512) 239-4967; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: Jaguar Holdings, Incorporated; DOCKET NUMBER: 2016-0671-PWS-E; IDENTIFIER: RN106532989; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(b) and (f)(3)(C), and §290.122(b)(2)(B) and (f), and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.01 milligrams per liter for arsenic, based on the running annual average and failing to post public notification and submit a copy of the public notification to the executive director regarding an arsenic MCL violation; PENALTY: $172; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(15) COMPANY: James Construction Group, LLC; DOCKET NUMBER: 2016-1315-WQ-E; IDENTIFIER: RN109224907; LOCATION: Belton, Bell County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit for stormwater; PENALTY: $875; ENFORCEMENT COORDINATOR: Alex Laje, (512) 239-2547; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: Jim Chadwick dba Stone Zone Quarry; DOCKET NUMBER: 2016-0786-WQ-E; IDENTIFIER: RN107812240; LOCATION: Lueders, Haskill County; TYPE OF FACILITY: aggregate production operation; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities under Texas Pollutant Discharge Elimination System General Permit Number TXR050000; and TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of industrial wastewater into or adjacent to any water in the state; PENALTY: $1,626; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(17) COMPANY: Kolkhorst Petroleum Company dba Rattlers Country Store 6; DOCKET NUMBER: 2014-0873-PST-E; IDENTIFIER: RN101662484; LOCATION: Brenham, Washington County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; PENALTY: $12,600; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(18) COMPANY: Leonard Whitten dba B and L Portable Toilets; DOCKET NUMBER: 2016-0433-SLG-E; IDENTIFIER: RN103158838; LOCATION: Taylor, Williamson County; TYPE OF FACILITY: sludge transportation business; RULES VIOLATED: 30 TAC §312.142(d), by failing to renew the sludge transporter registration biennially; and 30 TAC §312.145(b)(4), by failing to submit to the executive director an annual summary of sludge transport activities; PENALTY: $13,779; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(19) COMPANY: LUBBOCK INVESTMENTS, LLC, A Nevada Corporation dba Pecan Grove Mobile Home Park; DOCKET NUMBER: 2016-0006-PWS-E; IDENTIFIER: RN102692167; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: mobile home park with a public water supply; RULES VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director (ED) each quarter by the tenth day of the month following the end of each and failing to provide public notification and submit a copy of the public notification to the ED; 30 TAC §290.117(c)(2)(C) and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites and submit the results to the ED for the January 1, 2011 - December 31, 2013, monitoring period; 30 TAC §290.117(c)(2)(B) and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required five sample sites and submit the results to the ED and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper samples; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect repeat coliform samples; and 30 TAC §290.122(b)(3)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to comply with the maximum contaminant level for arsenic and uranium; PENALTY: $4,071; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(20) COMPANY: Lubbock Reese Redevelopment Authority; DOCKET NUMBER: 2016-0476-PWS-E; IDENTIFIER: RN102595774; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(A), (h) and (i)(1) and 40 Code of Federal Regulations (CFR) §141.86 and §141.90(a), by failing to collect lead and copper tap samples at the required 20 sample sites; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director (ED) each quarter by the tenth day of the month following the end of each quarter; 30 TAC §290.117(e)(2), (h) and (i)(3) and §290.122(c)(2)(A) and (f) and 40 CFR §141.87 and §141.90(a), by failing to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample sites for two consecutive six-month periods following the January 1, 2014 - December 31, 2014,

monitoring period during which the lead action level was exceeded, have the samples analyzed, and report the results to the ED and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to conduct all of the required water quality parameter sampling; 30 TAC §290.117(d)(2)(A), (h) and (i)(2) and §290.122(c)(2)(A) and (f) and 40 CFR §141.88 and §141.90(b), by failing to collect one lead and copper sample from each of the facility's entry points no later than 180 days after the end of the January 1, 2014 - December 31, 2014, monitoring period during which the lead action level was exceeded, have the samples analyzed, and report the results to the ED and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to collect one lead and copper sample from each of the facility's entry points; 30 TAC §290.117(g)(2)(A) and §290.122(b)(2)(B) and (f) and 40 CFR §141.83 and §141.90(d)(1), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2014 - December 31, 2014, monitoring period during which the lead action level was exceeded and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for source water treatment; 30 TAC §290.117(f)(3)(A) and §290.122(b)(2)(B) and (f) and 40 CFR §§141.81(e)(1), 141.82(a), and 141.90(c)(2), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2014 - December 31, 2014, monitoring period during which the lead action level was exceeded and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for optimal corrosion control treatment; and 30 TAC §290.122(b)(2)(B) and (f), by failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to deliver the public education materials following the lead action level exceedance; PENALTY: $1,260; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(21) COMPANY: M AND S BROTHERS, INCORPORATED dba M AND S GROCERY; DOCKET NUMBER: 2016-0709-PST-E; IDENTIFIER: RN102230679; LOCATION: Orange, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(6) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit the Stage II vapor recovery system test results to the appropriate regional office within ten working days of the completion of the tests; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding the underground storage tanks within 30 days from the date of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition; and 30 TAC §115.242(d)(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system; PENALTY: $6,986; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 3870 Eastex Freeway Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: NEW BERNARD, LLC dba Churchill Grocery; DOCKET NUMBER: 2016-0432-PST-E; IDENTIFIER: RN101906204; LOCATION: Brazoria, Brazoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3) and §334.8(c)(4)(A) and (C), by failing to submit a properly completed underground storage tank (UST) registration and self-certification form and notify the agency of any changes; 30 TAC §334.50(b)(1)(A), (2)(A)(i)(III) and (ii), and (d)(1)(B) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month and failing to perform inventory control procedures and failing to test the line leak detectors at least once per year for performance and operational reliability and to test or monitor the pressurized lines for releases; 30 TAC §334.49(c)(2)(C) and (4)(C) and TWC, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure the rectifier and other system components are operating properly and failing to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class A, Class B, and Class C; PENALTY: $17,968; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: Pioneer Natural Resources USA, Incorporated; DOCKET NUMBER: 2016-0513-PWS-E; IDENTIFIER: RN106532179; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(d)(2)(A), (h), and (i)(2) and §290.122(c)(2)(B) and (f) and 40 Code of Federal Regulations (CFR) §141.88 and §141.90(b), by failing to collect one lead and copper sample from each of the facility's entry points no later than 180 days after the end of the January 1, 2015 - June 30, 2015, monitoring period during which the lead and copper action levels were exceeded, have the samples analyzed, and report the results to the executive director (ED) and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to collect one lead and copper sample from each of the facility's entry points; 30 TAC §290.117(g)(2)(A) and §290.122(b)(2)(B) and (f) and 40 CFR §141.83 and §141.90(d)(1), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2015 - June 30, 2015, monitoring period during which the lead and copper action levels were exceeded and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for source water treatment; and 30 TAC §290.117(f)(3)(A) and §290.122(b)(2)(B) and (f) and 40 CFR §§141.81(e)(1), 141.82(a), and 141.90(c)(2), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2015 - June 30, 2015, monitoring period during which the lead and copper action levels were exceeded and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for optimal corrosion control treatment; PENALTY: $250; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(24) COMPANY: Scott and White Healthcare dba Scott and White Memorial Hospital; DOCKET NUMBER: 2016-0873-PST-E; IDENTIFIER: RN100596634; LOCATION: Temple, Bell County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.602(a) and §334.606, by failing to designate at least

one Class C operator for the facility; PENALTY: $3,938; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(25) COMPANY: Tark Properties, LLC; DOCKET NUMBER: 2016-0782-EAQ-E; IDENTIFIER: RN109079012; LOCATION: Round Rock, Williamson County; TYPE OF FACILITY: commercial development site; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to initiating a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Caleb Olson, (512) 239-2541; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(26) COMPANY: TFA Management, LLC dba Shaver Food Mart; DOCKET NUMBER: 2016-0732-PST-E; IDENTIFIER: RN102371150; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator - Class A, Class B, and Class C for the facility; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: TIM ENTERPRISE, INCORPORATED; DOCKET NUMBER: 2016-0876-PWS-E; IDENTIFIER: RN101190262; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: convenience store; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of Well Number 1; and 30 TAC §290.41(c)(3)(O), by failing to protect the well with an intruder-resistant fence with a lockable gate or enclose the well in a locked, ventilated well house; PENALTY: $320; ENFORCEMENT COORDINATOR: Claudia Corrales, (512) 239-4935; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: U.S. Steel Tubular Products, Incorporated; DOCKET NUMBER: 2016-0990-PWS-E; IDENTIFIER: RN102955135; LOCATION: Lone Star, Morris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 milligrams per liter for haloacetic acids, based on the locational running annual average; PENALTY: $146; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-201604338
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 23, 2016

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Amended Notice of Hearing

BENEFICIAL LAND MANAGEMENT, L.L.C.

SOAH Docket No. 582-16-5474

TCEQ Docket No. 2016-0665-IWD

Permit No. WQ0004666000

APPLICATION.

Beneficial Land Management, L.L.C., P.O. Box 6870, San Antonio, Texas 78209, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal with changes of TCEQ Permit No. WQ0004666000, which authorizes the land application of Class B sewage sludge from a domestic wastewater treatment plant for beneficial use on 726.1 acres. The draft permit does not include an authorization for land application of sewage sludge mixed with grease and grit trap waste as requested by the applicant. This permit will not authorize a discharge of pollutants into water in the state. TCEQ received this application on December 5, 2011.

The sewage sludge land application site is located ten miles northwest of the City of Inez, on Farm-to-Market Road 444 and 2.5 miles northeast of the intersection of Karnes Road and Farm-to-Market Road 444, in Victoria County, Texas 77968. The sewage sludge land application site is located within the drainage basin of Lavaca Bay and Chocolate Bay in Segment No. 2453 of the Lavaca-Guadalupe Coastal Basin.

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 Victoria County Courthouse, County Clerk's Office, 115 North Bridge, Victoria, Texas. 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: *<http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=28.9875&lng=-96.843055&zoom=13&type=r>*. For the exact location, refer to the application.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. - September 27, 2016

Victoria County Courthouse

Commissioner's Courtroom - 2nd Floor

115 North Bridge Street

Victoria, Texas 77901

The contested case hearing 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 July 13, 2016. 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.

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 *http://www.tceq.texas.gov/*.

Further information may also be obtained from Beneficial Land Management, L.L.C. at the address stated above or by calling Mr. Carter Mayfield at (210) 828-0525.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: August 12, 2016

TRD-201604341
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 24, 2016

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Enforcement Orders

An agreed order was adopted regarding AZALI ENTERPRISES, L.L.C., Docket No. 2013-1292-WQ-E on August 24, 2016 assessing $14,519 in administrative penalties with $2,903 deferred.

Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was adopted regarding RGV Tire Recycling Group, LLC, Docket No. 2013-1973-MSW-E on August 24, 2016 assessing $44,888 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, 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 Mukhtar, Inc. dba Circle A Food Store, Docket No. 2014-0567-PST-E on August 24, 2016 assessing $26,725 in administrative penalties with $5,345 deferred.

Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Peaster Independent School District Public Facility Corporation, Docket No. 2014-1153-MWD-E on August 24, 2016 assessing $11,438 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, 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 S.B. INTERESTS, INC. d/b/a Time Out 1, Docket No. 2014-1510-PST-E on August 24, 2016 assessing $8,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Amber Ahmed, 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 City of Poth, Docket No. 2014-1727-MWD-E on August 24, 2016 assessing $9,425 in administrative penalties with $1,885 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Trident Environmental Resource Consulting, LLC, Docket No. 2015-0067-MSW-E on August 24, 2016 assessing $2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Amber Ahmed, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Edwin L. Carlisle d/b/a Crafton Mobile Home Park, Docket No. 2015-0165-PWS-E on August 24, 2016 assessing $946 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Amber Ahmed, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Jamie McCune, Docket No. 2015-0547-MLM-E on August 24, 2016 assessing $9,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Amber Ahmed, 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 SAHIL MANAGEMENT LTD. dba Shady Acres Trailer Park, Docket No. 2015-0723-PWS-E on August 24, 2016 assessing $3,841 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Solvay Specialty Polymers USA, L.L.C., Docket No. 2015-0989-WDW-E on August 24, 2016 assessing $11,138 in administrative penalties with $2,227 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, 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 City of Teague, Docket No. 2015-1122-MWD-E on August 24, 2016 assessing $17,323 in administrative penalties with $3,464 deferred.

Information concerning any aspect of this order may be obtained by contacting Claudia Corrales, 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 Douglas A. Bateman d/b/a Bateman Water Works, Docket No. 2015-1137-PWS-E on August 24, 2016 assessing $1,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Carroll Harkrider, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding MJG Ventures Properties, LLC d/b/a King Food Mart, Docket No. 2015-1287-PST-E on August 24, 2016 assessing $4,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jake Marx, 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 City of Yorktown, Docket No. 2015-1322-MWD-E on August 24, 2016 assessing $19,025 in administrative penalties with $3,805 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Grothe Industrial Coating, LLC, Docket No. 2015-1357-AIR-E on August 24, 2016 assessing $8,313 in administrative penalties with $1,662 deferred.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, 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 KM Liquids Terminals LLC, Docket No. 2015-1447-AIR-E on August 24, 2016 assessing $88,650 in administrative penalties with $17,730 deferred.

Information concerning any aspect of this order may be obtained by contacting Carol McGrath, 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 Bernardo Espinoza, Docket No. 2015-1590-WQ-E on August 24, 2016 assessing $15,813 in administrative penalties with $3,162 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, 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 SHUJAT HOLDING COMPANY dba Freeway Express, Docket No. 2015-1629-PST-E on August 24, 2016 assessing $10,690 in administrative penalties with $2,138 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 Parker-Hannifin Corporation, Docket No. 2015-1663-AIR-E on August 24, 2016 assessing $14,250 in administrative penalties with $2,850 deferred.

Information concerning any aspect of this order may be obtained by contacting Carol McGrath, 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 NEW NGC, INC., Docket No. 2015-1691-WQ-E on August 24, 2016 assessing $10,000 in administrative penalties with $2,000 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 Kuraray America, Inc., Docket No. 2015-1693-AIR-E on August 24, 2016 assessing $25,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, 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 BEACH RV PARTNERSHIP, LTD., Docket No. 2015-1713-PWS-E on August 24, 2016 assessing $990 in administrative penalties with $990 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lee Oak Grove Inc. dba Lee Oak Grove Food Mart, Docket No. 2015-1724-PST-E on August 24, 2016 assessing $16,714 in administrative penalties with $3,342 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Phillips 66 Company, Docket No. 2015-1729-AIR-E on August 24, 2016 assessing $21,288 in administrative penalties with $4,257 deferred.

Information concerning any aspect of this order may be obtained by contacting Tiffany Maurer, 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 Sunline Energy Services, Inc., Docket No. 2015-1750-MLM-E on August 24, 2016 assessing $19,250 in administrative penalties with $3,850 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, 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 City of Holland, Docket No. 2015-1760-MWD-E on August 24, 2016 assessing $11,237 in administrative penalties with $2,247 deferred.

Information concerning any aspect of this order may be obtained by contacting Larry Butler, 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 City of Skellytown, Docket No. 2015-1769-PWS-E on August 24, 2016 assessing $907 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 Total Petrochemicals & Refining USA, Inc., Docket No. 2015-1770-AIR-E on August 24, 2016 assessing $45,000 in administrative penalties with $9,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio Gutierrez, 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 Houston Refining LP, Docket No. 2015-1785-AIR-E on August 24, 2016 assessing $59,063 in administrative penalties with $11,812 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, 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 Kenneth Mowles dba Captain Ken's RV Park, Docket No. 2015-1804-PWS-E on August 24, 2016 assessing $2,025 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, 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 Shell Oil Company, Docket No. 2015-1834-AIR-E on August 24, 2016 assessing $25,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kingsley Coppinger, 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 Whispering Oaks Water Coop, Docket No. 2015-1846-PWS-E on August 24, 2016 assessing $910 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Carney, 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 Aqua Texas, Inc., Docket No. 2015-1856-MWD-E on August 24, 2016 assessing $15,187 in administrative penalties with $3,037 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 LAMESA ENTERPRISES, INC., Docket No. 2016-0023-PWS-E on August 24, 2016 assessing $660 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sarah Kim, 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 Harris County Fresh Water Supply District No. 61, Docket No. 2016-0053-MWD-E on August 24, 2016 assessing $34,125 in administrative penalties with $6,825 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, 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 Abdulali Tejani dba FM Express Mart, Docket No. 2016-0064-PST-E on August 24, 2016 assessing $10,500 in administrative penalties with $2,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Tiffany Maurer, 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 EnLink Midstream Services, LLC, Docket No. 2016-0083-AIR-E on August 24, 2016 assessing $25,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carol McGrath, 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 Phillips 66 Company, Docket No. 2016-0090-AIR-E on August 24, 2016 assessing $26,250 in administrative penalties with $5,250 deferred.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, 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 SIGNOR Logistics, LP dba The Studios, Docket No. 2016-0095-PWS-E on August 24, 2016 assessing $2,655 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Murphy, Docket No. 2016-0106-WQ-E on August 24, 2016 assessing $8,250 in administrative penalties with $1,650 deferred.

Information concerning any aspect of this order may be obtained by contacting Austin Henck, 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 City of Center, Docket No. 2016-0107-PWS-E on August 24, 2016 assessing $1,215 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Austin Henck, 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 Jim Wells County Fresh Water Supply District 1, Docket No. 2016-0110-PWS-E on August 24, 2016 assessing $183 in administrative penalties with $183 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle 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 Sportsman's World Municipal Utility District, Docket No. 2016-0149-PWS-E on August 24, 2016 assessing $366 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Town of Edgecliff Village, Docket No. 2016-0156-WQ-E on August 24, 2016 assessing $15,750 in administrative penalties with $3,150 deferred.

Information concerning any aspect of this order may be obtained by contacting Austin Henck, 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 Llano West Mobile Home Park & Golf Course, Ltd., Docket No. 2016-0171-PWS-E on August 24, 2016 assessing $172 in administrative penalties with $172 deferred.

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 Aqua Utilities, Inc., Docket No. 2016-0179-PWS-E on August 24, 2016 assessing $684 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 City of Raymondville, Docket No. 2016-0202-PWS-E on August 24, 2016 assessing $690 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Holly Kneisley, 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 City of Houston, Docket No. 2016-0205-AIR-E on August 24, 2016 assessing $8,888 in administrative penalties with $1,777 deferred.

Information concerning any aspect of this order may be obtained by contacting Carol McGrath, 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 SOUTHERN METHODIST UNIVERSITY, Docket No. 2016-0211-WQ-E on August 24, 2016 assessing $5,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sandra Douglas, 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 Somervell County Water District, Docket No. 2016-0213-PWS-E on August 24, 2016 assessing $187 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, 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 EMCAD Water and Wastewater, LLC, Docket No. 2016-0341-MWD-E on August 24, 2016 assessing $9,112 in administrative penalties with $1,822 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandra Douglas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201604364
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 24, 2016

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Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls

Proposed Air Quality Registration Number 141755

APPLICATION.

Tex-Mix Partners, Ltd., P.O. Box 830, Leander, Texas 78646-0830 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 141755 to authorize the operation of two concrete batch plants. The facility is proposed to be located in Belton, Bell County, Texas 76502. The following driving direction were provided: from the intersection of 6th Avenue (Farm-to-Market Road 93) and Hubbard Lane, travel 0.35 mile west on 6th Avenue to entrance on south side of 6th Avenue. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. *http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=31.046829&lng=-97.445508&zoom=13&type=r.* This application was submitted to the TCEQ on July 25, 2016. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on August 2, 2016.

PUBLIC COMMENT / PUBLIC HEARING.

Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at *www.tceq.texas.gov/about/comments.html.* If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record.

A public hearing has been scheduled that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. Written comments about this application may also be submitted at any time during the hearing. The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. The public hearing is not an evidentiary proceeding.

The Public Hearing is to be held:

Thursday, October 6, 2016, at 6:00 p.m.

Harris Community Center - Kinchion Room

401 North Alexander Street

Belton, Texas 76513

RESPONSE TO COMMENTS.

A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all com-

ments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL / REGIONAL OFFICE.

The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Waco Regional Office, located at 6801 Sanger Ave Ste. 2500, Waco, Texas 76710-7826, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION.

If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Tex-Mix Partners, Ltd., P.O. Box 830, Leander, Texas 78646-0830, or by calling Mr. Brandon Wilcox, Environmental Specialist, Westward Environmental, Inc. at (830) 249-8284.

Notice Issuance Date: August 19, 2016

TRD-201604342
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 24, 2016

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Notice of Costs to Administer the Voluntary Cleanup Program and the Innocent Owner/Operator Program

In accordance with Texas Health and Safety Code, §361.613 (pertaining to the Voluntary Cleanup Program (VCP)) and 30 TAC §333.43 (pertaining to the Innocent Owner/Operator Program (IOP)), the executive director of the Texas Commission on Environmental Quality (TCEQ or commission) annually shall calculate the commission's costs to administer the VCP and the IOP, and shall publish in the *Texas Register* the rates established for the purposes of identifying the costs recoverable by the commission. The TCEQ has calculated and is publishing the bill rate for both the VCP and the IOP as $115 per hour for the commission's Fiscal Year 2017.

The VCP and the IOP are implemented by the same TCEQ staff. Therefore, a single hourly bill rate for both programs is appropriate. The hourly bill rate is determined based upon current projections for staff salaries for the Fiscal Year 2017, including the fringe benefit rate and the indirect cost rate, minus anticipated federal funding that the commission will receive, and then divided by the estimated number of staff hours necessary to complete the program tasks. Fringe benefits include retirement, social security, and insurance expenses and are calculated at a set rate for the entire agency. The current fringe benefit rate is 30.40% of the budgeted salaries. Indirect costs include allowable overhead expenses and also are calculated at a set rate for the entire agency. The current indirect cost rate is 28.48% of the budgeted salary. The release time hours include, for example, sick leave, holidays, military duty, and jury duty, and are set at 24.60%. The hourly bill rate was calculated and then rounded to the nearest whole dollar amount. The commission will use an hourly bill rate of $115 for both the VCP and the IOP for the Fiscal Year 2017. After an applicant's initial $1,000 application fee has been depleted for the VCP or the IOP review and oversight costs, invoices will be sent monthly to the applicant, or designee, for payment.

The commission anticipates receiving federal funding during Fiscal Year 2017 for the continued development and enhancement of the VCP and the IOP. If the federal funding anticipated for Fiscal Year 2017 does not become available, the commission may calculate and publish a new hourly bill rate. Federal funding of the VCP and the IOP should occur prior to October 1, 2016.

For more information, please contact Ms. Merrie Smith, PG, VCP-CA Section, Remediation Division, Texas Commission on Environmental Quality, MC 221, 12100 Park 35 Circle, Austin, Texas 78753 or call (512) 239-5051 or email: *merrie.smith@tceq.texas.gov.*

TRD-201604337
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 23, 2016

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Notice of District Petition

Notices issued August 19, 2016

Texas Commission on Environmental Quality (TCEQ) Internal Control No. D-02082016-005; CE Development, Inc. and SBJV Investments, Ltd. (Petitioners) filed a petition for creation of Travis County Municipal Utility District No. 24 (District) with the TCEQ. The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) there are three lienholders, 130 Cactus Investment, L.P.; ARP Autumn Ridge, LP; and Minerva, Ltd.; on the property to be included in the proposed District and the before mentioned entities have consented to the petition; (3) the proposed District will contain approximately 348.361 acres located within Travis County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Pflugerville, Texas, and no portion of land within the proposed District is located outside the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 1476-16-02-09-0297, passed and approved February 9, 2016 the City of Pflugerville gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners, from the information available at this time, that the cost of said project will be approximately $38,430,000 ($29,780,000 utilities plus $4,325,000 recreational plus $4,325,000 roads).

INFORMATION SECTION.

To view the complete issued notice, view the notice on our web site at *www.tceq.texas.gov/comm_exec/cc/pub_notice.html* or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the

Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at *www.tceq.texas.gov.*

Issued in Austin, Texas on August 23, 2016

TRD-201604344
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 24, 2016

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Notice of Hearing

SOUTHERN POWER COMPANY

SOAH Docket No. 582-16-5762

TCEQ Docket No. 2016-1285-AIR

Proposed Permit Nos. 121917 and PSDTX1422

APPLICATION.

Southern Power Company, P.O. Box 2641, Birmingham, Alabama 35202-2641, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Proposed Air Quality Permit 121917 and Prevention of Significant Deterioration (PSD) Air Quality Permit PSDTX1422, which would authorize construction of the Jackson County Generating Facility at the property which is south of Lundquist Road at the intersection of Texas County Road 710 and Lundquist Road, Ganado, Jackson County, Texas 77962. This application was submitted to the TCEQ on July 14, 2014. The proposed facility will emit the following air contaminants in a significant amount: organic compounds, carbon monoxide, nitrogen oxides, and particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less. In addition, the facility will emit the following air contaminants: sulfur dioxide and sulfuric acid.

The degree of PSD increment predicted to be consumed by the proposed facility and other increment-consuming sources in the area is as follows:

PM_{10}

Maximum Averaging Time	Maximum Increment Consumed (μg/m3)	Allowable Increment (μg/m3)
24-hour	7.9	30
Annual	1.5	17

$PM_{2.5}$

Maximum Averaging Time	Maximum Increment Consumed (μg/m3)	Allowable Increment (μg/m3)
24-hour	8	9
Annual	1.5	4

The Executive Director has determined that the emissions of air contaminants from the proposed facility which are subject to PSD review will not violate any state or federal air quality regulations and will not have any significant adverse impact on soils, vegetation, or visibility. All air contaminants have been evaluated, and "best available control technology" will be used for the control of these contaminants.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The permit application, executive director's preliminary decision, draft permit, and the executive director's preliminary determination summary and executive director's air quality analysis, are available for viewing and copying at the TCEQ central office, the TCEQ Corpus Christi regional office, and at and the Jackson County Memorial Library, 411 North Wells Street, Edna, Jackson County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Corpus Christi Regional Office, NRC Building Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas. 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: *<http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.101111&lng=-96.51&zoom=13&type=r>*. For the exact location, refer to the application.

DIRECT REFERRAL.

The Notice of Application and Preliminary Decision was published on February 17, 2016. On August 3, 2016, the Applicant filed a request for direct referral to the State Office of Administrative Hearings (SOAH). Therefore, the chief clerk has referred this application directly to SOAH for a hearing on whether the application complies with all applicable statutory and regulatory requirements.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. - October 3, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will be conducted in accordance with the Chapter 2001, Texas Government Code; Chapter 382, Texas Health and Safety Code; TCEQ rules including 30 Texas Administrative Code (TAC) Chapter 116, Subchapters A and B; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155.

To request to be a party, you must attend the hearing and show you would be affected by the application in a way not common to 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.

MAILING LIST. You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at *www.tceq.texas.gov/goto/comments,* 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. If you communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application, the permitting process, or the contested case hearing process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040. General information regarding the TCEQ may be obtained electronically at *http://www.tceq.texas.gov*

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 regarding the TCEQ can be found at http://www.tceq.texas.gov/.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Further information may also be obtained from Southern Power Company at the address stated above or by calling Ms. Kelli McCullough, Environmental Engineer at (205) 257-6720.

Issued: August 19, 2016

TRD-201604343

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 24, 2016

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Notice of Water Rights Application

Notices issued August 17, 2016 through August 19, 2016

APPLICATION NO. 13247; The City of Dallas and the City of Fort Worth, P.O. Box 619428, DFW Airport, Texas 75261, Applicants, seek a Temporary Water Use Permit to divert and use not to exceed 1,600 acre-feet of water from a point on reservoir (Trigg Lake) on an unnamed tributary of Bear Creek, Trinity River Basin for storage in an off-channel reservoir for subsequent industrial (construction) and agricultural (irrigation) purposes in Tarrant County. The application and fees were received on January 6, 2016. Additional information and fees were received on January 15, April 15, and April 28, 2016. The application was declared administratively complete and filed with the Office of the Chief Clerk on May 10, 2016. The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, streamflow restrictions. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin, TX 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by September 5, 2016.

APPLICATION NO. 14-1823E; Marvin Riggs and Barbara Riggs, 507 South Edgewood, San Saba, Texas 76877, Applicants, have applied to amend their portion of Certificate of Adjudication No. 14-1823 to add a downstream diversion point on the San Saba River, Colorado River Basin and change the place of use in San Saba County. Applicants do not seek to increase the diversion rate. The application was received on October 1, 2012. Fees and additional information was received on October 1, 2012, May 13, 2013, and January 21, 2015. The application was declared administratively complete and filed with Office of Chief Clerk on September 17, 2015. The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would contain special conditions including, but not limited to, the installation of screens on the diversion structure. The application, technical memoranda, and Executive Director's draft amendment are available for reviewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin, TX 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by September 6, 2016.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name

and permit number; (3) the statement (I/we) request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-201604345
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 24, 2016

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Proposed Settlement Agreement between TCEQ and Gulf Chemical & Metallurgical Corporation

The Texas Commission on Environmental Quality (TCEQ) is providing the following notice of opportunity to comment on the proposed settlement agreement between the TCEQ and Gulf Chemical & Metallurgical Corporation (DOCKET NUMBER: Bankruptcy Case 16-22192-JAD; TCEQ ID NUMBER: RN100210129; LOCATION: 302 Midway Road, Freeport, Brazoria County; TYPE OF FACILITY: industrial solid waste management facility) in accordance with Texas Water Code, §7.110.

BACKGROUND: On June 14, 2016, Gulf Chemical & Metallurgical Corporation filed in the United States Bankruptcy Court for the Western District of Pennsylvania a voluntary petition for relief under United States Bankruptcy Code, Chapter 11. In the bankruptcy process, Gulf Chemical & Metallurgical Corporation is seeking to sell substantially all of its assets by September 30, 2016. Prior to the commencement of the bankruptcy proceeding, the TCEQ had initiated an administrative enforcement case, TCEQ Docket Number 2014-1534-IHW-E, against Gulf Chemical & Metallurgical, alleging violations of the State's industrial hazardous waste program. This case is stayed because of the bankruptcy. On July 6, 2016, TCEQ filed a complaint for injunctive relief and civil fines and penalties in the bankruptcy court, Adversary Proceeding Number 16-02140-JAD (the "Adversary"), against Gulf Chemical & Metallurgical, alleging additional violations of the State's industrial hazardous waste and air quality programs. Comilog Holding is Gulf Chemical & Metallurgical Corporation's parent corporation.

SUMMARY OF PROPOSED SETTLEMENT AGREEMENT: The parties have reached an agreement regarding the status of the enforcement cases, including the priority of the alleged fines and penalties. TCEQ will have an allowed general unsecured claim in the amount of $7,870,000 on account of the claims in the administrative enforcement case. The Adversary Proceeding is stayed through and including September 30, 2016. If a sale closes on or before September 30, 2016, TCEQ will have a second allowed general unsecured claim in the amount of $3,800,000 on account of the claims in the complaint filed in the bankruptcy court, and, at that time, the Adversary case will be dismissed. If a sale does not close, the claims alleged in the Adversary case will be tried at the State Office of Administrative Hearings. TCEQ will not object to or seek to re-characterize the claims of Comilog Holding, will not bring any claims or causes of action against Comilog, and will release Comilog and certain officers of Gulf Chemical & Metallurgical Corporation from liability for actions arising or existing before the effective date of the bankruptcy plan. Both parties acknowledge that the claims in the enforcement cases are disputed and nothing in the agreement is an admission of liability or an admission that the claims are not valid. TCEQ reserves the right to bring certain additional claims. Language relating to the obligation to comply with environmental law will be included in any order approving sale of Gulf Chemical & Metallurgical Corporation's assets.

COMMENTS AND DEADLINES: Written comments may be submitted to Abigail Ryan, MC 152, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-3021, or by email at *Abigail.Ryan@tceq.texas.gov.* **The comment period closes October 3, 2016. Please reference Bankruptcy Case 16-22192-JAD.**

TRD-201604335
Kathleen Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 23, 2016

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Texas Facilities Commission

Request for Proposals #303-7-20551-A

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS), announces the re-issuance of Request for Proposals (RFP) #303-7-20551-A. TFC seeks a five (5) or ten (10) year lease of approximately 2,982 square feet of usable square feet that consists of 2,787 square feet of office space and 195 square feet of outdoor employee lounge area space in Jacksonville, Texas.

The deadline for questions is September 7, 2016 and the deadline for proposals is September 21, 2016 at 3:00 p.m. The award date is October 19, 2016. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=126722.*

TRD-201604247
Kay Molina
General Counsel
Texas Facilities Commission
Filed: August 18, 2016

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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 August 11, 2016, through August 22, 2016. 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, August 26, 2016. The public comment period for this project will close at 5:00 p.m. on Sunday, September 25, 2016.

FEDERAL AGENCY ACTIONS:

Applicant: Baycrete, Inc.

Location: The project site is located in Cedar Bayou, at 4318 State Highway 146, in Baytown, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: MONT BELVIEU, Texas.

LATITUDE & LONGITUDE (NAD 83): 29.764566 -94.919600

Project Description: The applicant proposes to construct a 25-foot-wide by 100-foot-long unloading dock, a 15-foot-wide by 30-foot-long covered boathouse, and install four 24-inch by 24-inch tie-up pilings in Cedar Bayou. The dock would be constructed by placing steel bulkheading, filling with approximately 1,200 cubic yards of earthen material, and placing a concrete slab on top. The dock would be used for unloading sand and gravel from barges to supply the adjacent concrete manufacturing facility.

CMP Project No: 16-1399-F1

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2016-00196. 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.

Applicant: Sunset Marina @ Offatts Bayou, LLC

Location: The project site is located in Offatts Bayou, at 9415 Teichman Road, in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: VIRGINIA POINT, Texas.

LATITUDE & LONGITUDE (NAD 83): 29.3022 -94.908480

Project Description: The applicant proposes to retain all existing structures, dredging, and riprap; and to reconfigure and construct marina boat slips, 2 irregular-shaped docks, and finger piers. The existing dredging, fill, riprap, and structures consist of the following components: Dredging: 24,030-square-foot area to 7 feet below mean high water; Fill: 4,220-square-foot area and a 17-foot by 30-foot boat ramp; Riprap: 4-foot by 25-foot area and a 4-foot by 50-foot area; Structures: retain eleven finger piers on the west side: 1-foot-wide by 24-foot-long finger piers and 24-square-foot triangles at the base of the walkway, Reconfigure Finger Piers on the East side as described in the proposed section, two walkways: 4-foot-wide by 221-foot-long walkway and 4-foot-wide by 225-foot-long walkway, four mooring piles, L-head piers: one 10-foot-wide by 30-foot-long and two 4-foot-wide by 28-foot-long. The proposed structures consist of the following components: Irregular-shaped docks located at the back of the basin: 1,319 square feet and 2,143 square feet; Reconfigure Finger Piers on East side into proposed structures: Eighteen 15-foot-wide by 30-foot-long covered boat lifts created with ten 6-foot-wide by 30-foot-long docks and eight 1-foot by 30-foot finger piers, and a 10-foot by 30-foot-long L-head at the end of the existing East side walkway.

CMP Project No: 16-1392-F1

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2016-00508. 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.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Mr. Jesse Solis, P.O. Box 12873, Austin, Texas 78711-2873, or via email at *federal.consistency@glo.texas.gov.* Comments should be sent to Mr. Solis at the above address or by email.

TRD-201604348
Anne L. Idsal
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: August 24, 2016

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Texas Health and Human Services Commission

Public Notice - Temporary Assistance for Needy Families

The Texas Health and Human Services Commission (HHSC) will post the draft Temporary Assistance for Needy Families (TANF) State Plan on the HHSC Internet web site at http://www.hhsc.state.tx.us/ for public review by September 2, 2016.

Written Comments. Written comments on the draft TANF State Plan may be submitted to Lonnie Bean, Policy Strategy, Analysis, and Development, MC-2115, 909 W. 45th Street, Austin, Texas 78751 or by email to *Lonnie.Bean@hhsc.state.tx.us,* within 30 days after publication of this proposal in the *Texas Register.* For additional information or a copy of the TANF State Plan, contact Lonnie Bean at (512) 206-5322.

People requiring Americans with Disabilities Act accommodation, auxiliary aids or services should call Amy Chandler at (51) 487-3419 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-201604365
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: August 24, 2016

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Public Notice - Texas State Plan for Medical Assistance Amendment

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective October 1, 2016.

The purpose of this amendment is to update the fee schedules in the current state plan by adjusting fees, rates or charges reflecting updated Medicare reimbursements for:

Durable Medical Equipment, Prosthetics, Orthotics, and Supplies to include orthotics and prosthetics;

Early and Periodic Screening, Diagnosis, and Treatment Services (EPSDT) to include physician administered drugs; and

Physicians and Other Practitioners to include physician administered drugs, female genital system surgery, and general and integumentary system surgery.

The proposed amendment is estimated to result in an annual aggregate cost of $8,393,212 for federal fiscal year (FFY) 2016, consisting of $4,715,307 in federal funds and $3,677,906 in state general revenue. For FFY 2017, the estimated annual cost is $8,776,135 consisting of $4,930,433 in federal funds and $3,845,702 in state general revenue. For FFY 2018, the estimated annual cost is $9,174,498 consisting of $5,154,233 in federal funds and $4,020,265 in state general revenue.

Proposed rate adjustments were calculated based on resource-based fee (RBF) methodology and selected access-based fee (ABF) methodologies, as appropriate. All of the proposed adjustments are being made in accordance with 1 TAC §355.201. Further detail on specific rates and percentage changes is available on the Texas Health and Human Services Rate Analysis website under the proposed effective date at: *http://www.hhsc.state.tx.us/Rad/rate-packets.shtml.*

Rate Hearing. A rate hearing was held on August 11, 2016, at 1:30 p.m. in Austin, Texas, and information about the proposed rate changes (including methodology and justification) and the hearing can be found in the July 8, 2016, issue of the *Texas Register* at pages 5113-5115 at *http://www.sos.state.tx.us/texreg/index.shtml.*

Copy of Proposed Amendment. Interested parties may obtain a free copy of the proposed amendments or additional information about the amendments by contacting J.R. Top, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 462-6397; by facsimile at (512) 730-7472; or by email at *jr.top@hhsc.state.tx.us.* Copies of the proposed amendments will be available for review at the local county offices of the Texas Department of Aging and Disability Services.

Written Comments. Written comments about the beneficiary access to services affected by the rate adjustments and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email.

U.S. Mail. Texas Health and Human Services Commission Attention: Rate Analysis, Mail Code H-400 P.O. Box 149030 Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery. Texas Health and Human Services Commission Attention: Rate Analysis, Mail Code H-400 Brown-Heatly Building 4900 North Lamar Austin, Texas 78751. Phone number for package delivery: (512) 730-7401

Fax. Attention: Rate Analysis at (512) 730-7475

Email.*RADAcuteCare@hhsc.state.tx.us*

TRD-201604309
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: August 22, 2016

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Public Notice - Waiver Amendment to the Home and Community-based Services Program

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request for an amendment of the Home and Community-based Services (HCS) waiver program, a waiver implemented under the authority of §1915(c) of the Social Security Act. This notice revises and is intended to replace the notice that was published on August 19, 2016. CMS has approved this waiver through August 31, 2018. The proposed effective date for the amendment is January 1, 2017, with changes to cost neutrality.

This amendment request proposes to make the following changes:

Add High Medical Needs Support registered nurse (RN), High Medical Needs Support licensed vocational nurse (LVN), and High Medical Needs Support services, including the consumer directed services option (Appendices C, E, I and J).

Update "Methods for Remediation/Fixing Individual Problems" and add administrative penalties as an additional method of remediation for program providers who do not comply with the HCS rules (Appendices C, D and G).

Update "Methods of State Oversight and Follow-up" and add administrative penalties as an additional method of remediation for program providers who do not comply with the HCS rules (Appendix G-3).

The Department of Aging and Disability Services (DADS) operates the HCS waiver, under HHSC's authority. The waiver provides services and supports to individuals with intellectual disabilities who live in their own homes, a family member's home, or community settings such as small three and four person homes. To be eligible for the waiver, individuals must meet financial eligibility criteria and meet the level of care required for admission into an intermediate care facility for individuals with intellectual disabilities.

An individual may obtain a free copy of the proposed waiver amendment, including the HCS settings transition plan, or to ask questions, obtain additional information, or submit comments regarding this amendment or the HCS settings transition plan, by contacting Jacqueline Pernell by U.S. mail, telephone, fax, or email. The addresses are as follows:

U.S. Mail

Texas Health and Human Services Commission

Attention: Jacqueline Pernell, Waiver Coordinator, Policy Development Support

P.O. Box 13247

Mail Code H-600

Austin, Texas 78711-3247

Telephone

(512) 428-1931

Fax

Attention: Jacqueline Pernell, Waiver Coordinator, at (512) 730-7477

Email

TX_Medicaid_Waivers@hhsc.state.tx.us.

In addition, the HHSC local offices will post this notice for 30 days. The complete waiver amendment request can be found online on the DADS website at *http://www.dads.state.tx.us/providers/HCS/.*

TRD-201604340

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: August 23, 2016

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Texas Department of Housing and Community Affairs

Notice to Public and to all Interested Mortgage Lenders

MORTGAGE CREDIT CERTIFICATE PROGRAM

The Texas Department of Housing and Community Affairs (the "Department") intends to implement a Mortgage Credit Certificate Program (the "Program") to assist eligible very low, low, and moderate income first-time homebuyers with the purchase of a residence located within the State of Texas.

Under the Program, a first-time homebuyer who satisfies the eligibility requirements described herein may receive a federal income tax credit in an amount equal to the product of the certificate credit rate established under the Program and the interest paid or accrued by the homeowner during the taxable year on the remaining principal of the certified indebtedness amount incurred by the homeowner to acquire the principal residence of the homeowner; provided that such credit allowed in any taxable year does not exceed $2,000. In order to qualify to receive a mortgage credit certificate, the homebuyer must qualify for a conventional, FHA, VA or other home mortgage loan from a lending institution and must meet the other requirements of the Program.

The mortgage credit certificates will be issued to qualified mortgagors on a first-come, first-served basis by the Department, which will review applications from lending institutions and prospective mortgagors to determine compliance with the requirements of the Program and determine that mortgage credit certificates remain available under the Program. No mortgage credit certificates will be issued prior to ninety (90) days from the date of publication of this notice or after the date that all of the credit certificate amount has been allocated to homebuyers, and in no event will mortgage credit certificates be issued later than the date permitted by federal tax law.

In order to satisfy the eligibility requirements for a mortgage credit certificate under the Program: (a) the prospective residence must be a single-family residence located within the State of Texas that can be reasonably expected to become the principal residence of the mortgagor within a reasonable period of time after the financing is provided; (b) the prospective homebuyer's current income must not exceed, (1) for families of three or more persons, 115% (140% in certain targeted areas or in certain cases permitted under applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code")) of the area median income; and (2) for individuals and families of two persons, 100% (120% in certain targeted areas or in certain cases permitted under applicable provisions of the Code) of the area median income; (c) the prospective homebuyer must not have owned a home as a principal residence during the past three years (except in the case of certain targeted area residences or in certain cases permitted under applicable provisions of the Code); (d) the acquisition cost of the residence must not exceed 90% (110%, in the case of certain targeted area residences or in certain cases permitted under applicable provisions of the Code) of the average area purchase price applicable to the residence; and (e) no part of the proceeds of the qualified indebtedness may be used to acquire or replace an existing mortgage (except in certain cases permitted under applicable provisions of the Code). To obtain additional information on the Program, including the boundaries of current targeted areas, as well as the current income and purchase price limits (which are subject to revision and adjustment from time to time by the Department pursuant to changes in applicable federal law and Department policy), please contact Cathy Gutierrez at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701-2410; telephone (512) 475-0277.

The Department intends to maintain a list of single family mortgage lenders that will participate in the Program by making loans to qualified holders of these mortgage credit certificates. Any lender interested in appearing on this list or in obtaining additional information regarding the Program should contact Cathy Gutierrez at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701-2410; (512) 475-0277. The Department may schedule a meeting with lenders to discuss in greater detail the requirements of the Program.

This notice is published in satisfaction of the requirements of Section 25 of the Code and Treasury Regulation Section 1.25-3T(j)(4) issued thereunder regarding the public notices prerequisite to the issuance of mortgage credit certificates and to maintaining a list of participating lenders.

TRD-201604346
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 24, 2016

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University of Houston System

Notice of Procurement - In-Plant Printing Operations

The University of Houston System announces a Request for Proposal (RFP) for consultant services pursuant to Government Code, Chapter 2254, Subchapter B.

RFP730-16151, In-Plant Printing Operations

Purpose:

The University of Houston (UH) Campus Services Department is seeking competitive responses to a Request for Proposal ("RFP") for a Consultant to provide an independent analysis of UH In-Plant Printing Operations.

Eligible Applicants:

Consulting firms with related knowledge and experience in:

Firms that have expertise with current In-Plant Printing Operations.

Services to be performed:

• To evaluate the methods and procedures used to provide in-plant print services

• To review financials/costs required to provide in-plant services

• To examine the effectiveness of Marketing and Customer Development Programs

• To review current equipment and make recommendations for upgrades/replacements

• To make process/service improvement recommendations as needed

Finding by Chief Executive Officer, Renu Khator:

After reviewing the current status and discussing this matter with the staff, the evaluation of these services can only be conducted by a firm considered expert in In-Plant Printing Operations. The university believes that using a third-party consultant, who has conducted similar evaluations of printing services on national campuses similar in con-

text and size to the University, will provide the institution with best practices that can be used to improve the service to our customers. Similarly, in this era of financial accountability, it is important for the University to understand if this service should be outsourced and if the physical and financial resources dedicated to this service should be re-allocated to other programs. The expertise needed for this evaluation is complex and requires a comprehensive knowledge of national industry trends related to university In-Plant Printing. Currently, the In-Plant staff do not have the breadth of experience needed for this evaluation. Thus, it is necessary for the University to engage a consultant to advise on In-Plant Printing Operations, and make recommendations, as appropriate for the improvement of these services.

Review and Award Criteria:

All proposals will be evaluated by appointed representatives of the University in accordance with the following procedures:

1. Purchasing will receive and review each RFP proposal to ensure it meets the requirements of the RFP. Qualified proposals will be given to the selection committee.

2. Each member of the selection committee will independently evaluate the qualified proposals according to the criteria in section IX of the RFP, except for price, and send their evaluations to Purchasing. Price will be evaluated by Project Manager.

3. Purchasing will combine the committee's scores to determine which proposal received the highest combined score.

4. Purchasing will notify the respondent with the highest score that the University intends to contract with them.

Deadlines: UH must receive proposals according to instructions in the RFP package on or before Monday, October 3, 2016 at 2:00 p.m. CDT.

Obtaining a copy of the RFP: Copies will be available on the Electronic State Business Daily (ESBD) at *http://esbd.cpa.state.tx.us/.*

The sole point of contact for inquiries concerning RFP is:

Jack Tenner

UH Purchasing

5000 Gulf Freeway, ERP 1, Room 204

Houston, Texas 77204-5015

Phone: (713) 743-5671

Email: jdtenner@central.uh.edu

TRD-201604336
Jack Tenner
Director of Purchasing
University of Houston System
Filed: August 23, 2016

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Texas Department of Insurance

Company Licensing

Application for incorporation in the State of Texas by CLEAR SPRING PROPERTY AND CASUALTY COMPANY, a domestic fire and/or casualty company. The home office is in Austin, Texas.

Application for admission to the State of Texas by THIRD COAST INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in New Berlin, Wisconsin.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Jeff Hunt, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201604347
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: August 24, 2016

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Company Licensing

Admission for incorporation in the State of Texas by STARR SPECIALTY INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Dallas, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Jeff Hunt, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201604361
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: August 24, 2016

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Texas Lottery Commission

Scratch Ticket Game Number 1814 "Holiday Loteria"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1814 is "Holiday Loteria". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1814 shall be $3.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1814.

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: SNOWMAN SYMBOL, SNOWGLOBE SYMBOL, MITTEN SYMBOL, SNOWFLAKE SYMBOL, MILK SYMBOL, ICESKATE SYMBOL, SCARF SYMBOL, HAT SYMBOL, BOW SYMBOL, REINDEER SYMBOL, LIGHTS SYMBOL, ORNAMENT SYMBOL, DRUM SYMBOL, ICICLES SYMBOL, CHIMNEY SYMBOL, ACORN SYMBOL, CANDYCANE SYMBOL, SLED SYMBOL, CANDLE SYMBOL, SWEATER SYMBOL, CARD SYMBOL, FIREPLACE SYMBOL, ELF SYMBOL, GINGERBREAD SYMBOL, GIFTBOX SYMBOL, HOLLY SYMBOL, BELLS SYMBOL, SHOVEL SYMBOL, STAR SYMBOL, STOCKING SYMBOL, TREE SYMBOL and WREATH SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink

in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1814 - 1.2D

PLAY SYMBOL	CAPTION
SNOWMAN SYMBOL	SNOWMAN
SNOWGLOBE SYMBOL	SNOWGLOBE
MITTEN SYMBOL	MITTEN
SNOWFLAKE SYMBOL	SNOWFLAKE
MILK SYMBOL	MILK
ICESKATE SYMBOL	ICESKATE
SCARF SYMBOL	SCARF
HAT SYMBOL	HAT
BOW SYMBOL	BOW
REINDEER SYMBOL	REINDEER
LIGHTS SYMBOL	LIGHTS
ORNAMENT SYMBOL	ORNAMENT
DRUM SYMBOL	DRUM
ICICLES SYMBOL	ICICLES
CHIMNEY SYMBOL	CHIMNEY
ACORN SYMBOL	ACORN
CANDYCANE SYMBOL	CANDYCANE
SLED SYMBOL	SLED
CANDLE SYMBOL	CANDLE
SWEATER SYMBOL	SWEATER
CARD SYMBOL	CARD
FIREPLACE SYMBOL	FIREPLACE
ELF SYMBOL	ELF
GINGERBREAD SYMBOL	GINGERBREAD
GIFT BOX SYMBOL	GIFTBOX
HOLLY SYMBOL	HOLLY
BELLS SYMBOL	BELLS
SHOVEL SYMBOL	SHOVEL
STAR SYMBOL	STAR
STOCKING SYMBOL	STOCKING
TREE SYMBOL	TREE
WREATH SYMBOL	WREATH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $3.00, $4.00, $7.00, $10.00, $17.00 or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $33.00, $50.00, $80.00 or $300.

H. High-Tier Prize - A prize of $3,000 or $50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1814), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1814-0000001-001.

K. Pack - A Pack of the "Holiday Loteria" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. 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.

M. Scratch Game Ticket, Scratch Ticket or Ticket - Texas Lottery "Holiday Loteria" Scratch Ticket Game No. 1814.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "Holiday Loteria" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 30 (thirty) Play Symbols. The player scratches the CALLER'S CARD area to reveal 14 symbols. The player scratches only the symbols on the PLAY BOARD that match the symbols revealed on the CALLER'S CARD. If the player reveals a complete row, column or diagonal line, the player wins the prize for that line. El jugador raspa las CARTA DEL GRITON para revelar 14 símbolos. El jugador raspa SOLAMENTE los símbolos en la TABLA DE JUEGO que son iguales a los símbolos revelados en las CARTA DEL GRITON para revelar una línea completa horizontal, vertical o diagonal para ganar el premio para esa línea. 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 30 (thirty) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly 30 (thirty) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 30 (thirty) Play Symbols must be exactly one of those described in §1.2.C of these Game Procedures;

17. Each of the 30 (thirty) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to three (3) times in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play Symbol patterns. Two (2) Tickets have matching Play Symbol patterns if they have the same Play Symbols in the same spots.

C. No matching Play Symbols in the CALLER'S CARD play area.

D. At least eight (8), but no more than twelve (12), CALLER'S CARD Play Symbols will match a symbol on the PLAY BOARD play area on a Ticket.

E. CALLER'S CARD Play Symbols will have a random distribution on the Ticket unless restricted by other parameters, play action or prize structure.

F. No matching Play Symbols are allowed on the PLAY BOARD play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "Holiday Loteria" Scratch Ticket Game prize of $3.00, $4.00, $7.00, $10.00, $17.00, $20.00, $30.00, $33.00, $50.00, $80.00 or $300, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $33.00, $50.00, $80.00 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 §2.3.B and §2.3.C of these Game Procedures.

B. To claim a "Holiday Loteria" Scratch Ticket Game prize of $3,000 or $50,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "Holiday Loteria" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in §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 "Holiday Loteria" 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 "Holiday Loteria" 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 7,200,000 Scratch Tickets in Scratch Ticket Game No. 1814. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1814 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$3	816,000	8.82
$4	384,000	18.75
$7	240,000	30.00
$10	120,000	60.00
$17	96,000	75.00
$20	96,000	75.00
$30	24,000	300.00
$33	24,000	300.00
$50	9,000	800.00
$80	4,440	1,621.62
$300	3,120	2,307.69
$3,000	100	72,000.00
$50,000	5	1,440,000.00

*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 3.96. 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. 1814 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1814, 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-201604288

Bob Biard
General Counsel
Texas Lottery Commission
Filed: August 22, 2016

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Scratch Ticket Game Number 1866 "Cashword Multiplier"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1866 is "Cashword Multiplier". The play style is "crossword".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1866 shall be $10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1866.

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, 1X SYMBOL, 2X SYMBOL, 3X SYMBOL, 4X SYMBOL, 5X SYMBOL and 10X 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. 1866 - 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	
▓ SYMBOL	
1X SYMBOL	TIMES1
2X SYMBOL	TIMES2
3X SYMBOL	TIMES3
4X SYMBOL	TIMES4
5X SYMBOL	TIMES5
10X SYMBOL	TIMES10

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $50.00, $60.00, $80.00, $100, $150, $200 or $500.

H. High-Tier Prize - A prize of $1,000, $10,000 or $250,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1866), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 1866-0000001-001.

K. Pack - A Pack of the "Cashword Multiplier" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

L. 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.

M. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "Cashword Multiplier" Scratch Ticket Game No. 1866.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "Cashword Multiplier" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 312 (three hundred twelve) possible Play Symbols. The player must scratch all the YOUR 20 LETTERS. Then the player must scratch all of the letters found in GAME 1, GAME 2 and GAME 3 that exactly match the YOUR 20 LETTERS. If a player has scratched at least 3 complete WORDS within a GAME, the player wins the prize found in the corresponding PRIZE LEGEND. Each GAME is played separately. WORDS revealed in one GAME cannot be combined with WORDS revealed from another GAME. Only one prize paid per GAME. Only letters within the same GAME that are matched with the YOUR 20 LETTERS can be used to form a complete WORD. In each GAME, every lettered square within an unbroken horizontal (left to right) or vertical (top to bottom) sequence must be matched with the YOUR 20 LETTERS 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. A complete WORD must contain at least three letters. GAME 1 and GAME 2 can win by revealing 3 to 9 complete WORDS on each GAME. GAME 3 can win by revealing 3 to 7 complete WORDS. MULTIPLIER BONUS: If a player reveals a 2X, 3X, 4X, 5X or 10X Symbol, then the player multiplies the total prize won in GAMES 1, 2 and 3 by that amount. Revealing a 1X Symbol does not multiply winnings in any GAME. 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 312 (three hundred twelve) 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 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, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly 312 (three hundred twelve) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 312 (three hundred twelve) Play Symbols must be exactly one of those described in §1.2.C of these Game Procedures;

17. Each of the 312 (three hundred twelve) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have matching play data, spot for spot.

B. There is no correlation between any exposed data on a Ticket and its status as a winner or non-winner.

C. Each grid from GAME 1 and GAME 2 will contain exactly the same number of letters.

D. Each grid from GAME 1 and GAME 2 will contain exactly the same number of words.

E. No matching words on a Ticket.

F. All words used will be from the TEXAS APPROVED WORD LIST CASHWORD/CROSSWORD v.1.1.

G. All words will contain a minimum of 3 letters.

H. All words will contain a maximum of 9 letters.

I. No consonant will appear more than nine (9) times, and no vowel will appear more than fourteen (14) times in GAME 1 and GAME 2.

J. No consonant will appear more than seven (7) times, and no vowel will appear more than ten (10) times in GAME 3.

K. No matching Play Symbols in the YOUR 20 LETTERS play area.

L. There will be a minimum of three (3) vowels in the YOUR 20 LETTERS play area. Vowels are considered to be A, E, I, O, U.

M. At least fifteen (15) of the letters in the YOUR 20 LETTERS play area will open at least one letter in the GAME 1 and GAME 2 (11x11) and GAME 3 (7x7) crossword grids combinations.

N. The presence or absence of any letter or combination of letters in the YOUR 20 LETTERS play area will not be indicative of a winning or Non-Winning Ticket.

O. Words from the TEXAS REJECTED WORD LIST v.2.2 will not appear horizontally in the YOUR 20 LETTERS play area when read left to right or right to left.

P. On Non-Winning Tickets, there will be at least two (2) completed words in GAME 1 and GAME 2.

Q. GAME 1 and GAME 2 will not have more than nine (9) complete words per grid.

R. GAME 3 will not have more than seven (7) complete words.

S. MULTIPLIER BONUS: The BONUS Play Symbols of "2X" (TIMES 2), "3X" (TIMES 3), "4X" (TIMES 4), "5X" (TIMES 5) and "10X" (TIMES 10) will only be used on winning Tickets as dictated by the prize structure.

T. MULTIPLIER BONUS: Tickets that do not win in the "MULTIPLIER BONUS" play area will display the "1X" (TIMES 1) BONUS Play Symbol.

U. MULTIPLIER BONUS: Revealing a "1X" (TIMES 1) BONUS Play Symbol does not multiply winnings in any GAME.

2.3 Procedure for Claiming Prizes.

A. To claim a "Cashword Multiplier" Scratch Ticket Game prize of $10.00, $20.00, $30.00, $50.00, $60.00, $80.00, $100, $150, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $50.00, $60.00, $80.00, $100, $150, $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 §2.3.B and §2.3.C of these Game Procedures.

B. To claim a "Cashword Multiplier" Scratch Ticket Game prize of $1,000, $10,000 or $250,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery 's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "Cashword Multiplier" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in §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 "Cashword Multiplier" 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 "Cashword Multiplier" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 12,000,000 Scratch Tickets in Scratch Ticket Game No. 1866. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1866 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$10	1,440,000	8.33
$20	840,000	14.29
$30	480,000	25.00
$50	320,000	37.50
$60	63,000	190.48
$80	45,000	266.67
$100	80,000	150.00
$150	6,000	2,000.00
$200	10,000	1,200.00
$500	1,000	12,000.00
$1,000	1,200	10,000.00
$10,000	67	179,104.48
$250,000	7	1,714,285.71

*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 3.65. 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. 1866 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1866, 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-201604289
Bob Biard
General Counsel
Texas Lottery Commission
Filed: August 22, 2016

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Public Utility Commission of Texas

Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 15, 2016, for a service provider certificate of operating authority, pursuant to the Public Utility Regulatory Act. Applicant intends to provide facilities-based and resale telecommunications services in the exchanges of AT&T Texas.

Docket Title and Number: Application of Media Link Telecom, LLC for a Service Provider Certificate of Operating Authority, Docket Number 46285.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than September 9, 2016. Hearing and speech impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46285.

TRD-201604243
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 18, 2016

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Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on August 19, 2016, with the Public Utility Commission of Texas (commission) for an amendment to a certificated service area boundary in Comal County, Texas.

Docket Style and Number: Application of Guadalupe Valley Telephone Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for Service Area Boundary Changes Within Comal County. Docket Number 46295.

The Application: The minor boundary amendment is being filed to realign the boundary between the Bulverde exchange of Guadalupe Valley Telephone Cooperative, Inc. (GVTC) and the Elm Creek exchange of ATT Communications, Inc. The amendment will transfer a portion of ATT's serving area in the Elm Creek exchange to GVTC's Bulverde exchange.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by September 9, 2016, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46295.

TRD-201604363
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 24, 2016

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on August 17, 2016, pursuant to the Public Utility Regulatory Act, Tex. Util. Code Ann. §39.154 and §39.158.

Docket Style and Number: Application of Monarch Wind, LLC for Approval Pursuant to §39.158 of the Public Utility Regulatory Act, Docket Number 46293.

The Application: On August 17, 2016, Monarch Wind, LLC (Monarch) filed an application for approval of the issuance of passive Class B interests to JPM Capital Corporation and EFS Renewables Holding, LLC (Investors). The combined generation owned and controlled by Monarch, the Investors, and their respective affiliates equals approximately 592.77 MW.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46293.

TRD-201604257
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 18, 2016

♦ ♦ ♦

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on August 16, 2016, to amend a certificate of convenience and necessity for a proposed transmission line in Jefferson, Chambers, and potentially Liberty Counties, Texas.

Docket Style and Number: Application of Entergy Texas, Inc. to Amend its Certificate of Convenience and Necessity for a 230-kV Transmission Line in Jefferson, Chambers, and Liberty Counties, Texas Docket Number 46248.

The Application: The application of Entergy Texas, Inc. includes construction of a new 230-kV transmission line that will connect the existing China Substation located just west of China, Texas in Jefferson County to the existing Stowell Substation located in the unincorporated community of Stowell, Texas in Chambers County. New equipment will be installed at both substations.

The total estimated cost for the project ranges from approximately $66 million to $84 million depending on the route chosen. The proposed project is presented with seventeen (17) alternate routes and is estimated to be approximately 20.60 to 26.66 miles in length. Any of the routes or route segments presented in the application could, however, be approved by the commission.

This application includes facilities subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies.

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 September 30, 2016. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46248.

TRD-201604226
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 17, 2016

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Request for Comments on Rate Filing Package Forms for Class C Water and Sewer Utilities

Project No. 45759

The Public Utility Commission of Texas (commission) requests comments on its proposed rate filing package forms for Class C water and sewer utilities. The proposed forms can be found on the commission's website home page under "Filings," using Control Number 45759. The forms would be used by water and sewer utilities filing an application for a rate adjustment pursuant to Texas Water Code Annotated §13.1872 (West 2008 & Supp. 2016) (TWC). Project Number 45759 is assigned to this proceeding.

Comments on the proposed forms may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, on or before September 23, 2016. Sixteen copies of comments to the proposed forms are required to be filed. Comments should be organized in a manner consistent with the organization of the forms. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, adoption of the proposed forms. The commission will consider the costs and benefits in considering the adoption of the proposed forms. All comments should refer to Project Number 45759.

The commission staff may conduct a workshop on the proposed forms, if requested, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a workshop must be received on or before September 23, 2016.

Questions concerning the project should be directed to A. J. Smullen, Legal Division, at (512) 936-7289. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201604305
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 22, 2016

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Office of the Secretary of State

Extension of Comment Periods

On August 1, 2016, the Texas Secretary of State proposed to repeal and replace 1 TAC §81.52, relating to precinct ballot counters, and proposed amendments to 1 TAC §81.60 and §81.61 relating to voting system certification exams, and to §81.62 relating specifically to real time audit log printers. The proposed changes to the rules were published in the August 12, 2016, issue of the *Texas Register* (41 TexReg 5837; 41 TexReg 5840) with a thirty (30) day comment period to follow. **The comment period for all of the foregoing proposed changes has been extended for an additional sixty (60) days, and comments will be accepted through November 10, 2016.**

Comments on the proposed repeal, new rule, and/or amendments may be submitted by mail to Elections Division, Office of the Texas Secretary of State, P.O. Box 12060, Austin, Texas 78711-2060. Comments may also be sent via email to:*elections@sos.texas.gov.* For comments submitted electronically, please include "Proposed Rule §81.52" and/or "Proposed Amendments of Rules §§81.60 - 81.62" in the subject line. Comments should be organized in a manner consistent with the organization of the proposed changes to the rules. Questions concerning the proposed changes to the rules may be directed to Elections Division, Office of the Texas Secretary of State, at (512) 463-5650. The Secretary of State encourages all interested persons to submit written comments no later than November 10, 2016.

TRD-201603845; TRD-201603846; TRD-201603847.

TRD-201604320
Lindsey Wolf
General Counsel
Office of the Secretary of State
Filed: August 23, 2016

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Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural Services

Nueces County, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a professional architectural firm for services pursuant to the Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualification statements for the current aviation project as described below.

Airport Sponsor: Nueces County; TxDOT CSJ No.: 16TBROBST. Scope: Architectural services, to include materials testing and inspection services during construction, for construction of a new terminal building at the Nueces County Airport. The selected architect will coordinate delivery of the project with a construction manager at risk (CMAR) which will be selected under a separate procurement process.

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that any contract entered into pursuant to this advertisement, that disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The DBE goal for this phase of the current project is 0%. The goal will be re-set for the construction phase. TxDOT Project Manager is Stephanie Kleiber.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html* by selecting "Nueces County Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html.* The form may not be altered in any way. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight pages of data plus one optional illustration page. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. Responses to this solicitation WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Five copies of the completed Form AVN-550 must be received by TxDOT, Aviation Division no later than September 27, 2016, 4:00 p.m. (CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan using one of the delivery methods below:

Overnight Delivery

TxDOT- Aviation

200 East Riverside Drive

Austin, Texas 78704

Hand Delivery or Courier*

TxDOT Riverside Campus, Bldg. 150

150 East Riverside Drive, 1st Floor

Austin, Texas 78704

(MUST check in at guard's desk)

*If hand delivering your response, you must check in with the guard on the 1st floor main visitor's entrance on the east side of Building 150. The guard will contact the Aviation Division's reception desk to announce your arrival. If the guard contacts the Aviation Division's re-

ception desk by the due date and time specified in the RFQ, your response will be considered on time. An Aviation Division representative will meet you downstairs to accept your submittal. **Please plan to arrive at least 30 minutes before the due date and time in order to accommodate any wait time while others are checking in with the guard.**

The consultant selection committee will be composed of Aviation Division staff. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for this solicitation can be found at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html* under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact Stephanie Kleiber, P.E., Project Manager.

TRD-201604319
Angie Parker
Associate General Counsel
Texas Department of Transportation
Filed: August 22, 2016

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Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website:

www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html.

Or visit *www.txdot.gov,* and under How Do I, choose Find Hearings and Meetings, then choose Hearings and Meetings, and then choose Schedule.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4500 or 1-800-68-PILOT.

TRD-201604260
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: August 19, 2016

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Workforce Solutions Brazos Valley Board

Workforce Innovations Opportunity Act FY17 Targeted Occupations Public Notice

The Workforce Solutions Brazos Valley Board seeks public comment on an update to the FY17 Targeted Occupations list for the time period August 19, 2016 to September 19, 2016. The Targeted Occupation list is used to provide Workforce Innovation Opportunity Act (WIOA) training for eligible customers to achieve self-sufficient wages. A copy of this may be reviewed at the Center for Regional Services located at 3991 East 29th, Bryan, Texas 77802 between 8:00 a.m. to 5:00 p.m., Monday through Friday, for the period August 19, 2016 to September 19, 2016.

A proud partner of the American Job Center network.

Equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.

Relay Texas (800) 735-2989 TDD (800) 735-2988 (Voice) TTY (979) 595-2819.

TRD-201604259
Patricia Buck
Board Program Manager
Workforce Solutions Brazos Valley Board
Filed: August 19, 2016

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Workforce Solutions for the Heart of Texas

Request for Proposal for Lease Space for Workforce Center in Hillsboro, Texas

The Heart of Texas Workforce Development Board, Inc. (HOTWDB) is accepting proposals for lease of office space in Hillsboro, Texas, for the Hill County Workforce Solutions Center. Proposals are due on September 19, 2016 by 4:30 p.m. Any proposal received after that time and date will not be considered.

For bid specifications, the Request for Proposal will be available at *www.hotworkforce.com.*

The Heart of Texas Workforce Development Board, Inc. reserves the right to reject any and/or all bids, and to make awards as they may appear to be advantageous to HOTWDB.

The Heart of Texas Workforce Development Board, Inc. provides workforce services to six counties; Bosque, Falls, Freestone, Hill, Limestone and McLennan.

The Heart of Texas Workforce Board, Inc. is an equal opportunity employer. Programs and auxiliary aids and services are available upon request to include individuals with disabilities. TTY/TDD via RELAY Texas service at 711 or (TDD) 1800-735-2989/1-800-735-2988 (voice).

TRD-201604266
Anthony Billings
Executive Director
Workforce Solutions for the Heart of Texas
Filed: August 19, 2016

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How to Use the Texas Register

Information Available: The sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 40 (2015) is cited as follows: 40 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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