

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



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.

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Natalia Luna Ashley
Executive Director
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CHAPTER 26. POLITICAL AND LEGISLATIVE ADVERTISING

1 TAC §26.1

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

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

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

The rule currently states that the disclosure statement must include the words "political advertising" or a recognizable abbreviation and must appear on one line of text or on successive lines of text on the face of the political advertising. The amendment would add that the statement must be "clearly spoken" in political advertising that 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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Executive Director

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For further information, please call: (512) 463-5800



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 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(e)(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.

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Catherine Reyer

General Counsel

Texas Department of Banking

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For further information, please call: (512) 475-1301



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.

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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



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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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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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 record-keeping. 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 in-

formation, 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.

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-201604275

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



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 li-

cence 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) [(e)] 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 PAWNHOPS

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.)

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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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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.

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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.

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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 rule-making, 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, [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



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

(13) [(42)] 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



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 fore-

seeable 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



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



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



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



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 411, 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



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



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.

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Kerri Lewis

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3092



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.

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Kerri Lewis

General Counsel

Texas Real Estate Commission

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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.

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Kerri Lewis

General Counsel

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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

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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

Deputy General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3093



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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Kerri Lewis

General Counsel

Texas Real Estate Commission

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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) ~~[(e)]~~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) ~~[(f)]~~ 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)~~[(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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Kerri Lewis

General Counsel

Texas Real Estate Commission

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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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Kerri Lewis

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3092



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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For further information, please call: (512) 936-3093



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 eco-

nomical 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~~ \$66 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

General Counsel

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.

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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



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 [øf] 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) ~~[(4)]~~ 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

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For further information, please call: (512) 936-3093



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@hpsc.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) [(42)] Department--Department of State Health Services.

(14) [(43)] 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) [(44)] 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) [(45)] 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) [(46)] 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) [(47)] 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) [(48)] 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) [(49)] 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) [(*)] 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) [(e)] 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) [(e)] 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@cpvit.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, biologics, 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



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@cpr.it.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 [CPRIF] 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 [øf] 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



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 and 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@cpvit.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, pre-clinical, 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 collaborators 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 chair-

person 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 multi-year 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 of 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 constitute 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-

ingly 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 [fœr] 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*, [f]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



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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Sharon Howell

General Counsel

Texas Department of Criminal Justice

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For further information, please call: (936) 437-6700

