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 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 52. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §52.2

The Office of the Attorney General (OAG), Human Resources Division, proposes amendments to §52.2, concerning agency employee education and training. Consistent with recent changes enacted by House Bill 3337, 84th Regular Session, the proposed amendments update the OAG's policies regarding agency-funded external education. The proposed amendments provide that the OAG reimburse only the tuition expenses for program courses successfully completed and require the reimbursements to be approved by the First Assistant Attorney General. They also address reimbursement for online courses, courses that provide continuing legal education, and courses not accredited towards a degree.

Mr. John M. Poole, Human Resources Division Chief, has determined that for the first five-year period the section is in effect there will be cost saving fiscal implications for state or local government due to a requirement that the agency employees only receive tuition reimbursement for a program course successfully completed. The actual cost savings is unknown at this time.

Mr. Poole has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the amended section will be a more streamlined and efficient expenditure of tuition funds.

Mr. Poole has also determined that the proposed section is not likely to have an adverse economic impact on small businesses.

Written comments on the proposal may be submitted for 30 days following the publication of this notice to Greg Simpson, Senior Employment Counsel, Human Resources Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, *Greg.Simpson@texasattorneygeneral.gov.*

The amendments are proposed in accordance with Government Code §656.048(a), which requires the OAG to adopt rules relating to the eligibility of agency employees for training and education supported by the agency, and the obligations assumed by the employees upon receiving the training and education.

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

§52.2. Employee Education and Training.

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

(c) When an employee seeks reimbursement for a training or education program offered by an institution of higher education or private or independent institution of higher education, the agency shall only reimburse the tuition expenses for a program course successfully completed by an employee at an accredited institution of higher education.

(d) [~~(c)~~] The agency's education and training program benefits both the agency and the employees participating by:

(1) preparing for technological and legal developments;

(2) increasing work capabilities;

(3) increasing the number of qualified employees in areas for which the agency has difficulty in recruiting and retaining employees; and

(4) increasing the competence of agency employees.

(e) [~~(d)~~] Agency employees may be required to complete an education or training program related to the employee's duties or prospective duties as a condition of employment.

(f) [~~(e)~~] Participation in an education or training program requires the appropriate level of approval prior to participation and is subject to the availability of funds within the agency's budget.

(g) Reimbursement for completing program courses offered by institutions of higher education, such as those credited towards a degree, requires the approval of the First Assistant Attorney General.

(h) [~~(f)~~] The employee education and training program for the agency may include:

(1) mandatory agency-sponsored training required for all employees;

(2) education relating to technical or professional certifications and licenses;

(3) education and training relating to the promotion of employee development;

(4) employee-funded external education;

(5) agency-funded external education, including continuing legal education, online courses, and courses not credited towards a degree; and

(6) other agency-sponsored education and training determined by the agency to fulfill the purposes of the State Employees Training Act.

(i) [~~(g)~~] The Office of the Attorney General's Human Resources Director is designated as the administrator of the agency's education and training program.

(j) [~~(h)~~] The administrator or administrator's designee shall develop policies for administering each of the components of the em-

ployee education and training program. These policies shall provide clear and objective guidelines and shall include, at a minimum, the following [~~include~~]:

(1) eligibility requirements for participation;

(2) approval procedures for participation; and

(3) obligations of program participants.

(k) [~~(i)~~] Approval to participate in any portion of the agency's education and training program shall not in any way affect an employee's at-will status or constitute a guarantee or indication of continued employment, nor shall it constitute a guarantee or indication of future employment in a current or prospective position.

(l) [~~(j)~~] Permission to participate in any education and training program may be withdrawn if the agency determines, in its sole discretion, that participation would negatively impact the employee's job duties or performance.

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

Filed with the Office of the Secretary of State on November 6, 2015.

TRD-201504786
Amanda Crawford
General Counsel
Office of the Attorney General
Earliest possible date of adoption: December 20, 2015
For further information, please call: (512) 936-7940

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PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 202. INFORMATION SECURITY STANDARDS

The Texas Department of Information Resources (department) proposes amendments to 1 TAC Chapter 202, §§202.2, 202.21, 202.23, 202.71, and 202.73, concerning Information Security Standards to clarify and update the processes and policies of current practices.

In 1 TAC §202.2, an exception was created for public junior colleges. This amendment is necessary to align the definition with Texas Government Code §2054.0075.

In 1 TAC §202.21(b)(4), department staff recommended amendments to language to clarify existing policies and best practices.

In 1 TAC §202.23(b)(1)(A), department staff added language specifying that reports made to the department must be in the form and manner specified by the department. The proposed language clarifies current policies and procedures.

In 1 TAC §202.71(b)(4), department staff recommended amendments to language to clarify existing policies and best practices.

In 1 TAC §202.73(b)(1)(A), department staff added language specifying that reports made to the department must be in the form and manner specified by the department. The proposed language clarifies current policies and procedures.

The changes to the chapter apply to state agencies, local government and institutions of higher education. The assessment of the impact of the proposed changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education in compliance with §2054.121(c), Texas Government Code.

Eddie Block, Chief Information Security Officer, has determined that during the first five-year period following the amendments to 1 TAC Chapter 202, §§202.2, 202.21, 202.23, 202.71, and 202.73, there will be no fiscal impact on state agencies, institutions of higher education and local governments.

Mr. Block has further determined that for each year of the first five years following the adoption of the amendments to 1 TAC Chapter 202, §§202.2, 202.21, 202.23, 202.71, and 202.73 there are no anticipated additional economic costs to persons or small businesses required to comply with the amended rule.

Written comments on the proposed amendment may be submitted to Martin Zelinsky, General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701 or to martin.zelinsky@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register.*

SUBCHAPTER A. DEFINITIONS

1 TAC §202.2

The amendments to existing rule are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; and §2059.053, Texas Government Code, which authorizes the department to adopt rules related to network security.

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

§202.2. Institution of Higher Education.

A university system or institution of higher education as defined by §61.003, Education Code, except for public junior colleges unless otherwise directed by the Higher Education Coordinating Board.

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

Filed with the Office of the Secretary of State on November 3, 2015.

TRD-201504674
Martin H. Zelinsky
General Counsel
Department of Information Resources
Earliest possible date of adoption: December 20, 2015
For further information, please call: (512) 463-1634

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SUBCHAPTER B. INFORMATION SECURITY STANDARDS FOR STATE AGENCIES

1 TAC §202.21, §202.23

The amendments to existing rules are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code;

and §2059.053, Texas Government Code, which authorizes the department to adopt rules related to network security.

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

§202.21. Responsibilities of the Information Security Officer.

(a) Each agency shall have a designated Information Security Officer (ISO), and shall provide that its Information Security Officer:

(1) reports to executive level management;

(2) has authority for information security for the entire agency;

(3) possesses training and experience required to administer the functions described under this chapter; and

(4) whenever possible, has information security duties as that official's primary duty.

(b) The Information Security Officer shall be responsible for:

(1) developing and maintaining an agency-wide information security plan as required by §2054.133, Texas Government Code;

(2) developing and maintaining information security policies and procedures that address the requirements of this chapter and the agency's information security risks;

(3) working with the business and technical resources to ensure that controls are utilized to address all applicable requirements of this chapter and the agency's information security risks;

(4) providing for training and direction of [~~training and overseeing~~] personnel with significant responsibilities for information security with respect to such responsibilities;

(5) providing guidance and assistance to senior agency officials, information-owners, information custodians, and end users concerning their responsibilities under this chapter;

(6) ensuring that annual information security risk assessments are performed and documented by information-owners;

(7) reviewing the agency's inventory of information systems and related ownership and responsibilities;

(8) developing and recommending policies and establishing procedures and practices, in cooperation with the agency Information Resources Manager, information-owners and custodians, necessary to ensure the security of information and information resources against unauthorized or accidental modification, destruction, or disclosure;

(9) coordinating the review of data security requirements, specifications, and, if applicable, third-party risk assessment of any new computer applications or services that receive, maintain, and/or share confidential data;

(10) verifying that security requirements are identified and risk mitigation plans are developed and contractually agreed and obligated prior to the purchase of information technology hardware, software, and systems development services for any new high impact computer applications or computer applications that receive, maintain, and/or share confidential data;

(11) reporting, at least annually, to the state agency head the status and effectiveness of security controls; and

(12) informing the parties in the event of noncompliance with this chapter and/or with the agency's information security policies.

(c) The Information Security Officer, with the approval of the state agency head, may issue exceptions to information security requirements or controls in this chapter. Any such exceptions shall be justified, documented and communicated as part of the risk assessment process.

§202.23. Security Reporting.

(a) Agency Reporting. Each Information Security Officer shall report, at least annually, to the agency head on the adequacy and effectiveness of information security policies, procedures, and practices, and compliance with the requirements of this chapter and:

(1) effectiveness of current information security program and status of key initiatives;

(2) residual risks identified by the agency risk management process; and

(3) agency information security requirements and requests.

(b) Report to the Department.

(1) Urgent Incident Report.

(A) Each state agency shall assess the significance of a security incident based on the business impact on the affected resources and the current and potential technical effect of the incident (e.g., loss of revenue, productivity, access to services, reputation, unauthorized disclosure of confidential information, or propagation to other networks). Security incidents shall be promptly reported to immediate supervisors and the agency Information Security Officer. Security incidents shall be promptly reported to the department in the form and manner specified by the department where the security incident is assessed to:

(i) propagate to other state systems;

(ii) result in criminal violations that shall be reported to law enforcement in accordance with state or federal information security or privacy laws; or

(iii) involve the unauthorized disclosure or modification of confidential information, e.g., sensitive personal information as defined in §521.002(a)(2), Business and Commerce Code, and other applicable laws that may require public notification.

(B) If the security incident is assessed to involve suspected criminal activity (e.g., violations of Chapters 33, Penal Code (Computer Crimes) or Chapter 33A, Penal Code (Telecommunications Crimes)), the agency shall contact law enforcement, as required, and the security incident shall be investigated, reported, and documented in accordance with the legal requirements for handling of evidence.

(C) Depending on the criticality of the incident, it will not always be feasible to gather all the information prior to reporting. In such cases, incident response teams should continue to report information to the department as it is collected. The department shall instruct state agencies as to the manner in which they shall report such information to the department. Supporting vendors or other third parties that report security incident information to an agency shall submit such reports to the agency in the form and manner specified by the department, unless otherwise directed by the agency. Agencies shall ensure that compliant reporting requirements are included in any contract where incident reporting may be necessary.

(2) Monthly Incident Report. Summary reports of security-related events shall be sent to the department on a monthly basis no later than nine (9) calendar days after the end of the month. Agencies shall submit summary security incident reports in the form and manner specified by the department. Supporting vendors or other third parties that report security incident information to an agency shall submit such reports to the agency in the form and manner specified by the department, unless otherwise directed by the agency.

(3) Biennial Information Security Plan. Each state agency shall submit to the department a Biennial Information Security Plan, in accordance with §2054.133, 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 November 3, 2015.

TRD-201504675
Martin H. Zelinsky
General Counsel
Department of Information Resources
Earliest possible date of adoption: December 20, 2015
For further information, please call: (512) 463-1634

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SUBCHAPTER C. INFORMATION SECURITY STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION

1 TAC §202.71, §202.73

The amendments to existing rules are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; and §2059.053, Texas Government Code, which authorizes the department to adopt rules related to network security.

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

§202.71. Responsibilities of Information Security Officer.

(a) Each institution of higher education shall have a designated Information Security Officer (ISO), and shall provide that its Information Security Officer:

(1) reports to executive level management;

(2) has authority for information security for the entire institution;

(3) possesses training and experience required to administer the functions described under this chapter; and

(4) whenever possible, has information security duties as that official's primary duty.

(b) The Information Security Officer shall be responsible for:

(1) developing and maintaining an institution-wide information security plan as required by §2054.133, Texas Government Code;

(2) developing and maintaining information security policies and procedures that address the requirements of this chapter and the institution's information security risks;

(3) working with the business and technical resources to ensure that controls are utilized to address all applicable requirements of this chapter and the institution's information security risks;

(4) providing for training and direction of [~~training and overseeing~~] personnel with significant responsibilities for information security with respect to such responsibilities;

(5) providing guidance and assistance to senior institution of higher education officials, information owners, information custodians, and end users concerning their responsibilities under this chapter;

(6) ensuring that annual information security risk assessments are performed and documented by information-owners;

(7) reviewing the institution's inventory of information systems and related ownership and responsibilities;

(8) developing and recommending policies and establishing procedures and practices, in cooperation with the institution Information Resources Manager, information-owners and custodians, necessary to ensure the security of information and information resources against unauthorized or accidental modification, destruction, or disclosure;

(9) coordinating the review of the data security requirements, specifications, and, if applicable, third-party risk assessment of any new computer applications or services that receive, maintain, and/or share confidential data;

(10) verifying that security requirements are identified and risk mitigation plans are developed and contractually agreed and obligated prior to the purchase of information technology hardware, software, and systems development services for any new high impact computer applications or computer applications that receive, maintain, and/or share confidential data;

(11) reporting, at least annually, to the state institution of higher education head the status and effectiveness of security controls; and

(12) informing the parties in the event of noncompliance with this chapter and/or with the institution's information security policies.

(c) The Information Security Officer, with the approval of the state institution of higher education head, may issue exceptions to information security requirements or controls in this chapter. Any such exceptions shall be justified, documented and communicated as part of the risk assessment process.

§202.73. Security Reporting.

(a) Institution Reporting. Each Information Security Officer shall report, at least annually, to the institution of higher education head on the adequacy and effectiveness of information security policies, procedures, and practices, and compliance with the requirements of this chapter and:

(1) effectiveness of current information security program and status of key initiatives;

(2) residual risks identified by the institution of higher education risk management process; and

(3) institution of higher education information security requirements and requests.

(b) Report to the Department.

(1) Urgent Incident Report.

(A) Each state institution of higher education shall assess the significance of a security incident based on the business impact on the affected resources and the current and potential technical effect of the incident (e.g., loss of revenue, productivity, access to services, reputation, unauthorized disclosure of confidential information, or propagation to other networks). Security incidents shall be promptly reported to immediate supervisors and the institution of higher education Information Security Officer. Security incidents shall be promptly

reported to the department in the form and manner specified by the department where the security incident is assessed to:

(i) propagate to other state systems;

(ii) result in criminal violations that shall be reported to law enforcement in accordance with state or federal information security or privacy laws; or

(iii) involve the unauthorized disclosure or modification of confidential information, e.g., sensitive personal information as defined in §521.002(a)(2), Business and Commerce Code, and other applicable laws that may require public notification.

(B) If the security incident is assessed to involve suspected criminal activity (e.g., violations of Chapters 33, Penal Code (Computer Crimes) or Chapter 33A, Penal Code (Telecommunications Crimes)), the institution of higher education shall contact law enforcement, as required, and the security incident shall be investigated, reported, and documented in accordance with the legal requirements for handling of evidence.

(C) Depending on the criticality of the incident, it will not always be feasible to gather all the information prior to reporting. In such cases, incident response teams should continue to report information to the department as it is collected. The department shall instruct state institutions of higher education as to the manner in which they shall report such information to the department. Supporting vendors or other third parties that report security incident information to an institution of higher education shall submit such reports to the institution of higher education in the form and manner specified by the department, unless otherwise directed by the institution of higher education. Institutions of higher education shall ensure that compliant reporting requirements are included in any contract where incident reporting may be necessary.

(2) Monthly Incident Report. Summary reports of security-related events shall be sent to the department on a monthly basis no later than nine (9) calendar days after the end of the month. Institutions of higher education shall submit summary security incident reports in the form and manner specified by the department. Supporting vendors or other third parties that report security incident information to an institution of higher education shall submit such reports to the institution of higher education in the form and manner specified by the department, unless otherwise directed by the institution of higher education.

(3) Biennial Information Security Plan. Each state institution of higher education shall submit to the department a biennial Information Security plan, in accordance with §2054.133, 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 November 3, 2015.

TRD-201504676
Martin H. Zelinsky
General Counsel
Department of Information Resources
Earliest possible date of adoption: December 20, 2015
For further information, please call: (512) 463-1634

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 12. WEIGHTS AND MEASURES

SUBCHAPTER B. DEVICES

4 TAC §12.11

The Texas Department of Agriculture (the Department) proposes amendments to §12.11, concerning calibration requirements for commercial liquid measuring devices used in commercial motor fuel sales. The amendment to §12.11 is proposed to improve consumer protection by enhancing the accuracy assurance of liquid measuring devices used in commercial motor fuel sales by establishing a calibration requirement.

The proposed amendment will require liquid measuring devices used by consumers to fuel motor vehicles to be calibrated by a service technician registered with the Department not later than the facility's weights and measures registration renewal date in 2019, and every two years thereafter.

Philip Wright, Director for Consumer Product Protection, has determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state government. There will be no estimated increase in state revenue annually, and there is no anticipated fiscal impact for local governments as a result of administering or enforcing the rule amendment, as proposed.

Mr. Wright has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of administering the proposed amendment will be achieving increased consumer protection by ensuring that all retail motor fuel devices are calibrated biennially for accuracy and correctness. The Department cannot determine anticipated costs to micro-businesses, small businesses or individuals required to comply with the amendment because increased costs to most entities will be based on the number and type of weights and measure devices registered and age of the equipment.

Comments on the proposal may be submitted to Philip Wright, Director for Consumer Product Protection, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or by email at *Philip.Wright@TexasAgriculture.gov.* Comments must be received no later than 30 days from the date of publication on the proposal in the *Texas Register.*

The amendments are proposed under the Texas Agriculture, §13.002, which designates the Department as the agency responsible for weights and measures regulations.

The code affected by the proposal is Chapter 13 of the Texas Agriculture Code.

§12.11. Registration of Commercial Weighing and Measuring Devices.

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

(j) Calibration required. Beginning January 1, 2018, all meters in stationary liquid measuring devices with a maximum flow rate of 20 gallons per minute or less and used for motor fuel sales must be calibrated by a service technician registered with the department in accordance with §12.60 of this chapter (relating to Service Technician Registration Requirement and Procedure), not later than the facility's registration renewal date in calendar year 2019 and at least every two years, thereafter, from the previous calibration date.

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

Filed with the Office of the Secretary of State on November 9, 2015.

TRD-201504839
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 20, 2015
For further information, please call: (512) 463-4075

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CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER C. GO TEXAN CERTIFICATION MARK

4 TAC §17.61

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Agriculture (Department) proposes the repeal of §17.61, relating to the Department's GO TEXAN Wildlife Program (Program). The Department proposes repeal of §17.61 because of insufficient Program participation. The Department will work with existing Program participants to facilitate their participation in other GO TEXAN categories, such as agricultural products, non-agricultural products and associate participation.

Dan Hunter, Assistant Commissioner for Trade and Business Development, has determined that for the first five years the repeal is in effect, there will be no fiscal implications for state government as a result of administering or enforcing the repealed section. There will be no fiscal implications for local government.

Mr. Hunter has also determined that for each year of the first five years the proposed repeal is in effect, the public benefit will be that Department resources will be directed to new and existing members in other GO TEXAN categories to improve the delivery of services to participants in those categories. There will be no increased costs to individuals, microbusinesses or small businesses as a result of the repeal as set out in this proposal.

Comments on the proposed repeal may be submitted to Dan Hunter, Assistant Commissioner for Trade and Business Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The repeal of §17.61 is proposed pursuant to the Texas Agriculture Code, §12.0175, which provides the department with authority to establish programs by rule to promote and market agricultural products and other products grown, processed, or produced in the state, and charge a membership fee, and §12.016, which provides the department may adopt rules as necessary for the administration of its powers and duties.

The statutory code affected by the proposal is Texas Agriculture Code, Chapter 12.

§17.61. GO TEXAN Wildlife Program.

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

Filed with the Office of the Secretary of State on November 9, 2015.

TRD-201504838
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 20, 2015
For further information, please call: (512) 463-4075

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TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 26. PRACTICE AND PROCEDURE

The Texas Historical Commission (THC) proposes amendments to Chapter 26, concerning Rules of Practice and Procedure, §26.3 related to Definitions; §26.14 related to Issuance and Restrictions of Archeological Permits; §26.20 related to Application for Historic Buildings and Structures Permits; §26.21 related to Issuance and Restriction of Historic Buildings and Structures Permits; and §26.22 related to Historic Buildings and Structures Permit Categories. The proposed amendments implement §2005.003 of the Texas Government Code, related to Permit Processing Periods, and offer minor clarification regarding definitions and when certain permit types are needed.

The permit applications for Archeology and Historic Buildings and Structures generally follow similar review processes, but there are some significant differences due to the types of permits and the nature of the proposed work for different cultural resources. An example is that a Historic Buildings and Structures Permit may be issued for restoration or demolition of a structure, but Archeological Permits are not issued for restoration or demolition. Conversely, Archeological Permits may be issued for intensive survey or monitoring of a known or suspected archeological site, but Historic Buildings and Structures Permits are not issued for intensive survey or monitoring. Consequently, it is necessary and appropriate for the proposed rules to establish different timelines for processing of the Archeological Permit applications versus Historic Buildings and Structures Permit applications.

When a permit application is received, the THC may take any of the following actions:

(1) Accept the permit application and issue the permit;

(2) Request more project information from the permit applicant;

(3) Request a revised scope of work or research design from the permit applicant;

(4) Refer the application to the Antiquities Advisory Board for consideration; or

(5) Deny issuing the permit.

If the THC requests more information or revisions from a permit applicant, the permit processing time starts upon receipt of the complete permit application.

Some examples of cases where a permit might be denied would include:

(1) A permit application is submitted by someone who does not meet the professional qualifications listed in §26.4;

(2) An Archeological Permit application is submitted for survey work, but THC determines (or previously determined) that the survey is not warranted;

(3) An Archeological Permit application is submitted by a project sponsor or agency because they mistakenly believed the permit was for the development project (rather than an archeological investigation), or they believed that the permit application was a required part of the initial project review inquiry;

(4) A Historic Buildings and Structures Permit application is submitted for routine maintenance that does not require a permit, for work outside the designated State Antiquities Landmark boundaries, or for a property that is not designated as a landmark; or

(5) A Historic Buildings and Structures Permit application is submitted for demolition or other proposed work that the THC determines is inappropriate and does not meet the Secretary of the Interior's Standards for the Treatment of Historic Properties.

Section 26.3(63) is the definition of State Antiquities Landmark, referred to throughout the rules as a landmark. The proposed revision clarifies what may be considered a landmark, in addition to those officially designated by the THC. The phrase "eligible to be designated as a landmark" is replaced by a more precise reference to the interim protection of properties nominated and determined eligible for designation, as described in §26.8(d).

Section 26.14 describes the process for issuance of Archeological Permits. Proposed revisions to §26.14(a) provide additional details regarding the process by which the commission reviews and issues permits. Commission staff will notify the applicant of any additional information needed to complete the review within 30 days of receipt of the permit application. Within 30 days of receipt of a complete application, the commission will take action on the permit application, as described above.

The procedures for submission of applications for Archeological Permits are consistent with the Antiquities Code of Texas, §191.054 and §191.093, Texas Natural Resources Code and allow sufficient time for proposals to receive review by commission staff and approval by the director of the Archeology Division. Archeological Permits are considered granted upon issuance of the permit number, and the permit itself may take additional time to process. For Archeological Permits issued in fiscal year 2015, between September 1, 2014 and August 31, 2015, the processing time for permits ranged between 1 and 14 days, with a median permit processing time of one day from receipt of the permit application.

Section 26.20 describes the application procedures for Historic Buildings and Structures Permits. No changes are proposed to the timelines or procedures established in this section. The commission completes its review of an initial notification of proposed work to a State Antiquities Landmark within 30 days of receipt and specifies in its response if a formal permit application is needed. A permit application should be submitted at least 60 days prior to the commencement of work or issuance of bid documents. Section 26.20(a)(2) is revised in a similar manner to §26.3, as described above. Information on the timing of permit issuance has moved from §26.20(a)(9) to §26.21. Section 26.20(a)(9) is also revised to indicate that, if contract documents are issued prior to receiving a permit, the THC will not be responsible for any delays or costs associated with changes needed to meet the Secretary of the Interior's Standards for the Treatment of Historic Properties.

Section 26.21 describes the process for issuance of Historic Buildings and Structures Permits. Proposed revisions to §26.21(a) provide additional details regarding the process by which the commission reviews and issues permits. While commission staff will notify an applicant promptly if there are obvious omissions in the permit application and supporting material, thorough review of plans and specifications may be necessary to determine if additional information is needed to issue the permit. Such information could include additional drawings, construction details, or product information. The commission will notify the applicant of any additional information needed to complete the review within 30 days of receipt of the permit application. Within 60 days of receipt of a complete application, the commission will take action on the permit application, as described above.

The procedures for submission of applications for Historic Buildings and Structures Permits are consistent with the Antiquities Code of Texas, §191.054 and §191.093, Texas Natural Resources Code and allow sufficient time for proposals to receive review by commission staff and approval by the director of the Division of Architecture and the executive director of the commission. For Historic Buildings and Structures Permits issued in fiscal year 2015, between September 1, 2014 and August 31, 2015, the processing time for permits ranged between 1 and 70 days, with a median permit processing time of 22 days from receipt of the permit application. During this period, 99% of all permits were issued within 60 days.

Section 26.22 lists and describes the Historic Buildings and Structures permit categories. Additional language in §26.22(4) and (9) describes the limited circumstances in which a Historic Buildings and Structures permit could be required for a landmark that is significant as an archeological site. In particular, Division of Architecture staff review permits for reconstruction of missing features to ensure the design is accurate and meets the Secretary of the Interior's Standards for Reconstruction. In some instances, architectural review of new construction projects at archeological sites may also be appropriate.

Adoption of these amendments is proposed under §§442.005(b), 442.005(q), and 442.005(r), Texas Government Code; §191.052, Texas Natural Resources Code; and §2005.003, Texas Government Code, which provide the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter. No other statutes, articles, or codes are affected by these sections.

Mark Wolfe, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Wolfe has also determined that for each year of the first five year period these amended rules are in effect the public benefit anticipated will be an increased efficiency and effectiveness in the implementation of the Antiquities Code of Texas. Addition-

ally, Mr. Wolfe has determined that there will be no effect on small businesses.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

13 TAC §26.3

These amendments are proposed under §§442.005(b), 442.005(q), and 442.005(r), Texas Government Code; §191.052, Texas Natural Resources Code; and §2005.003, Texas Government Code, which provide the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

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

§26.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. These definitions also clarify the interpretation of terms and phrases used in the Antiquities Code of Texas but not defined therein.

(1) - (62) (No change.)

(63) State Antiquities Landmark--An archeological site, archeological collection, ruin, building, structure, cultural landscape, site, engineering feature, monument or other object, or district that is [~~eligible to be designated as a landmark or is already~~] officially designated as a landmark or treated as a landmark under the interim protection described in §26.8(d) of this title (relating to Designation Procedures for Publicly Owned Landmarks).

(64) - (67) (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 November 4, 2015.

TRD-201504737
Mark Wolfe
Executive Director
Texas Historical Commission
Earliest possible date of adoption: December 20, 2015
For further information, please call: (512) 463-1858

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SUBCHAPTER C. ARCHEOLOGY

13 TAC §26.14

These amendments are proposed under §§442.005(b), 442.005(q), and 442.005(r), Texas Government Code; §191.052, Texas Natural Resources Code; and §2005.003, Texas Government Code, which provide the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

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

§26.14. Issuance and Restrictions of Archeological Permits.

(a) Issuance of permit. The commission shall review the permit application submitted pursuant to §26.13 of this title (relating to Application for Archeological Permits) and may issue the permit, issue the permit with special conditions, request additional information for review, request a revised scope of work or research design, or deny the permit application.

(1) Review by commission staff. Within 30 days of the receipt of a permit application, staff shall notify the applicant in writing that the permit application is complete and accepted for filing or that the permit application is incomplete and specify the additional information required for review. The commission will also issue or deny the permit within 30 days. Investigations may commence upon receipt of notification of the assignment of a permit number, and a hard copy of the permit will be mailed to all signatories to the permit application.

(2) Review by the Antiquities Advisory Board. The executive director may choose to submit the permit application to the Antiquities Advisory Board for its consideration. Permits that are denied by commission staff may be appealed by the applicant to the Antiquities Advisory Board. The board shall review such applications at its next scheduled meeting, provided it shall have a minimum of 15 days to prepare for such review. Recommendations of the board shall be taken to the next scheduled meeting of the commission by the chair of the board or by one of the other commissioners who serve on the board for action thereon.

(3) The deadlines in this section may be extended for good cause. In the event a deadline is extended, the commission shall provide notice of the extension and the good cause to the applicant in writing. The applicant may complain directly to the executive director if the staff exceeds the established period for processing permits and may request a timely resolution of any dispute arising from the delay.

(4) Failure to respond. If no response has been made by the commission within 30 days of receipt of any permit application, the permit shall be considered to be granted.

(b) [~~(a)~~] Review by controlling entities. It is the responsibility of the permit applicant to obtain all necessary permissions and signatures prior to submitting an archeological permit application.

(c) [~~(b)~~] Special requirements. When a permit is issued, it will contain all special requirements governing that particular investigation; it must be signed by the director of the Archeology Division of the commission, or his or her designated representative.

(d) [~~(c)~~] Permit period. No permit will be issued for less than one year nor more than ten years, but a permit may be issued for any length of time as deemed necessary by the commission in consultation with the principal investigator.

(e) [~~(d)~~] Transferal of permits. No permit issued by the commission will be assigned by the permittee in whole or in part to any other institution, museum, corporation, organization, or individual without acknowledgement of the original permittee and the consent of the commission.

(f) [~~(e)~~] State site survey forms. TexSite electronic forms for all sites recorded as a result of activities undertaken through an Antiquities Permit will be completed and submitted to the Texas Archeological Research Laboratory at the University of Texas in Austin, upon the completion of field work.

(g) [~~(f)~~] Permit expiration date. The expiration date shall be specified in each permit and is the date by which all terms and conditions must be completed for that permit. It is the responsibility of the permittee, sponsor, investigative firm, and principal investigator to meet any and all permit submission terms and conditions prior to the expiration date listed on the permit.

(1) Expiration date notification. Principal investigators will be notified 60 days in advance of permit expiration date.

(2) Expiration date extension. A principal investigator must complete and submit a First Extension Application Form to the commission if he or she desires an extension of the final due date for the completion of an Antiquities Permit that was issued to him or her. The Archeology Division (AD) of the commission will review the submitted Permit Extension Form, determine whether an extension is warranted and extend the permit expiration date once for no less than one year and no more than ten years as deemed appropriate. In addition, and upon review and recommendations by the Antiquities Advisory Board, the commission may by a majority vote of its members, approve or disapprove an additional extension of the expiration date of an Antiquities Permit beyond the single extension that the AD staff of the commission is authorized to issue under subsection (c) of this section and this paragraph, provided that the following conditions are met:

(A) the principal investigator (PI), and/or the investigative firm listed under an Antiquities Permit must complete and submit a Second Extension Application Form to the commission, and give an oral presentation before the Antiquities Advisory Board justifying why a second permit expiration-date extension is warranted; and

(B) the justification for the second extension must show that the extension is needed due to circumstances beyond the control of the PI. Examples include, but are not limited to: funding problems, death of the PI, and artifact curation problems.

(h) [~~(g)~~] Expiration responsibilities. Investigative firms must ensure that a principal investigator is assigned to a permit at all times, regardless of whether the permit is active or has expired. Both the principal investigator and investigative firm should ensure that a new principal investigator is assigned to the permit if, for any reason, the original principal investigator must leave the project. The assignment of a new principal investigator must be approved by the commission.

(i) [~~(h)~~] Permit amendments. Proposed changes in the terms and conditions of the permit must be approved by the commission.

(j) [~~(i)~~] Permit cancellation. The commission may cancel an Antiquities Permit if one or more of the following events occur:

(1) death or withdrawal of the principal investigator without a new principal investigator being named and approved by the commission;

(2) cancellation of the project by the sponsor or permittee prior to the completion of the archeological field investigations;

(3) violation of §26.18 of this title (relating to Compliance with Rules for Archeological Permits); and/or

(4) destruction of the permit area or associated cultural resources due to natural causes, prior to the substantive completion of the field investigations being performed under the permit.

(k) [~~(j)~~] Permit censuring. The commission may censure a principal investigator and/or investigative firm if it is found that two or more permit application offenses have occurred in one calendar year. Permit application offenses result when investigations are performed without first obtaining a permit from the commission. Permit censuring will render a principal investigator and investigative firm ineligible for issuance of another permit for six months after a finding by the board that two or more permit application offenses have occurred in one year period.

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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Mark Wolfe
Executive Director
Texas Historical Commission
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SUBCHAPTER D. HISTORIC BUILDINGS AND STRUCTURES

13 TAC §§26.20 - 26.22

These amendments are proposed under §§442.005(b), 442.005(q), and 442.005(r), Texas Government Code; §191.052, Texas Natural Resources Code; and §2005.003, Texas Government Code, which provide the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

No other statutes, articles, or codes are affected by these sections.

§26.20. Application for Historic Buildings and Structures Permits.

(a) Permit application procedure.

(1) (No change.)

(2) Notification. The commission must be notified of any anticipated, planned, or proposed work to a landmark or the site associated with a landmark. Notification must also be given for work to buildings or structures that have been nominated for designation as landmarks. Such notice should be made early enough to allow adequate time to prepare the formal application as described in paragraph (4) of this subsection. The notification must include a brief written description of the project and at least one photograph of the building or structure or affected portion of that building or structure. If a permit is required for the proposed scope of work, the commission staff will provide the applicant with the permit application form and notify him or her of the necessary attachments or application reports within 30 days of receipt of notification. Historic Buildings and Structures Permits can only be required for work to a designated landmark, or a building or structure treated as a landmark under the interim protection described in §26.8(d) of this title (relating to Designation Procedures for Publicly Owned Landmarks); such permits cannot be required for a property that is eligible but not currently nominated for designation.

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

(3) (No change.)

(4) Formal application. All applications should [~~must~~] be submitted on the Historic Buildings and Structures Permit application form approved by the commission at least 60 days prior to the commencement of work or issuance of bid documents, whichever comes first. The application form may be submitted in hard copy with original signatures, or electronically with scanned signatures, to the mailing or email address indicated on the form. The project professional personnel must be a project architect who has the required experience on historic buildings and structures in the type of project work proposed,

or other professional as provided for in §26.4(3) of this title (relating to Professional Qualifications and Requirements). At the request of commission staff, the professional personnel must submit a resume demonstrating the required education and experience.

(5) - (8) (No change.)

(9) Issuance of contract documents [~~permit~~]. Contract documents should [~~must~~] not be issued for bidding purposes before a permit has been issued by the commission under §26.21 of this title (relating to Issuance and Restriction of Historic Buildings and Structures Permits). Since changes may be required for issuance of a permit, the commission will not be responsible for delay caused by amending contract documents after issuance, price increases caused by reissuance of contract documents, or any other such consequences. [~~If no response has been made by the commission within 60 days of receipt of any permit application, the permit shall be considered to be granted.~~]

(b) (No change.)

§26.21. Issuance and Restriction of Historic Buildings and Structures Permits.

(a) Issuance of permit. The commission shall review the permit application submitted pursuant to §26.20 of this title (relating to Application for Historic Buildings and Structures Permits) and may issue the permit, issue the permit with special conditions, request additional information for review, request a revised scope of work, or deny the permit application.

(1) Review by commission staff. Within 30 days of the receipt of a permit application, staff shall notify the applicant in writing that the permit application is complete and accepted for filing or that the permit application is incomplete and specify the additional information required for review, such as additional drawings, construction details, or product information. The commission will issue or deny the permit within 60 days of the receipt of a complete permit application, unless additional time is required for review by the Antiquities Advisory Board under paragraph (2) of this subsection. Permits are issued by the commission and must be signed by the executive director, the director of the Division of Architecture, or a designated representative.

(2) Review by the Antiquities Advisory Board. The executive director may choose to submit the permit application to the Antiquities Advisory Board for its consideration. Permits that are denied by commission staff may be appealed by the applicant to the Antiquities Advisory Board. The board shall review such applications at its next scheduled meeting, provided it shall have a minimum of 15 [~~30~~] days to prepare for such review. Recommendations of the board shall be taken to the next scheduled meeting of the commission by the chair of the board or by one of the other commissioners who serve on the board for action thereon.

(3) The deadlines in this section may be extended for good cause. In the event a deadline is extended, the commission shall provide notice of the extension and the good cause to the applicant in writing. The applicant may complain directly to the executive director if the staff exceeds the established period for processing permits and may request a timely resolution of any dispute arising from the delay.

(4) Failure to respond. If no response has been made by the commission within 60 days of receipt of any permit application, the permit shall be considered to be granted.

(b) - (i) (No change.)

§26.22. Historic Buildings and Structures Permit Categories.

All work done on historic buildings or structures and their sites will be reviewed, and issued permits when appropriate, in accordance with one or more of the following permit categories. Section 191.054 of the Texas Natural Resources Code authorizes the commission to issue permits for survey and discovery, excavation, restoration, demolition, or study. The following permit categories clarify specific scopes of work within these areas. Restoration is herein understood to include preservation, rehabilitation, restoration, and reconstruction as defined in the Secretary of the Interior's Standards for the Treatment of Historic Properties (Standards), per §26.20(b) of this title (relating to Application for Historic Buildings and Structures Permits).

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

(4) Reconstruction permit. Reconstruction is the act or process of depicting, by means of new construction, the exact form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location. Reconstruction of a non-surviving cultural resource, or any part thereof within the described limits of a designated landmark, will be reviewed and permitted in light of its impact on the historical, architectural, or cultural integrity of that site. Reconstruction permits may be required for any reconstruction within the boundaries of a landmark that is significant as an archeological site, in addition to other applicable permits described in §26.15 of this title (relating to Archeological Permit Categories).

(5) - (8) (No change.)

(9) New construction permit. Any new construction to be built within the described limits of a landmark must be reviewed and permitted in light of its impact on the historical, architectural, and cultural integrity of that cultural resource and its site. The applicant must submit plans, elevations, and sections that adequately describe the full scope of the project and its relationship to the existing building or structure and its site. New construction permits may be required for construction within the boundaries of a landmark that is significant as an archeological site, in addition to other applicable permits described in §26.15 of this title (relating to Archeological Permit Categories).

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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Mark Wolfe
Executive Director
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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes amendments to §25.24, relating to Credit Requirements and Deposits, and §25.478, relating to Credit Requirements and Deposits. The proposed amendments will implement legislative changes made by Senate Bill 734 of the 84th Legislature, Regular Session. The amendments will make clear that the annual interest rate shall be set by the commission on or before December 1 of each calendar year to be used for the next calendar year. Project Number 45133 is assigned to this proceeding.

Anjuli Winker of the Commission's Rate 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 or local government as a result of enforcing or administering the section.

Anjuli Winker 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 flexibility with regard to when the commission will set the annual interest rate for the following calendar year. 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.

Anjuli Winker 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.

Comments on the proposed amendments 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 December 11, 2015. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 45133.

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §25.24

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2014) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, the amendments made to §183.003 of the Utilities Code, by Senate Bill 734 of the 84th Legislature, Regular Session, which directs the commission on when to set the rate of interest for the following calendar year.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, Senate Bill 734, and Utilities Code §183.003.

§25.24. Credit Requirements and Deposits.

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

(g) Interest on deposits. Each electric utility requiring deposits shall pay interest on these deposits at an annual rate at least equal to that set by the commission on or before December 1 of the preceding calendar year, pursuant to Texas Utilities Code §183.003 [~~(Vernon 1998)~~] (relating to Rate of Interest). If a deposit is refunded within 30 days of the date of deposit, no interest payment is required. If the electric utility keeps the deposit more than 30 days, payment of interest shall be made retroactive to the date of deposit.

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

(h) - (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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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7293

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SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

16 TAC §25.478

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2014) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, the amendments made to §183.003 of the Utilities Code, by Senate Bill 734 of the 84th Legislature, Regular Session, which directs the commission on when to set the rate of interest for the following calendar year.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, Senate Bill 734, and Utilities Code §183.003.

§25.478. Credit Requirements and Deposits.

(a) - (e) (No change.)

(f) Interest on deposits. A REP that requires a deposit pursuant to this section shall pay interest on that deposit at an annual rate at least equal to that set by the commission on or before [~~in~~] December 1 of the preceding calendar year, pursuant to Texas Utilities Code §183.003 (relating to Rate of Interest). If a deposit is refunded within 30 days of the date of deposit, no interest payment is required. If the REP keeps the deposit more than 30 days, payment of interest shall be made from the date of deposit.

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

(g) - (l) (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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Adriana Gonzales
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CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §26.24, §26.27

The Public Utility Commission of Texas (commission) proposes amendments to §26.24, relating to Credit Requirements and Deposits, and §26.27, relating to Bill Payment and Adjustments. The proposed amendments will implement legislative changes made by Senate Bill 734 of the 84th Legislature, Regular Session. The amendments will make clear that the annual interest rate shall be set by the commission on or before December 1 of each calendar year to be used for the next calendar year. Project Number 45132 is assigned to this proceeding.

Anjuli Winker of the Commission's Rate 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 or local government as a result of enforcing or administering the section.

Anjuli Winker 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 flexibility with regard to when the commission will set the annual interest rate for the following calendar year. 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.

Anjuli Winker 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.

Comments on the proposed amendments 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 December 11, 2015. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 45132.

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2014) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, the amendments made to §183.003 of the Utilities Code, by Senate Bill 734 of the 84th Legislature, Regular Session, which directs the commission on when to set the rate of interest for the following calendar year.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, Senate Bill 734, and Utilities Code §183.003.

§26.24. Credit Requirements and Deposits.

(a) Dominant certificated telecommunications utility (DCTU).

(1) - (6) (No change.)

(7) Interest on deposits.

(A) Each DCTU requiring deposits shall pay interest, compounded annually, on these deposits. The annual rate shall be at least equal to that set by the commission on or before December 1 of the preceding calendar year, pursuant to Texas Utilities Code Annotated §183.003 [~~(Vernon 1998)~~] (relating to Rate of Interest).

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

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

(8) - (13) (No change.)

(b) Non-dominant certificated telecommunications utility (NCTU).

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

(3) Interest on deposits.

(A) Each NCTU requiring deposits shall pay interest, compounded annually, on these deposits. The annual rate shall be at least equal to that set by the commission on or before December 1 of the preceding calendar year, pursuant to Texas Utilities Code Annotated §183.003 [~~Vernon 1998~~] (relating to Rate of Interest).

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

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

(4) - (7) (No change.)

(c) (No change.)

§26.27. Bill Payment and Adjustments.

(a) Dominant certificated telecommunications utility (DCTU).

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

(3) Billing adjustments.

(A) (No change.)

(B) Overbilling. If charges are found to be higher than authorized by the DCTU's tariffs or the terms and conditions of service, an appropriate refund shall be made to the customer.

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

(iii) If the overbilling is not corrected within three billing cycles of the initial bill in error, interest shall be paid on the amount of the overcharges. The minimum interest to be paid shall be based on the rate set by the commission on or before December 1 of the preceding calendar year, compounded monthly, and accruing from the date of payment or the initial date of the bill in error.

(iv) (No change.)

(C) Underbilling. If charges are found to be lower than authorized by the DCTU's tariffs or terms and conditions of service, or if the DCTU failed to bill the customer for service, then:

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

(iv) Interest on underbilled amounts shall:

(I) (No change.)

(II) not exceed an amount based on the rate set by the commission on or before December 1 of the preceding calendar year, compounded monthly, and accruing from the day the customer is found to have first tampered with, bypassed, or diverted service.

(4) - (8) (No change.)

(b) Nondominant certificated telecommunications utility (NCTU).

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

(4) Billing adjustments.

(A) Overbilling. If charges are higher than the NCTU's tariff, schedule, or price list terms and conditions of service, or a customer-specific contract, an appropriate refund shall be made to the customer:

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

(iii) If the overbilling is not corrected within three billing cycles of the initial bill in error, interest shall be paid on the amount of the overcharges. The minimum interest to be paid shall be based on the rate set by the commission on or before December 1 of the preceding calendar year, compounded monthly, and accruing from the date of payment or the initial date of the bill in error.

(iv) (No change.)

(B) Underbilling. If charges are found to be lower than authorized by the NCTU's tariff, schedule, or price list, terms and conditions of service, or a customer-specific contract, or if the NCTU failed to bill the customer for service, then:

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

(iv) Interest on underbilled amounts shall:

(I) (No change.)

(II) not exceed an amount based on the rate set by the commission on or before December 1 of the preceding calendar year, compounded monthly, and accruing from the day the customer is found to have first tampered with, bypassed, or diverted service.

(5) - (7) (No change.)

(c) (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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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7223

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 73. CHIROPRACTIC FACILITIES

22 TAC §73.4

The Texas Board of Chiropractic Examiners (Board) proposes amending §73.4, concerning Rules of Conduct for Facility Owners. The proposed amended rule will assist the Board in serving the public, stakeholders and licensees. The amendment will require the maintenance of electronic-mail addresses to enhance communication with the Board.

Bryan Snoddy, Interim Executive Director and General Counsel, has determined that for the first five-year period the proposed amended rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the amendment of the rule.

Mr. Snoddy has determined that for the first five-year period the proposed amended rule is in effect, the public benefit expected as a result of the proposed amendment will be clarifying the present rule resulting in clearer guidance for the public and stakeholders and a potential reduction in costs for both the Board and the licensee.

Mr. Snoddy has also determined that the proposed amended rule will not have an adverse economic effect on small businesses or individuals because the proposed amendment does not impose any duties or obligations upon small businesses or individuals.

This rule was proposed for publication at the Board's meeting on October 14, 2015. The proposed language was published on the Rules Committee and the Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meetings prior to this publication in the *Texas Register.*

No comments were received at that time regarding this amendment.

Additional comments on the proposed amended rule and/or a request for a public hearing on the proposed amended rule may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701; by fax to (512) 305-6705; or by e-mail to *rules@tbce.state.tx.us,* no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

This amended rule is proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

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

§73.4. Rules of Conduct for Facility Owners.

(a) An owner of an unregistered facility or a facility with an expired registration that continues to provide chiropractic services shall be subject to the same sanctions as a license holder who violates the Chiropractic Act or Board rules.

(b) No facility owner or employee, other than the primary treating doctor of chiropractic, shall control or attempt to control, in any way whatsoever, the professional judgment of such treating doctor with respect to patient care and treatment.

(c) A facility shall maintain a current street address with the board. A different mailing address may be provided in addition to the street address. A facility shall notify the board, in writing, of any change in street or mailing address or ownership within 30 days of the change. The notification shall be signed by the owner or authorized representative of the facility and must include the facility registration number.

(d) A facility shall maintain a current electronic mail address with the board. A facility shall notify the board, by electronic mail, of any change in the electronic mailing address within five (5) business days of the change. The notification must include the facility registration number.

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

Filed with the Office of the Secretary of State on November 5, 2015.

TRD-201504778
Bryan Snoddy
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: December 20, 2015
For further information, please call: (512) 305-6715

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CHAPTER 75. LICENSES AND RENEWALS

22 TAC §75.1

The Texas Board of Chiropractic Examiners (Board) proposes amending §75.1, concerning Notification and Change of Address. The proposed amended rule will assist the Board in serving the public, stakeholders and licensees. The amendment will require the maintenance of electronic-mail addresses to enhance communication with the Board.

Bryan Snoddy, Interim Executive Director and General Counsel, has determined that for the first five-year period the proposed amended rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the amendment of the rule.

Mr. Snoddy has determined that for the first five-year period the proposed amended rule is in effect, the public benefit expected as a result of the proposed amendment will be clarifying the present rule resulting in clearer guidance for the public and stakeholders and a potential reduction in costs for both the Board and the licensee.

Mr. Snoddy has also determined that the proposed amended rule will not have an adverse economic effect on small businesses or individuals because the proposed amendment does not impose any duties or obligations upon small businesses or individuals.

This rule was proposed for publication at the Board's meeting on October 14, 2015. The proposed language was published on the Rules Committee and the Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meetings prior to this publication in the *Texas Register.*

No comments were received regarding this amendment.

Additional comments on the proposed amended rule and/or a request for a public hearing on the proposed amended rule may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701; by fax to (512) 305-6705; or by e-mail to *rules@tbce.state.tx.us,* no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

This amended rule is proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

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

§75.1. Notification and Change of Address.

(a) Licensees shall maintain a current physical home and business address with the Board. In addition, a different mailing address may be provided beyond that of the home and business address. Within 30 days of a change in any of these addresses, a licensee shall notify the Board of the change in writing via U.S. mail, electronic-mail, facsimile, or other written communication. The notification of address change shall clearly and legibly identify the licensee, the address to be changed, the license number(s) associated with the address, and shall be signed by the licensee(s). A change of address submitted through any of the online registration portals, including Texas.gov, is not valid and must be submitted in writing as indicated within this rule.

(b) The notification shall be signed by the licensee and must include the license number.

(c) A licensee shall maintain a current electronic mail address with the board. A licensee shall notify the board, by electronic mail, of any change in the electronic mailing address within five (5) business days of the change. The notification must include the license number.

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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Bryan Snoddy
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6715

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CHAPTER 77. PROFESSIONAL CONDUCT

22 TAC §77.10

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Board of Chiropractic Examiners or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of §77.10, concerning Rules to Prevent Fraud. The repeal is necessary in order to clarify, restructure and draft a new rule regarding concise and clear guidance to the public and licensees to comply with Texas Occupations Code §201.1555.

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

Mr. Snoddy has determined that for the first five-year period the proposed repeal is in effect, the public benefit expected as a result of the proposed repeal will be clarifying and reorganizing the proposed new rule resulting in clearer guidance for the public and stakeholders.

Mr. Snoddy has also determined that the proposed repeal will not have an adverse economic effect on small businesses or individuals because the repeal does not impose any duties or obligations upon small businesses or individuals.

This repeal was proposed upon a recommendation by the Rules Committee to the Board and approved by the Board for publication. Comments were received that noted the current rule request needed additional clarification to comply with the statutory requirements.

Comments on the proposed repeal and/or a request for a public hearing on the proposed repeal may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701; by fax to (512) 305-6705 or by e-mail to rules@tbce.state.tx.us, no later than 30 days from the date that this proposed rule is published in the *Texas Register.*

This repeal is proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

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

§77.10. Rules to Prevent Fraud.

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

Filed with the Office of the Secretary of State on November 5, 2015.

TRD-201504775
Bryan Snoddy
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6715

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22 TAC §77.10

The Texas Board of Chiropractic Examiners (Board) proposes new §77.10, concerning Rules to Prevent Fraud. The proposed new rule is necessary in order to comply with Texas Occupations Code §201.1555 and to provide concise and clear guidance to the public and licensees.

Bryan Snoddy, Interim Executive Director and General Counsel, has determined that for the first five-year period the proposed new 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.

Mr. Snoddy has determined that for the first five-year period the proposed rule is in effect, the public benefit expected as a result of the proposed rule will be clarifying the present rule resulting in clearer guidance for the public and stakeholders and a potential reduction in fraudulent activity.

Mr. Snoddy has also determined that the proposed rule will not have an adverse economic effect on small businesses or individuals because the proposed rule does not impose any new significant additional duties or obligations upon small businesses or individuals.

This rule was proposed upon a recommendation by the Enforcement Committee and forwarded to the Rules Committee. The Rules Committee concurred and made a recommendation to propose the rule to the Board which subsequently approved the rule for publication. Comments were received noting that the rules were being drafted with an eye toward instituting procedural mechanisms that could reduce instances of fraud.

Comments on the proposed new rule and/or a request for a public hearing on the proposed new rule may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705; or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed rule is published in the *Texas Register.*

This new rule is proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. Additionally, the Board is authorized to adopt this rule under Texas Occupations Code §201.1555.

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

§77.10. Rules to Prevent Fraud.

(a) Fraud Definition. Fraud is defined as an intentional misrepresentation where the following conditions are present:

(1) there must be a cause of deception;

(2) the act or acts must show an intentional misrepresentation of fact; and

(3) the provider must stand to gain financially from the deception and misrepresentation.

(b) Fraud Prevention.

(1) A registered chiropractic facilities must annually certify that it maintains policies and/or procedures that govern how it handles matters concerning at least the following topics on: Medicare, billing, records management, and continuity of operations/wind-down of facility operations.

(2) Chiropractic facilities are required to ensure that its employees have read, reviewed and been trained on each procedure or policy as applicable to the employee's job responsibilities within sixty (60) days of employment and every two (2) years thereafter while in the employ of the facility.

(3) Chiropractors that have been found in violation of any law or Board rule related to fraud may be required to take the jurisprudence examination at their own expense.

(4) The Enforcement Committee may require a chiropractic facility where a violation of any law or Board rule occurred involving fraud to submit to utilization and compliance reviews at the facility owner's expense. Additionally, the Enforcement Committee may re-

quire utilization and compliance reviews for chiropractic facilities that fail to maintain adequate policies and procedures.

(c) Incorporation by Reference. As part of its policy for the prevention of fraud, the Board incorporates by reference into this section the following rules under this title: §72.2, relating to Application for License; §75.5, relating to Continuing Education; §78.1, relating to Unprofessional Conduct; §78.2, relating to Proper Diligence and Efficient Practice of Chiropractic; §77.2, relating to Publicity; and §77.8, relating to Records and Documentation.

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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Bryan Snoddy
General Counsel
Texas Board of Chiropractic Examiners
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CHAPTER 78. RULES OF PRACTICE

22 TAC §78.8

The Texas Board of Chiropractic Examiners (Board) proposes amending §78.8, concerning Complaint Procedures. The proposed amended rule is necessary in order to remove the requirement for a 120-day hearing that is not found within the Chiropractic Act or the Administrative Procedure Act.

Bryan Snoddy, Interim Executive Director and General Counsel, has determined that for the first five-year period the proposed amended rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the amendment of the rule.

Mr. Snoddy has determined that for the first five-year period the proposed amended rule is in effect, the public benefit expected as a result of the proposed amendment will be clarifying the present rule resulting in clearer guidance for the public and stakeholders.

Mr. Snoddy has also determined that the proposed amended rule will not have an adverse economic effect on small businesses or individuals because the proposed amendment does not impose any duties or obligations upon small businesses or individuals.

The purpose of the amendment is to remove a requirement for a hearing that is unsupported by statutory provisions mentioned in subsection (g)(1)(C). Additionally, the rule is proposed for amendment to recognize the changes in notice and service requirements permitted by Texas Senate Bill 1267 which allows the use of electronic-mail upon the consent of the parties.

This rule was proposed for publication at the Board's meeting on May 20, 2015. The proposed language was published on the Rules Committee and the Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meetings prior to this publication in the *Texas Register.*

No comments were received regarding proposal of the amendment.

Comments on the proposed amended rule and/or a request for a public hearing on the proposed amendment may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St., Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705; or *rules@tbce.state.tx.us,* no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The amendment is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The Board is further authorized to adopt rules based upon the relevant portions of the Administrative Procedure Act, Government Code Chapter 2001.

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

§78.8. Complaint Procedures.

(a) Filing complaints. A person who has a complaint about a licensee, facility or CRT may file a complaint with the board in person at the board's office, or in any written form, including submission of a completed complaint form. The board adopts the following form in both English and Spanish as its official complaint form which shall be available from the board upon request. A complaint shall contain information necessary for the proper processing of the complaint by the board, including:
Figure: 22 TAC §78.8(a) (No change.)

(1) complainant's name, address and phone number;

(2) name, address and phone number of the chiropractor, chiropractic facility, CRT or other person, firm or corporation, if known, against whom the complaint is made;

(3) date, time and place of occurrence of alleged violation; and

(4) complete description of incident giving rise to the complaint.

(b) Categories of complaints and investigation.

(1) The board shall distinguish between categories of complaints as follows:

(A) consumer and patient complaints against chiropractors, CRTs, or chiropractic facilities regarding alleged violations of state law, including the Texas Chiropractic Act, or board rules or orders;

(B) alleged unauthorized practice of chiropractic by unlicensed individuals, unregistered facilities or CRTs, or by a licensee, facility or CRT while a suspension order or restrictive sanction by the board is in effect;

(C) licensure, registration or reinstatement applications;

(D) alleged advertising violations by chiropractors or chiropractic facilities.

(2) The board shall prioritize complaints for purposes determining the order in which complaints are investigated, taking into account the seriousness of the allegations made in a complaint and the length of time a complaint has been pending.

(A) The board shall create and maintain a written list of the categories of complaints in order from the most serious to least

serious violations of the Texas Chiropractic Act or administrative rules. The list shall also cite the specific rules and statutes that may have been violated, and the fines or other penalties that may be assessed.

(B) The board shall have this list available at the board office and on the board website for interested parties.

(C) The board shall use this list to set priorities for the investigation of complaints against licensees with the most serious complaints being of the highest priority.

(3) All complaints or reports of alleged violations will be investigated by the board. However, anonymous complaints may not be investigated if insufficient information is provided or the allegations are vague, appear to lack a credible or factual foundation, or cannot be proved for lack of a witness or other evidence. The executive director of the board will determine whether or not an anonymous report will be logged in as a complaint for investigation. A complaint shall not be dismissed without appropriate consideration. The board and a complainant shall be advised of a dismissal of a complaint.

(4) The board staff may initiate an investigation, including the filing of a complaint, on an individual or facility regulated by the board for compliance with the law or board rules or order.

(c) Enforcement Committee.

(1) The President shall appoint an Enforcement Committee to consider all complaints filed with the board. The Executive Director under the direction of the Enforcement Committee chair shall supervise all investigations.

(2) The Enforcement Committee shall have the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records, and documents, to issue commissions to take depositions, to administer oaths and to take testimony concerning all matters within the assigned jurisdiction.

(3) The Enforcement Committee shall determine the disposition of a complaint as provided in this subsection and §78.9 and §78.10 of this title (relating to Disciplinary Guidelines and Schedule of Sanctions, respectively). The Enforcement Committee may delegate the authority to close certain complaints to the Executive Director.

(4) The Enforcement Committee may schedule an informal conference in a case in order to hear from the complainant and the respondent, in person, or if it believes a conference may facilitate the resolution of the case. A respondent, although not required, is urged to attend the informal conference. A complainant will be given notice of the conference and invited to attend. A complainant is not required to attend an informal conference.

(5) Informal conferences shall not be deemed to be meetings of the board.

(6) In a case where the Enforcement Committee has made a finding of a violation for which a sanction should be imposed, the committee may direct staff to offer an agreed order to the respondent in an effort to resolve the case informally. If an agreed order is not accepted by the respondent or no agreed order is offered, the case will be referred to the SOAH for formal hearing. The Enforcement Committee shall present an agreed order to the board for its approval once it has been signed by the respondent. Should the board amend the proposed order, the executive director shall contact the respondent to seek concurrence. If the respondent does not concur, the Enforcement Committee shall determine whether negotiations on an agreed order should continue or to refer the case for formal hearing.

(d) Commencement of formal hearing proceedings. Board staff shall commence formal hearing proceedings by filing the case with the SOAH and by giving notice to the respondent as provided §79.2 of this title (relating to Commencement of Enforcement Proceedings).

(e) Recission of probation.

(1) The board may at any time while an individual or facility is on probation upon majority vote rescind the probation and enforce the board's original action suspending such license or registration for violation of the terms of the probation or for other good cause as the board in its discretion may determine. Violations of probation shall be referred to the Enforcement Committee for action under this section. Probation shall not be rescinded without notice and an opportunity for a hearing on whether or not the probation has been violated.

(2) The board shall maintain a chronological and alphabetical listing of licensees, facilities, and CRTs, who have had their license or registration, suspended or revoked, and shall monitor compliance with each order. Any noncompliance observed as a result of monitoring shall be referred to the Enforcement Committee for action under this section.

(f) Reinstatement. An individual or chiropractic facility whose license or registration has been revoked for a period of more than one year may, after the expiration of at least one year from the date that such revocation became final, apply to the board, on forms provided by the board, for reinstatement. In considering the reinstatement of a revoked license or registration, the board in its discretion may:

(1) deny reinstatement; or

(2) grant reinstatement:

(A) without condition;

(B) with probation for a specified period of time under specified conditions; or

(C) with or without reexamination or additional training.

(g) Temporary suspension upon threat to public. The Enforcement Committee or the board, with a two-thirds vote, may temporarily suspend a license to practice chiropractic in the State of Texas if the committee or the board determines from the preponderance of the evidence or information presented to it that continued practice by the licensee constitutes a continuing or imminent threat to the public welfare. The purpose of a temporary suspension is to protect the public until a preliminary hearing can be held.

(1) Such suspension may occur without notice or hearing if at the time the suspension is ordered, a hearing on whether a disciplinary proceeding should be initiated is scheduled not later than the 14th day after the date of suspension.

(A) The purpose of the 14-day hearing is to provide the licensee with notice and an opportunity to review the Board's evidence or information, to present evidence, raise defenses, and to be heard.

(B) At the 14-day hearing, the only issue presented is whether the temporary suspension should be dissolved or kept in place. If the administrative law judge finds that the Board has competent evidence or information that continued practice by the licensee constitutes a continuing or imminent threat to the public welfare, then the administrative law judge may issue an order keeping the temporary suspension in place pending the initiation of other disciplinary proceedings against the licensee.

~~[(C) If a temporary suspension is ordered, the Board shall initiate other disciplinary proceedings within 120 days of the date~~

~~of the order of temporary suspension. If criminal action is pending against the licensee, a final hearing on such disciplinary proceedings may be deferred until such time as the criminal action is finally adjudicated.]~~

(2) A second hearing on the suspended license shall be held not later than the 60th day after the date the suspension was ordered. This 60-day hearing shall determine whether the suspension shall remain in effect pending the initiation, prosecution, and final determination of other disciplinary proceedings against the licensee. If the 60-day hearing is not held in the time required, the license is reinstated without further action of the board or committee.

(3) A hearing held under this subsection shall be conducted by the SOAH.

(4) The licensee will be notified of a suspension and any hearing scheduled under this subsection by certified mail to the address on file with the Board and by facsimile and/or email if such numbers or addresses are known to the Board. The notice sent by certified mail is legal notice under this section.

(5) The suspension shall remain in effect pending further action by the board unless an administrative law judge, the committee, or the board orders the suspension rescinded after hearing.

(6) The licensee shall not practice chiropractic during the duration of the suspension.

(7) During the suspension the enforcement and investigatory processes will continue.

(8) The licensee may waive either the 14-day or 60-day hearing or may agree that such hearings can be held beyond the statutory deadlines. The temporary suspension shall remain in effect until a hearing is held or is otherwise dissolved.

(h) Alternative Methods of Service. Upon agreement of the party to be notified, the Board may utilize electronic means sent to the current electronic-mail or telecopier number of the party's attorney of record or of the party if the party is not represented by counsel.

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

Filed with the Office of the Secretary of State on November 5, 2015.

TRD-201504776
Bryan Snoddy
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: December 20, 2015
For further information, please call: (512) 305-6715

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.210

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.210, Fees, in Subchapter R, Real Estate Inspectors. The proposed amendments align the rule with statutory changes to Chapter 1101, Texas Occupations Code, adopted by the 84th Legislature, and rule changes to the education course delivery standards. A charge for providing certified copies of documents was also added.

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 section. 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 section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be requirements that are consistent with the statute.

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 ensure compliance with Chapters 1101 and 1102.

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

§535.210. Fees.

(a) The Commission shall charge and collect the following fees:

(1) a fee of $60 for filing an original or reinstatement application for a license as an apprentice inspector;

(2) a fee of $100 for filing an original or reinstatement application for a license as a real estate inspector, which includes a fee for transcript evaluation;

(3) a fee of $120 for filing an original or reinstatement application for a license as a professional inspector, which includes a fee for transcript evaluation;

(4) a fee of $30 for the timely renewal of the license of an apprentice inspector;

(5) a fee of $50 for the timely renewal of the license of a real estate inspector;

(6) a fee of $60 for the timely renewal of the license of a professional inspector;

(7) a fee equal to 1-1/2 times the timely renewal fee for the late renewal of a license within 90 days of expiration;

(8) 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;

(9) a fee of $220 for taking a license examination consisting of a national portion and a state portion or retaking the national part of the license examination;

(10) a fee of $60 for taking a license examination without a national portion or retaking the state part of the license examination;

(11) a fee of $20 for requesting a change of a license holder name, or to establish a relationship with a sponsoring professional inspector;

(12) a fee of $50 to request an inactive professional inspector 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 the filing of a moral character determination;

(15) the fee required by the Department of Information Resources as a subscription or convenience fee for use of an online payment system;

(16) a fee of $400 for filing an application for accreditation of a qualifying inspector education program for a period of four years;

(17) after initial approval of accreditation, a fee of $200 a year for operation of a qualifying inspector education program;

(18) a fee of $50 plus the following fees [~~$10~~] per classroom hour approved by the Commission for each qualifying inspector education course for a period of four 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.

(19) a fee of $400 for filing an application for accreditation as a continuing inspector education provider for a period of two years;

(20) a fee of $50 plus the following fees [~~$5~~] per classroom hour approved by the Commission for each continuing inspector education course for a period of two years:[~~;~~]

(A) $2.50 for content and examination review;

(B) $2.50 for classroom delivery design and presentation review; and

(C) $5 for distance education delivery design and presentation review.

(21) the fee required under paragraphs (18)(C) and (20)(C) of this subsection will be waived if the course has already been certified by a distance learning certification center acceptable to the Commission.

(22) [~~(21)~~] a fee of $50 for the filing of an application for approval as an instructor for a two-year period for qualifying or continuing inspector education courses;

(23) [~~(22)~~] a fee of $30 for processing a check or other equivalent instrument returned by a bank or depository as dishonored for insufficient funds;

(24) [~~(23)~~] a fee of $10 for deposit in the real estate inspection recovery fund upon an applicant's successful completion of an examination;

(25) [~~(24)~~] 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~~]

(26) a fee of $20 per certification when providing certified copies; and

(27) [~~(25)~~] 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.

(b) - (c) (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 November 4, 2015.

TRD-201504736
Kristen Worman
Deputy General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 20, 2015
For further information, please call: (512) 936-3092

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 133. HOSPITAL LICENSING

SUBCHAPTER J. HOSPITAL LEVEL OF CARE DESIGNATIONS FOR NEONATAL AND MATERNAL CARE

25 TAC §§133.181 - 133.190

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §§133.181 - 133.190, concerning the neonatal level of care designation for hospitals.

BACKGROUND AND PURPOSE

The purpose of the new sections is to comply with House Bill (HB) 15, 83rd Legislature, Regular Session, 2013, which added Health and Safety Code, Subchapter H, Hospital Level of Care Designations for Neonatal and Maternal Care, §§241.181 - 241.187. HB 3433, 84th Legislature, Regular Session, 2015, amended Health and Safety Code, Chapter 241 and requires the development of initial rules to create the neonatal/maternal level of care designation by March 1, 2018. This rulemaking process addresses the neonatal level of care designation only. The maternal level of care designation rule development will be addressed in a future rulemaking. The designation for neonatal level of care is an eligibility requirement for Medicaid reimbursement. It is estimated that approximately 225 - 250 facilities will apply for one or both designations.

SECTION-BY-SECTION SUMMARY

Section 133.181 and §133.182 address the purpose and definitions for Subchapter J.

Section 133.183, General Requirements, identifies the four levels of neonatal care; the role of the Office of Emergency Medical Services/Trauma Services Coordination (office) in the designation process; states that facilities seeking neonatal designation for Levels II - IV shall be surveyed through a department-approved organization; and also establishes Perinatal Care Regions.

Section 133.184, Designation Process, addresses the application submittal; designation fee schedule; surveyor credentials; and an appeal process. Initial applications will receive staggered designations. Renewals will be for the full three-year designation term.

Section 133.185, Program Requirements, provides an outline of the general requirements each facility must meet.

The criteria for the four levels of neonatal designation are included in §133.186, Neonatal Designation Level I; §133.187, Neonatal Designation Level II; §133.188, Neonatal Designation Level III; §133.189, Neonatal Designation Level IV. Conversely to the Trauma Designation requirements found in Chapter 157 of this title, Subchapter G, Emergency Medical Services Trauma Systems, in the Neonatal Levels of Care, Level IV is the highest level of care and Level I is the lowest level of care.

Section 133.190, Survey Team, addresses the composition of the onsite survey team, criteria for surveyor credentials, conflict of interest, and confidentiality and privilege protection.

FISCAL NOTE

Renee Clack, Section Director, Health Care Quality Section, has determined that for the first year that the sections will be in effect, there will be fiscal implications to the state as a result of enforcing and administering the sections as proposed. For fiscal year 2017 and in subsequent years, staffing costs will be offset by designation fees. For each year of the first five years that the sections will be in effect, there may be fiscal implications for local governments should that governmental entity own and operate a facility that becomes designated. The department would be required to assign the appropriate level of care designations and to review the designations every three years; initial designations would be required to be completed by August 31, 2018, for neonatal services and by August 31, 2020, for maternal services. Any hospital failing to meet the minimum requirements at the lowest level (Level 1) of care designation would be prohibited from receiving a designation and would be unable to receive Medicaid reimbursement for neonatal services beginning September 1, 2018.

The fiscal impact of prohibiting Medicaid reimbursement for neonatal services for any hospital failing to meet the minimum requirements at the lowest level (Level 1) of care designation cannot be determined. Until the system for assigning levels of care has been established, it cannot be determined whether or not any hospital would be prohibited from receiving reimbursement.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS AND ECONOMIC COSTS TO PERSONS

Ms. Clack has also determined that there could be an adverse impact on small businesses or micro-businesses or persons who are required to comply with the sections as proposed if they operate a healthcare facility. A facility will be required to pay a non-refundable application fee for a three-year designation of neonatal care for Levels I - IV that vary from $250 to $2,500 depending on the level of designation sought to cover the department's costs.

There is an additional cost to the facility for an on-site survey to verify compliance for designation of neonatal care for Levels II - IV facilities. An on-site survey is not required for the Level I facility. Although the survey organizations must be approved by the department's office, the office does not determine the fee that the survey organization may charge. Anticipated costs based upon similar survey types and can range from $6,000 up to $20,000.

A facility seeking a renewal of designation will also be required to pay for the renewal application and survey fees.

IMPACT ON LOCAL EMPLOYMENT

There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Clack has also 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 public benefit anticipated as a result of enforcing or administering the sections is that designation of hospitals will facilitate the birth of neonates at hospitals with the appropriate capabilities necessary to improve neonatal outcomes in Texas.

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Jane Guerrero, Office of EMS/Trauma Systems Coordination, Health Care and Quality Section, Division of Regulatory Services, Department of State Health Services, Mail Code 1876, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6700, or by email to Jane.Guerrero@dshs.state.tx.us. Comments will be accepted for 30 days following the publication of the proposal to the *Texas Register.*

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the Department of State Health Services, 1100 West 49th Street, Austin, Texas. The meeting date will be posted on the home page of the EMS/Trauma Systems under "News/Features found at the following link: http://www.dshs.state.tx.us/emstraumasystems/. Please contact Jewell Potter by phone at (512)

834-6700, extension 6743 or Jewell.Potter@dshs.state.tx.us if you have questions.

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 new sections are authorized by Health and Safety Code, Chapter 241, which provides the department with the authority to adopt rules establishing the levels of care for neonatal care, establish a process for assignment or amendment of the levels of care to hospitals, divide the state into neonatal care regions, and facilitate transfer agreements through regional coordination; and 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 new sections affect Health and Safety Code, Chapter 241; and comply with Health and Safety Code, Chapter 1001; and Government Code, Chapters 531 and 2001.

§133.181. Purpose.

The purpose of this section is to implement Health and Safety Code, Chapter 241, Subchapter H, Hospital Level of Care Designations for Neonatal and Maternal Care, which requires a level of care designation of neonatal services to be eligible to receive reimbursement through the Medicaid program for neonatal services.

§133.182. Definitions.

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

(1) Attestation--A written statement, signed by the Chief Executive Officer of the facility, verifying the results of a self-survey represent a true and accurate assessment of the facility's capabilities required in this subchapter.

(2) Birth weight--The weight of the neonate recorded at time of birth.

(A) Low birth weight--Birth weight less than 2500 grams (5 lbs., 8 oz.);

(B) Very low birth weight (VLBW)--Birth weight less than 1500 grams (3 lbs., 5 oz.); and

(C) Extremely low birth weight (ELBW)--Birth weight less than 1000grams (2 lbs., 3 oz.).

(3) CAP--Corrective Action(s) Plan. A plan for the facility developed by the Office of EMS/Trauma Systems Coordination that describes the actions required of the facility to correct identified deficiencies to ensure compliance with the applicable designation requirements.

(4) Commission--The Health and Human Services Commission.

(5) Department--The Department of State Health Services.

(6) Designation--A formal recognition by the executive commissioner of a facility's neonatal or maternal care capabilities and commitment, for a period of three years.

(7) EMS--Emergency medical services used to respond to an individual's perceived need for immediate medical care.

(8) Executive commissioner--The executive commissioner of the Health and Human Services Commission.

(9) Gestational age--The age of a fetus or embryo at a specific point during a woman's pregnancy.

(10) High-risk Infant--A newborn that has a greater chance of complications because of conditions that occur during fetal development, pregnancy conditions of the mother, or problems that may occur during labor and/or birth.

(11) Immediate supervision--The supervisor is actually observing the task or activity as it is performed.

(12) Immediately--Without delay.

(13) Infant--A child from birth to 1 year of age.

(14) Lactation consultant--A health care professional who specializes in the clinical management of breastfeeding.

(15) Maternal--Pertaining to the mother.

(16) NCPAP--Nasal continuous positive airway pressure.

(17) Neonate--An infant from birth through 28 completed days after.

(18) NMD--Neonatal Medical Director.

(19) NPM--Neonatal Program Manager.

(20) Neonatal Resuscitation Program (NRP)--A resuscitation course that was developed and is administered jointly by the American Heart Association/American Academy of Pediatrics.

(21) Office--Office of Emergency Medical Services (EMS)/Trauma Systems Coordination.

(22) PCR--Perinatal Care Region.

(23) Perinatal--Of, relating to, or being the period around childbirth, especially the five months before and one month after birth.

(24) POC--Plan of Correction. A report submitted to the office by the facility detailing how the facility will correct any deficiencies cited in the survey report or documented in the self-attestation.

(25) Premature/prematurity--Birth at less than 37 weeks of gestation.

(26) Postpartum--The six-week period following delivery.

(27) QAPI--Quality Assessment and Performance Improvement Program.

(28) RAC--Regional Advisory Council as described in §157.123 of this title (relating to Regional Emergency Medical Services/Trauma Systems).

(29) Supervision--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(30) TSA--Trauma Service Area as described in §157.122 of this title relating to (Trauma Service Areas).

(31) Urgent--Requiring immediate action or attention.

§133.183. General Requirements.

(a) The Office of Emergency Medical Services (EMS)/Trauma Systems Coordination (office) shall recommend to the Executive Commissioner of the Health and Human Services Commission (executive

commissioner) the designation of an applicant/healthcare facility as a neonatal facility at the level for each location of a facility, which the office deems appropriate.

(b) A healthcare facility is defined under this subchapter as a single location where inpatients receive hospital services or each location if there are multiple buildings where inpatients receive hospital services and are covered under a single hospital license.

(c) Each location shall be considered separately for designation and the office will determine the designation level for that location, based on, but not limited to, the location's own resources and level of care capabilities; Perinatal Care Region (PCR) capabilities; compliance with Chapter 133 of this title, concerning Hospital Licensing. A stand-alone children's facility that does not provide obstetrical services is exempt from obstetrical requirements. The final determination of the level of designation may not be the level requested by the facility.

(1) Level I (Well Nursery). The Level I neonatal designated facility will:

(A) provide care for mothers and their infants of ≥35 weeks gestational age who have routine, transient perinatal problems; and

(B) have skilled personnel with documented training, competencies and continuing education specific for the patient population served.

(2) The Level II (Special Care Nursery). The Level II neonatal designated facility will:

(A) provide care for mothers and their infants of generally ≥32 weeks gestational age and birth weight ≥1500 grams who have physiologic immaturity or who have problems that are expected to resolve rapidly and are not anticipated to require subspecialty services on an urgent basis; and

(B) either provide care, including assisted endotracheal ventilation for less than 24 hours or nasal continuous positive airway pressure (NCPAP) until the infant's condition improves, or arrange for appropriate transfer to a higher level designated facility; and

(C) provide skilled personnel that have documented training, competencies and annual continuing education specific for the patient population served.

(3) Level III (Neonatal Intensive Care Unit (ICU)). The Level III neonatal designated facility will:

(A) provide care for mothers and comprehensive care of their infants of all gestational ages with mild to critical illnesses or requiring sustained life support;

(B) have access for consultation to a full range of pediatric medical subspecialists and pediatric surgical specialists, and the capability to perform major pediatric surgery on-site or at another appropriate designated facility;

(C) have skilled medical staff and personnel with documented training, competencies and continuing education specific for the patient population served;

(D) facilitate transports; and

(E) provide outreach education to lower level designated facilities.

(4) Level IV (Advanced Neonatal ICU). The Level IV neonatal designated facility will:

(A) provide care for mothers and comprehensive care of their infants of all gestational ages with the most complex and critically ill neonates/infants with any medical problems, and/or requiring sustained life support;

(B) have a comprehensive range of pediatric medical subspecialists and pediatric surgical subspecialists available to arrive on-site for face to face consultation and care, and the capability to perform major pediatric surgery including the surgical repair of complex conditions;

(C) have skilled personnel with documented training, competencies and continuing education specific for the patient population served;

(D) facilitate transports; and

(E) provide outreach education to lower level designated facilities.

(d) Facilities seeking neonatal facility designation shall be surveyed through an organization approved by the office to verify that the facility is meeting office-approved relevant neonatal facility requirements. The facility shall bear the cost of the survey.

(e) PCRs.

(1) The PCRs are established for descriptive and regional planning purposes and not for the purpose of restricting patient referral.

(2) The PCR will consider and facilitate transfer agreements through regional coordination.

(3) A written plan identifies all resources available in the PCRs for perinatal care including resources for emergency and disaster preparedness.

(4) The PCRs are geographically divided by counties and are integrated into the existing 22 TSAs and the applicable Regional Advisory Council (RAC) of the TSA provided in §157.122 and §157.123 of this title; will be administratively supported by the RAC; and will have fair and equitable representation on the board of the applicable RAC.

(5) Multiple PCRs can meet together for the purposes of mutual collaboration.

§133.184. Designation Process.

(a) Designation application submittal. The applicant shall submit the following documents to the Office of EMS/Trauma Systems Coordination (office):

(1) an accurate and complete designation application form for the appropriate level of designation, including full payment of the designation fee as listed in subsection (d) of this section;

(2) any subsequent documents submitted by the date requested by the office;

(3) a completed neonatal attestation for Level I applicants, a designation survey report, including patient care reviews, if required by the office, completed not later than 120 days prior to the date of the application;

(4) a plan of correction (POC), detailing how the facility will correct any deficiencies cited in the survey report, to include: the corrective action; the title of the person responsible for ensuring the correction(s) is implemented; how the corrective action will be monitored; and the date by which the POC will be completed; and

(5) evidence of participation in the applicable Perinatal Care Region (PCR).

(b) Renewal of designation. The applicant shall submit the documents described in subsection (a)(1) - (5) of this section to the office not more than 180 days prior to the designation expiration date and at least 60 days prior to the designation expiration date.

(c) If a facility seeking designation fails to meet the requirements in subsection (a)(1) - (5) of this section, the application shall be denied.

(d) Non-refundable application fees for the three year designation period are as follows:

(1) Level I neonatal facility applicants, the fees are as follows:

(A) ≤100 licensed beds, the fee is $250.00; or

(B) >100 licensed beds, the fee is $750.00.

(2) Level II neonatal facility applicants, the fee is $1,500.00.

(3) Level III neonatal facility applicants, the fee is $2,000.00.

(4) Level IV neonatal facility applicants, the fee is $2,500.00.

(A) All completed applications, received on or before July 1, 2018, including the application fee, evidence of participation in the PCR, an appropriate attestation if required, survey report, and that meet the requirements of the requested designation level, will be issued a designation for the full three-year term.

(B) Any facility that has not completed an on-site survey to verify compliance with the requirements for a Level II, III or IV designation at the time of application must provide a self-survey and attestation and will receive a Level I designation. The office, at its sole discretion may recommend a designation for less than the full three-year term. A designation for less than the full three-year term will have a pro-rated application fee consistent with the one, two or three-year term length.

(C) A facility applying for Level I designation requiring an attestation may receive a shorter term designation at the discretion of the office. A designation for less than the full three-year term will have a pro-rated application fee.

(D) The office, at its discretion, may designate a facility for a shorter term designation for any application received prior to September 1, 2018.

(E) An application for a higher or lower level designation may be submitted at any time.

(e) If a facility disagrees with the level(s) determined by the office to be appropriate for initial designation or re-designation, it may make an appeal in writing not later than 60 days to the director of the office. The written appeal must include a signed letter from the facility's governing board with an explanation as to why designation at the level determined by the office would not be in the best interest of the citizens of the affected PCR or the citizens of the State of Texas.

(1) The written appeal may include a signed letter(s) from the executive board of its PCR or individual healthcare facilities and/or EMS providers within the affected PCR with an explanation as to why designation at the level determined by the office would not be in the best interest of the citizens of the affected PCR or the citizens of the State of Texas.

(2) If the office upholds its original determination, the director of the office will give written notice of such to the facility not later than 30 days of its receipt of the applicant's complete written appeal.

(3) The facility may, not later than 30 days of the office's sending written notification of its denial, submit a written request for further review. Such written appeal shall then go to the Assistant Commissioner of the Division for Regulatory Services (assistant commissioner).

(f) The surveyor(s) shall provide the facility with a written, signed survey report regarding their evaluation of the facility's compliance with neonatal program requirements. This survey report shall be forwarded to the facility no later than 30 days of the completion date of the survey. The facility is responsible for forwarding a copy of this report to the office if it intends to continue the designation process.

(g) The office shall review the findings of the survey report and any POC submitted by the facility, to determine compliance with the neonatal program requirements.

(1) A recommendation for designation shall be made to the executive commissioner based on compliance with the requirements.

(2) A neonatal level of care designation shall not be denied to a facility that meets the minimum requirements for that level of care designation.

(3) If a facility does not meet the requirements for the level of designation requested, the office shall recommend designation for the facility at the highest level for which it qualifies and notify the facility of the requirements it must meet to achieve the requested level of designation.

(4) If a facility does not comply with requirements, the office shall notify the facility of deficiencies and required corrective action(s) plan (CAP).

(A) The facility shall submit to the office reports as required and outlined in the CAP. The office may require a second survey to ensure compliance with the requirements. The cost of the survey will be at the expense of the facility.

(B) If the office substantiates action that brings the facility into compliance with the requirements, the office shall recommend designation to the executive commissioner.

(C) If a facility disagrees with the office's decision regarding its designation application or status, it may request a secondary review by a designation review committee. Membership on a designation review committee will:

(i) be voluntary;

(ii) be appointed by the office director;

(iii) be representative of neonatal care providers and appropriate levels of designated neonatal facilities; and

(iv) include representation from the office and the Perinatal Advisory Council.

(D) If a designation review committee disagrees with the office's recommendation for corrective action, the records shall be referred to the assistant commissioner for recommendation to the executive commissioner.

(E) If a facility disagrees with the office's recommendation at the end of the secondary review, the facility has a right to a hearing, in accordance with a hearing request referenced in §133.121(9) of this title (relating to Enforcement Action), and Government Code, Chapter 2001.

§133.185. Program Requirements.

(a) Designated facilities shall have a family centered philosophy. Parents shall have reasonable access to their infants at all times and be encouraged to participate in the care of their infants. The facility environment for perinatal care shall meet the physiologic and psychosocial needs of the mothers, infants, and families.

(b) Program Plan. The facility shall develop a written plan of the neonatal program that includes a detailed description of the scope of services available to all maternal and neonatal patients, defines the neonatal patient population evaluated and/or treated, transferred, or transported by the facility, that is consistent with accepted professional standards of practice for neonatal and maternal care, and ensures the health and safety of patients.

(1) The written plan and the program policies and procedures shall be reviewed and approved by the facility's governing body. The governing body shall ensure that the requirements of this section are implemented and enforced.

(2) The written neonatal program plan shall include, at a minimum:

(A) standards of neonatal practice that the program policies and procedures are based upon that are adopted, implemented and enforced for the neonatal services it provides;

(B) a periodic review and revision schedule for all neonatal care policies and procedures;

(C) written triage, stabilization and transfer guidelines for neonates and/or pregnant/postpartum women that include consultation and transport services;

(D) provisions for disaster response to include evacuation of mothers and infants to appropriate levels of care;

(E) a Quality Assessment and Performance Improvement (QAPI) Program as described in §133.41(r) of this title (relating to Hospital Functions and Services). The facility shall demonstrate that the neonatal program evaluates the provision of neonatal care on an ongoing basis, identify opportunities for improvement, develop and implement improvement plans, and evaluate the implementation until a resolution is achieved. The neonatal program shall measure, analyze, and track quality indicators or other aspects of performance that the facility adopts or develops that reflect processes of care and is outcome based. Evidence shall support that aggregate patient data is continuously reviewed for trends and data is submitted to the department as requested;

(F) requirements for minimal credentials for all staff participating in the care of neonatal patients;

(G) provisions for providing continuing staff education; including annual competency and skills assessment that is appropriate for the patient population served;

(H) a perinatal staff registered nurse as a representative on the nurse staffing committee under §133.41(o)(2)(F) of this title;

(I) the availability of all necessary equipment and services to provide the appropriate level of care and support of the patient population served; and

(J) the availability of personnel with knowledge and skills in breastfeeding.

(c) Medical Staff. The facility shall have an organized, effective neonatal program that is recognized by the medical staff and approved by the facility's governing body. The credentialing of the medical staff shall include a process for the delineation of privileges for neonatal care.

(d) Medical Director. There shall be an identified Neonatal Medical Director (NMD) and/or Transport Medical Director (TMD) as appropriate, responsible for the provision of neonatal care services and credentialed by the facility for the treatment of neonatal patients.

(1) The NMD and/or TMD shall have the authority and responsibility to monitor neonatal patient care from admission, stabilization, operative intervention(s) if applicable, through discharge, inclusive of the QAPI Program.

(2) The responsibilities and authority of the NMD and/or TMD shall include but are not limited to:

(A) examining qualifications of medical staff requesting neonatal privileges and makes recommendations to the appropriate committee for such privileges;

(B) assuring staff competency in resuscitation techniques;

(C) participating in ongoing staff education and training in the care of the neonatal patient;

(D) oversight of the inter-facility neonatal transport;

(E) participating in the development, review and assurance of the implementation of the policies, procedures and guidelines of neonatal care in the facility including written criteria for transfer, consultation or higher level of care;

(F) regular and active participation in neonatal care at the facility where medical director services are provided;

(G) ensuring that the QAPI Program is specific to neonatal/infant care, is ongoing, data driven and outcome based; and regularly participates in the neonatal QAPI meeting; and

(H) maintaining active staff privileges as defined in the facility's medical staff bylaws.

(e) Neonatal Program Manager (NPM). The NPM responsible for the provision of neonatal care services shall be identified by the facility and:

(1) be a registered nurse:

(2) have successfully completed and is current in the Neonatal Resuscitation Program (NRP) or an office-approved equivalent:

(3) have the authority and responsibility to monitor the provision of neonatal patient care services from admission, stabilization, operative intervention(s) if applicable, through discharge, inclusive of the QAPI Program as defined in subsection (b)(2)(E) of this section;

(4) collaborate with the NMD in areas to include, but not limited to: developing and/or revising policies, procedures and guidelines; assuring staff competency, education, and training; the QAPI Program; and regularly participates in the neonatal QAPI meeting; and

(5) develop collaborative relationships with other NPM(s) of designated facilities within the applicable Perinatal Care Region.

§133.186. Neonatal Designation Level I.

(a) Level I (Well Nursery). The Level I neonatal designated facility will:

(1) provide care for mothers and their infants of ≥35 weeks gestational age who have routine, transient perinatal problems; and

(2) have skilled personnel with documented training, competencies and continuing education specific for the patient population served.

(b) Neonatal Medical Director (NMD). The NMD shall be a physician who:

(1) is a currently practicing pediatrician, family medicine physician, or physician specializing in obstetrics and gynecology with experience in the care of neonates/infants;

(2) demonstrates a current status on successful completion of the Neonatal Resuscitation Program (NRP);

(3) demonstrates effective administrative skills and oversight of the Quality Assessment and Performance Improvement (QAPI) Program; and

(4) has completed continuing medical education annually specific to the care of neonates.

(c) Program Functions and Services.

(1) Triage and assessment of all patients admitted to the perinatal service with identification of pregnant patients who are at high risk of delivering a neonate that requires a higher level of care who will be transferred to a higher level facility prior to delivery unless the transfer would be unsafe.

(2) Supportive and emergency care delivered by appropriately trained personnel for unanticipated maternal-fetal problems that occur during labor and delivery through the disposition of the patient.

(3) The ability to perform an emergency cesarean delivery.

(4) The primary physician, advanced practice nurse and/or physician assistant with special competence in the care of neonates, who has been approved by the NMD and is on call, and:

(A) shall demonstrate a current status on successful completion of the American Heart Association/American Academy of Pediatrics for the resuscitation of all infants NRP;

(B) has completed continuing education annually, specific to the care of neonates;

(C) shall arrive at the patient bedside within 30 minutes of an urgent request;

(D) if not immediately available to respond or is covering more than one facility, be provided appropriate backup coverage who shall be available, documented in an on call schedule and readily available to facility staff; and

(E) if the physician, advanced practice nurse and/or physician assistant is providing backup coverage, shall arrive at the patient bedside within 30 minutes of an urgent request.

(5) Availability of appropriate anesthesia, laboratory, radiology, ultrasonography and blood bank services on a 24 hour basis as described in §133.41(a), (h), and (s) of this title, respectively.

(A) If preliminary reading of imaging studies pending formal interpretation is performed, the preliminary findings must be documented in the medical record.

(B) There must be regular monitoring of the preliminary versus final reading in the QAPI Program.

(6) A pharmacist shall be available for consultation on a 24 hour basis.

(A) If medication compounding is done by a pharmacy technician for neonates/infants, a pharmacist will provide immediate supervision of the compounding process.

(B) If medication compounding is done for neonates/infants, the pharmacist will develop checks and balances to ensure the accuracy of the final product.

(7) Resuscitation. The facility shall have appropriately trained staff, policies and procedures for the stabilization and resuscitation of neonates based on current standards of professional practice; shall ensure the availability of personnel who can stabilize distressed neonates including those ≤35weeks gestation until they can be transferred to a higher level facility.

(A) Each birth shall be attended by at least one person who demonstrates a current status of successful completion of the NRP whose primary responsibility is for the management of the neonate and initiating resuscitation.

(B) At least one person must be immediately available on-site with the skills to perform a complete neonatal resuscitation including endotracheal intubation, establishment of vascular access and administration of medications.

(C) Additional providers with current status of successful completion of the NRP shall be on-site and immediately available upon request;

(D) Basic NRP equipment and supplies shall be immediately available for trained staff to perform resuscitation and stabilization on any neonate/infant.

(8) Perinatal Education. A registered nurse with experience in neonatal and/or perinatal care shall provide supervision and coordination of staff education.

(9) Ensures the availability of support personnel with knowledge and skills in breastfeeding to meet the needs of new mothers.

(10) Social services and pastoral care shall be provided as appropriate to meet the needs of the patient population served.

§133.187. Neonatal Designation Level II.

(a) Level II (Special Care Nursery).

(1) The Level II neonatal designated facility will:

(A) provide care for mothers and their infants of generally ≥32 weeks gestational age and birth weight ≥1500 grams who have physiologic immaturity or who have problems that are expected to resolve rapidly and are not anticipated to require subspecialty services on an urgent basis; and

(B) will either provide care, including assisted endotracheal ventilation for less than 24 hours or nasal continuous positive airway pressure (NCPAP) until the infant's condition improves, or arrange for appropriate transfer to a higher level designated facility; and

(C) provide skilled personnel that have documented training, competencies and annual continuing education specific for the patient population served.

(2) If a facility is located more than 75 miles from the nearest Level III or IV designated neonatal facility, and retains a neonate between 30 and 32 weeks of gestation having a birth weight of between 1250 - 1500 grams, the facility shall provide the same level of care that the neonate would receive at a higher level designated neonatal facility and shall, through the QAPI program, complete an in depth critical review of the care provided.

(b) Neonatal Medical Director (NMD). The NMD shall be a physician who is:

(1) a board eligible/certified neonatologist, or board eligible/certified pediatrician with experience in the care of neonates/infants and demonstrates a current status on successful completion of the Neonatal Resuscitation Program (NRP); or

(2) by the effective date of this rule, a pediatrician or neonatologist who:

(A) has continuously provided neonatal care for the last consecutive two years; has experience and training in the care of neonates/infants including assisted endotracheal ventilation and NCPAP management;

(B) maintains a consultative relationship with a board eligible/certified neonatologist;

(C) demonstrates effective administrative skills and oversight of the Quality Assessment and Performance Improvement Program;

(D) demonstrates a current status on successful completion of the NRP; and

(E) has completed continuing medical education annually specific to the care of neonates.

(c) Program Functions and Services.

(1) Triage and assessment of all patients admitted to the perinatal service with the identification of pregnant women with a high likelihood of delivering a neonate requiring a higher level of care be transferred prior to delivery unless the transfer is unsafe.

(2) Supportive and emergency care delivered by appropriately trained personnel, for unanticipated maternal-fetal problems that occur during labor and delivery through the disposition of the patient.

(3) The ability to perform an emergency cesarean delivery.

(4) The physician, advanced practice nurse and/or physician assistant with special competence in the care of neonates, who has been approved by the NMD and is on call, and:

(A) shall demonstrate a current status on successful completion of the NRP;

(B) shall have completed continuing education annually specific to the care of neonates;

(C) shall arrive at the patient bedside within 30 minutes of an urgent request;

(D) if not immediately available to respond or is covering more than one facility, appropriate back-up coverage shall be available, documented in an on call schedule and readily available to facility staff;

(E) the physician, advanced practice nurse and/or physician assistant providing backup coverage shall arrive at the patient bedside within 30 minutes of urgent request; and

(F) shall be on-site to provide ongoing care and to respond to emergencies when a neonate/infant is maintained on endotracheal ventilation.

(5) Anesthesia services with pediatric experience will be provided in compliance with the requirements found in §133.41(a) of this title (relating to Hospital Functions and Services).

(6) Dietitian or nutritionist with sufficient training and experience in neonatal and maternal nutrition, appropriate to meet the needs of the population served, shall be available and in compliance with the requirements found in §133.41(d) of this title.

(7) Laboratory services shall be in compliance with the requirements found in §133.41(h) of this title and shall have:

(A) personnel on-site at all times when a neonate/infant is maintained on endotracheal ventilation;

(B) a blood bank capable of providing blood and blood component therapy; and

(C) neonatal/infant blood gas monitoring capabilities.

(8) Pharmacy services shall be in compliance with the requirements found in §133.41(q) of this title and shall have a pharmacist with experience in neonatal/perinatal pharmacology available at all times.

(A) If medication compounding is done by a pharmacy technician for neonates/infants, a pharmacist will provide immediate supervision of the compounding process.

(B) If medication compounding is done for neonates/infants, the pharmacist will develop checks and balances to ensure the accuracy of the final product.

(C) Total parenteral nutrition appropriate for neonates/infants shall be available.

(9) An occupational or physical therapist with sufficient neonatal expertise shall be available to meet the needs of the population served.

(10) Medical Imaging. Radiology services shall be in compliance with the requirements found in §133.41(s) of this title and will incorporate the "As Low as Reasonably Achievable" principle when obtaining imaging in neonatal and maternal patients; and shall have:

(A) personnel appropriately trained, in the use of x-ray and ultrasound equipment;

(B) personnel at the bedside within 30 minutes of an urgent request;

(C) appropriately trained personnel shall be available on-site to provide ongoing care and to respond to emergencies when an infant is maintained on endotracheal ventilation; and

(D) interpretation capability of neonatal and perinatal x-rays and ultrasound studies available at all times.

(11) A respiratory therapist, with experience and specialized training in the respiratory support of neonates/infants, whose credentials have been reviewed by the NMD, shall be immediately available on-site when:

(A) a neonate/infant is on a respiratory ventilator to provide ongoing care and to respond to emergencies; or

(B) a neonate/infant is on a Continuous Positive Airway Pressure (CPAP) apparatus.

(12) Resuscitation. The facility shall have written policies and procedures specific to the facility for the stabilization and resuscitation of neonates based on current standards of professional practice.

(A) Each birth shall be attended by at least one provider who demonstrates current status of successful completion of the NRP whose primary responsibility is the management of the neonate and initiating resuscitation.

(B) At least one person must be immediately available on-site with the skills to perform a complete neonatal resuscitation including endotracheal intubation, establishment of vascular access and administration of medications.

(C) Additional providers with current status of successful completion of the NRP shall be on-site and immediately available upon request.

(D) Additional providers who demonstrate current status of successful completion of the NRP shall attend each neonate in the event of multiple births.

(E) A full range of NRP equipment and supplies shall be immediately available for trained staff to perform resuscitation and stabilization on any neonate/infant.

(13) Perinatal Education. A registered nurse with experience in neonatal care, including special care nursery, and/or perinatal care shall provide supervision and coordination of staff education.

(14) Social services and pastoral care shall be provided as appropriate to the patient population served.

(15) Ensure the timely evaluation of retinopathy of prematurity, monitoring, referral for treatment and follow-up, in the case of an at-risk infant.

(16) Ensure the availability of support personnel with knowledge and expertise in lactation to meet the needs of new mothers while breastfeeding.

(17) Ensure provisions for follow up care at discharge for infants at high risk for neurodevelopmental, medical or psychosocial complications.

§133.188. Neonatal Designation Level III.

(a) Level III (Neonatal Intensive Care Unit (ICU)). The Level III neonatal designated facility will:

(1) provide care for mothers and comprehensive care of their infants of all gestational ages with mild to critical illnesses or requiring sustained life support;

(2) have access for consultation to a full range of pediatric medical subspecialists and pediatric surgical specialists, and the capability to perform major pediatric surgery on-site or through arrangement for appropriate transfer to a higher level designated facility;

(3) have skilled medical staff and personnel with documented training, competencies and continuing education specific for the patient population served;

(4) facilitate transports; and

(5) provide outreach education to lower level designated facilities.

(b) Neonatal Medical Director (NMD). The NMD shall be a physician who is a board eligible/certified neonatologist and demonstrates a current status on successful completion of the Neonatal Resuscitation Program (NRP).

(c) If the facility has its own transport program, there shall be an identified Transport Medical Director (TMD). The TMD or Co-Director shall be a physician who is a board eligible/certified neonatologist or pediatrician with expertise and experience in neonatal/infant transport.

(d) Program Functions and Services.

(1) Triage and assessment of all patients admitted to the perinatal service with identification of pregnant patients who are at high risk of delivering a neonate that requires a higher level of care who will be transferred to a higher level facility prior to delivery unless the transfer is unsafe.

(2) Supportive and emergency care shall be delivered by appropriately trained personnel, for unanticipated maternal-fetal problems that occur during labor and delivery through the disposition of the patient.

(3) The ability to perform an emergency cesarean delivery within 30 minutes.

(4) At least one of the following neonatal providers shall be on-site at all times and includes pediatric hospitalists, neonatologists, and/or neonatal nurse practitioners, as appropriate, who have demonstrated competence in management of severely ill neonates/infants, who has been approved by the NMD and is on call, and:

(A) has a current status of successful completion of the NRP;

(B) has completed continuing education annually, specific to the care of neonates;

(C) if the on-site provider is not a neonatologist, a neonatologist shall be available for consultation at all times and shall arrive on-site within 30 minutes of an urgent request;

(D) if the neonatologist is covering more than one facility, the facility must ensure that a back-up neonatologist be available, documented in an on call schedule and readily available to facility staff; and

(E) ensure that the neonatologist providing back-up coverage shall arrive on-site within 30 minutes.

(5) When neonatal surgery or invasive procedures are required, anesthesiologists with pediatric expertise, shall directly provide the anesthesia care to the neonate, in compliance with the requirements found in §133.41(a) of this title (relating to Hospital Functions and Services).

(6) A dietitian or nutritionist who has special training in perinatal and neonatal nutrition and can plan diets that meet the special needs of neonates/infants is available at all times, in compliance with the requirements found in §133.41(d) of this title.

(7) Laboratory services shall be in compliance with the requirements found at §133.41(h) of this title and shall have:

(A) laboratory personnel on-site at all times;

(B) perinatal pathology services available;

(C) a blood bank capable of providing blood and blood component therapy; and

(D) neonatal blood gas monitoring capabilities.

(8) Pharmacy services shall be in compliance with the requirements found in §133.41(q) of this title and will have a pharmacist, with experience in neonatal/pediatric and perinatal pharmacology, available at all times.

(A) If medication compounding is done by a pharmacy technician for neonates/infants, a pharmacist will provide immediate supervision of the compounding process.

(B) If medication compounding is done for neonates/infants, the pharmacist will develop checks and balances to ensure the accuracy of the final product.

(C) Total parenteral nutrition appropriate for neonates/infants shall be available.

(9) An occupational or physical therapist with sufficient neonatal expertise shall be available to meet the needs of the population served.

(10) Medical Imaging. Radiology services shall be in compliance with the requirements found in §133.41(s) of this title; will incorporate the "As Low as Reasonably Achievable" principle when obtaining imaging in neonatal and maternal patients; and shall have:

(A) personnel appropriately trained in the use of x-ray equipment, ultrasound, computed tomography, magnetic resonance imaging, and/or cranial ultrasound, echocardiography equipment on-site and available at all times; fluoroscopy shall be available;

(B) interpretation of neonatal and perinatal diagnostic imaging studies by radiologists with pediatric expertise at all times; and

(C) pediatric echocardiography with pediatric cardiology interpretation and consultation within one hour of an urgent request.

(11) Speech language pathologist with neonatal/infant experience shall be available to evaluate and manage feeding and/or swallowing disorders.

(12) A respiratory therapist, with experience and specialized training in the respiratory support of neonates/infants, whose credentials have been reviewed by the NMD, shall be immediately available on-site.

(13) Resuscitation. Written policies and procedures shall be specific to the facility for the stabilization and resuscitation of neonates based on current standards of professional practice.

(A) Each birth shall be attended by at least one provider who demonstrates current status of successful completion of the NRP whose primary responsibility is the management of the neonate and initiating resuscitation.

(B) At least one person must be immediately available on-site with the skills to perform a complete neonatal resuscitation including endotracheal intubation, establishment of vascular access and administration of medications.

(C) Additional providers who demonstrate current status of successful completion of the NRP shall attend each neonate in the event of multiple births.

(D) Each high-risk delivery shall have in attendance at least two providers who demonstrate current status of successful completion of the NRP whose only responsibility is the management of the neonate.

(E) A full range of resuscitative equipment, supplies, and medications shall be immediately available for trained staff to perform complete resuscitation and stabilization on each neonate/infant.

(14) Perinatal education. A registered nurse with experience in neonatal care, including neonatal intensive care, and/or perinatal care shall provide supervision and coordination of staff education.

(15) Pastoral care and/or counseling shall be provided as appropriate to the patient population served.

(16) Social services shall be provided as appropriate to the patient population served.

(17) Ensure the timely evaluation of retinopathy of prematurity, monitoring, referral for treatment and follow-up, in the case of an at-risk infant.

(18) A certified lactation consultant shall be available at all times.

(19) Ensure provisions for follow up care at discharge for infants at high risk for neurodevelopmental, medical, or psychosocial complications.

§133.189. Neonatal Designation Level IV.

(a) Level IV (Advanced Neonatal Intensive Care Unit). The Level IV neonatal designated facility will:

(1) provide care for the mothers and comprehensive care of their infants of all gestational ages with the most complex and critically ill neonates/infants with any medical problems, and/or requiring sustained life support;

(2) ensure that a comprehensive range of pediatric medical subspecialists and pediatric surgical subspecialists are available to arrive on-site for face to face consultation and care, and the capability to perform major pediatric surgery including the surgical repair of complex conditions;

(3) have skilled personnel with documented training, competencies and continuing education specific for the patient population served;

(4) facilitate transports; and

(5) provide outreach education to lower level designated facilities.

(b) Neonatal Medical Director (NMD). The NMD shall be a physician who is a board eligible/certified neonatologist and demonstrates a current status on successful completion of the Neonatal Resuscitation Program (NRP).

(c) If the facility has its own transport program, there shall be an identified Transport Medical Director (TMD). The TMD and/or Co-Director shall be a physician who is a board eligible/certified neonatologist.

(d) Program Functions and Services.

(1) Triage and assessment of all patients admitted to the perinatal service with identification of pregnant patients who are at high risk of delivering a neonate that requires a higher level of care who will be transferred to another facility prior to delivery unless the transfer is unsafe.

(2) Supportive and emergency care shall be delivered by appropriately trained personnel, for unanticipated maternal-fetal problems that occur during labor and delivery, through the disposition of the patient.

(3) The ability to perform an emergency cesarean delivery within 30 minutes.

(4) Board certified/board eligible neonatologists whose credentials have been approved by the NMD and is on call, and who:

(A) shall demonstrate a current status on successful completion of the NRP;

(B) have completed continuing education annually, specific to the care of neonates; and

(C) shall be on-site and immediately available at the neonate/infant bedside as requested.

(5) Anesthesiologists with pediatric expertise shall directly provide anesthesia care to the neonate, in compliance with the requirements in §133.41(a) of this title.

(6) A dietitian or nutritionist who has special training in perinatal and neonatal nutrition and can plan diets that meet the special

needs of neonates in compliance with the requirements in §133.41(d) of this title.

(7) A comprehensive range of pediatric medical subspecialists and pediatric surgical subspecialists will be immediately available to arrive on-site for face to face consultation and care for an urgent request.

(8) Laboratory services shall be in compliance with the requirements in §133.41(h) of this title and shall have:

(A) appropriately trained and qualified laboratory personnel on-site at all times;

(B) perinatal pathology services;

(C) a blood bank capable of providing blood and blood component therapy; and

(D) neonatal/infant blood gas monitoring capabilities.

(9) Pharmacy services shall be in compliance with the requirements in §133.41(q) of this title and shall have a pharmacist, with experience in neonatal/pediatric and perinatal pharmacology available on-site at all times.

(A) If medication compounding is done by a pharmacy technician for neonates/infants, a pharmacist will provide immediate supervision of the compounding process.

(B) If medication compounding is done for neonates/infants, the pharmacist shall develop and implement checks and balances to ensure the accuracy of the final product.

(C) Total parenteral nutrition appropriate for neonates/infants shall be available.

(10) An occupational or physical therapist with neonatal expertise shall be available to meet the needs of the population served.

(11) Medical Imaging. Radiology services shall be in compliance with the requirements in §133.41(s) of this title will incorporate the "As Low as Reasonably Achievable" principle when obtaining imaging in neonatal and maternal patients; and shall have:

(A) personnel appropriately trained in the use of x-ray equipment, ultrasound, computed tomography, magnetic resonance imaging, echocardiography and/or cranial ultrasound equipment and fluoroscopy on-site at all times;

(B) neonatal and perinatal diagnostic imaging studies available at all times with interpretation by radiologists with pediatric expertise, available within one hour of an urgent request; and

(C) pediatric echocardiography with pediatric cardiology interpretation and consultation within one hour of an urgent request.

(12) Speech language pathologist with neonatal expertise shall be available to evaluate and manage feeding and/or swallowing disorders.

(13) A respiratory therapist, with experience and specialized training in the respiratory support of neonates/infants, whose credentials have been reviewed by the Neonatal Medical Director, shall be on-site and immediately available.

(14) Resuscitation. The facility shall have written policies and procedures specific to the facility for the stabilization and resuscitation of neonates/infants based on current standards of professional practice.

(A) Each birth shall be attended by at least one provider who demonstrates current status of successful completion of the NRP whose primary responsibility is the management of the neonate and initiating resuscitation.

(B) At least one person must be immediately available on-site with the skills to perform a complete neonatal resuscitation including endotracheal intubation, establishment of vascular access and administration of medications.

(C) Additional providers who demonstrate current status of successful completion of the NRP shall attend each neonate in the event of multiple births.

(D) Each high-risk delivery shall have in attendance at least two providers who demonstrate current status of successful completion of the NRP whose only responsibility is the management of the neonate.

(E) A full range of resuscitative equipment, supplies and medications shall be immediately available for trained staff to perform resuscitation and stabilization on each neonate/infant.

(15) Perinatal Education. A registered nurse with experience in neonatal care, including neonatal intensive care, and/or perinatal care shall provide supervision and coordination of staff education.

(16) Pastoral care and/or counseling shall be provided as appropriate to the patient population served.

(17) Social services shall be provided as appropriate to the patient population served.

(18) The facility must have a documented policy regarding the timely evaluation of retinopathy of prematurity in the event that an infant at risk is present, and a documented policy for the monitoring, treatment and follow-up of retinopathy of prematurity.

(19) A certified lactation consultant shall be available at all times.

(20) Ensure provisions for follow up care at discharge for infants at high risk for neurodevelopmental, medical, or psychosocial complications.

§133.190. Survey Team.

(a) The survey team composition shall be as follows:

(1) Level I facilities neonatal program staff shall conduct a self-survey, documenting the findings on the approved office survey form. The office may periodically require validation of the survey findings, by an on-site review conducted by department staff.

(2) Level II facilities shall be surveyed by a team that is multi-disciplinary and includes at a minimum of one neonatologist and one neonatal nurse, all active in the management of neonatal patients at a facility providing a higher level of neonatal care.

(3) Level III facilities shall be surveyed by a team that is multi-disciplinary and includes at a minimum of one neonatologist and one neonatal nurse, all approved in advance by the office and currently active in the management of neonatal patients. An additional surveyor may be requested by the facility or at the discretion of the office.

(4) Level IV facilities shall be surveyed by a team that is multi-disciplinary and includes at a minimum of one neonatologist, a pediatric surgeon and one neonatal nurse, all approved in advance by the office and currently active in the management of neonatal patients. If the facility holds a current pediatric surgery verification by the American College of Surgeons, the facility may be exempted from having a pediatric surgeon as a member of the survey team.

(b) Office-credentialed surveyors must meet the following criteria:

(1) have at least three years of experience in the care of neonatal patients;

(2) be currently employed/practicing in the coordination of care for neonatal patients;

(3) have direct experience in the preparation for and successful completion of neonatal facility verification/designation;

(4) have successfully completed an office-approved neonatal facility site surveyor course and be successfully re-credentialed every four years; and

(5) have current credentials as follows:

(A) a registered nurse who is current in the NRP;

(B) a physician who is board certified in the respective specialty, and current in the NRP; and

(C) have successfully completed an office approved site survey internship.

(c) All members of the survey team, except department staff, shall come from a Perinatal Care Region outside the facility's location and at least 100 miles from the facility. There shall be no business or patient care relationship or any potential conflict of interest between the surveyor or the surveyor's place of employment and the facility being surveyed.

(d) The survey team shall evaluate the facility's compliance with the designation criteria by:

(1) reviewing medical records; staff rosters and schedules; documentation of Quality Assessment and Performance Improvement Program activities including peer review; the program plan; policies and procedures; and other documents relevant to neonatal care;

(2) reviewing equipment and the physical plant;

(3) conducting interviews with facility personnel; and

(4) evaluating appropriate use of telemedicine capabilities where applicable.

(e) All information and materials submitted by a facility to the office under Health and Safety Code, §241.183(d), are subject to confidentiality as articulated in Health and Safety Code, §241.184, Confidentially; Privilege, and are not subject to disclosure under Government Code, Chapter 552, or discovery, subpoena, or other means of legal compulsion for release to any person.

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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For further information, please call: (512) 776-6972

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CHAPTER 289. RADIATION CONTROL

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §289.201 concerning general provisions for radioactive material; §289.202 concerning standards for protection against radiation from radioactive materials; §289.251 concerning exemptions, general licenses, and general license acknowledgements; §289.252 concerning licensing of radioactive material; and §289.257 concerning packaging and transportation of radioactive material.

BACKGROUND AND PURPOSE

Amendments to §§289.201, 289.202, 289.251, 289.252, and 289.257 are necessary to comply with compatibility requirements of the United States Nuclear Regulatory Commission (NRC), to which Texas is subject as an Agreement State. The amendments are the result of the NRC's adoption of new and revised terminology and definitions, and regulatory standards and requirements for: the physical protection of Category 1 and Category 2 quantities of radioactive material; licensing termination under restricted conditions; exemptions for source material and other radioactive materials; general licenses for, and transfers of, small quantities of source material; other general licenses; sealed source or device evaluation; and packaging and transportation of radioactive material.

Subsequent to the terrorist events of September 11, 2001, the NRC issued orders for increased controls to certain licensees who were authorized to possess radioactive material in quantities of concern. The essential substance of those orders was added to federal regulation with the NRC's adoption of Part 37 to Title 10, Code of Federal Regulations (CFR), "Physical Protection of Category 1 and Category 2 quantities of radioactive material." Those federal regulations provide the basis for compatible provisions in the proposed amendments relating to physical protection of Category 1 and Category 2 quantities of radioactive material.

Other amendments are made to §§289.201, 289.202, 289.251, 289.252, and 289.257 to clarify or include new or refined terminology and definitions and requirements for: portable and mobile device utilization records; waste management; recordkeeping and reporting; specific terms and conditions of licenses; and the transportation and storage of radioactive material.

In addition, amendments to §§289.201, 289.202, 289.251, 289.252, and 289.257 include changes which update, correct, improve, or clarify: rule citation references; terminology; obsolete language; language consistency; units of measure; grammar; and minor typographical and formatting errors.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 289.201, 289.202, 289.251, 289.252, and 289.257, have been reviewed and the department has determined that the reasons for adopting these sections continue to exist because rules on this subject are needed to protect public health and safety, to fulfill the department's statutory responsibilities as the state's Radiation Control Agency, and to comply with NRC compatibility requirements.

SECTION-BY-SECTION SUMMARY

To maintain rules that are compatible with the NRC, several new definitions are added to §289.201(b) to accommodate the new physical protection requirements for Category 1 and Category 2 quantities of radioactive material that are being incorporated into §289.252. The new definitions are designated as paragraphs (3), (8), (12), (14), (20), (21), (38), (45), (50), (67), (73), (75),

(78), (109), (112), (113), (115), (128), (135), and (138). Subsequent definitions are renumbered.

Language is added to the definition of "becquerel" in new §289.201(b)(16) regarding commonly used multiples to create consistency with the comparable inclusion of common multiples in the definition of "curie".

In new §289.201(b)(19)(C) - (E), language is added to the definition of "byproduct material" to specify certain sources are considered to be byproduct material if the production, extraction, or conversion after extraction occurred "before, on, or after August 8, 2005," because, as an agreement state, Texas is subject to federal rule compatibility requirements for this definition.

The definition of effective dose equivalent in new §289.201(b)(42) corrects the equation "($H_E = \Sigma w_T H_T$)" to read "($H_E = \Sigma W_T H_T$)" to be consistent with the use of a similar equation in new §289.201(b)(27).

New definitions for "portable device" and "stationary device" are added as §289.201(b)(86) and (126), respectively, to define terminology currently used without definition in Chapter 289.

Current Figure: 25 TAC §289.201(b)(106)(B) is replaced with new Figure: 25 TAC §289.201(b)(124)(B) to reflect the new paragraph number due to the renumbering of paragraphs in the subsection.

Language is revised in new §289.201(b)(139) for the definition of "unrefined and unprocessed ore" to maintain rules that are compatible with NRC's.

A rule reference is revised in new §289.201(b)(143) to reflect the new paragraph number due to the renumbering of paragraphs in the subsection.

The term "licensing state" has been removed throughout §289.201 because the Suggested State Regulations for Control of Radiation (SSRCR), as written by the Conference of Radiation Control Program Directors, Inc. (CRCPD), no longer uses the terminology. Revisions are reflected in §289.201(g)(1)(B), (C), and (H); and (g)(3). The definition has not been removed, since other references remain in sections to which these amendments have not yet been made.

References to "the agency," "the NRC," or "any agreement state," or the regulations of these agencies, are revised to be consistent with language used throughout the chapter. Revisions are made in §289.201(g)(1)(B), (C), and (H); and §289.201(g)(3).

The words "or equivalent regulations of the NRC or any agreement state" are added to §289.201(g)(1)(B) to recognize comparable NRC or agreement states, in the interest of promoting nationwide consistency in the control and regulation of radioactive materials.

References to "telegram" and "mailgram" are deleted in §289.201(k)(2) as the terms are obsolete and updated language is added to specify facsimile and other electronic media transmission as acceptable forms of transmission in addition to mailing.

Other changes to §289.201 are made to correct, clarify, or improve phrasing, grammar, punctuation, and consistency within the section and/or chapter; to add, define, or remove acronyms or their definitions; to eliminate unnecessary or redundant verbiage; and to replace existing numerical references that were spelled out with their corresponding Arabic numerals.

Based upon requirements for compatibility with NRC regulations, the words "to ensure against recurrence" are added to §289.202(e)(4) relating to corrective action taken for exceeding the dose restraint limit.

References to "telegram" and "mailgram" are deleted in §289.202(j)(2)(C), (k)(5)(B), (ee)(4), and (xx)(3), as the terms are obsolete, and language is added to allow the referenced communication by other electronic media transmission, in addition to the other modes remaining in existing rule.

References to "the agency," "the NRC," or "any agreement state," or the regulations of these agencies, are revised to be consistent with language used throughout the chapter. Revisions are made in §289.202(p)(3)(A) and (ff)(2)(J).

The term "licensing state" has been removed from §289.202(p)(3)(A) because the SSRCR, as written by the CRCPD, no longer uses the terminology.

New §289.202(y)(4) and (5) are added regarding utilization record requirements for portable and mobile devices to be consistent with equivalent requirements for the industrial radiography, well logging, and generally licensed devices rule sections.

Language is added to §289.202(ff)(1)(C) and new (ff)(3) is added to the general requirements for waste management in order to reference requirements of the TCEQ or the Railroad Commission of Texas. Subsequent paragraphs are renumbered.

New §289.202(ff)(1)(E) is added to allow the transfer of residual radiopharmaceutical waste for decay in storage back to a person who originally manufactured, compounded, and supplied the radiopharmaceutical, and who otherwise meets TCEQ exemption requirements.

Rule reference citations are revised in §289.202(ff)(6) and (7) due to the renumbering of definitions in §289.201(b).

Recordkeeping language is revised in §289.202(p)(2), (mm)(2), (nn)(1), (nn)(3), (oo), and (pp) to reference that the record retention requirements are specified in the table in §289.202(ggg)(5), and for use of language consistent with NRC compatibility requirements and within the chapter.

New §289.202(nn)(2) is added to clarify the required information on calibration records.

To clarify information required in reports of stolen, lost, or missing licensed sources of radiation, the words "the source and/or device manufacturer, model number and serial number" are added in §289.202(ww)(2)(A), (xx)(8)(A)(vi), (xx)(8)(B)(iii), (yy)(2)(B), and (bbb), and "dose limit exceeded" is added to §289.202(yy)(2)(B).

To ensure that department rules achieve the essential objectives of comparable NRC regulations, where required, new §289.202(ddd)(3), with subparagraphs (A) and (B), is added to address criteria for license termination under restricted conditions. Subsequent paragraphs are renumbered.

Due to the addition of §289.202(ddd)(3) and the renumbering of subsequent paragraphs, rule references in new §289.202(ddd)(4)(B), (5), and (5)(A)(ii) are revised.

New Figure: 25 TAC §289.202(ggg)(2)(F) replaces the figure with the same label in current rule to make corrections to the tables in that Figure, which contain values for annual limits on intake (ALI) and derived air concentrations of radionuclides for occupational exposure; effluent concentrations; and concen-

trations for release to sanitary sewerage. The spelling of the word "montly" is corrected to read "monthly" in the Figure's subheading, "Monthly Average Concentrations" under the Table III column heading, "Release to Sewers." The values in each of the radionuclides Nitrogen-13[2] (Atomic No. 7) and Oxygen-15[2] (Atomic No. 8) were moved over one column to the left to be correctly listed in Columns ("Col.") 2 and 3 of Table I. In the "Class" column for Titanium-44 (Atomic No. 22), the repeated word "nitrates" is removed as redundant. The term "LLI Wall" replaces "Bone Surf" for the oral ingestion ALI in Table I, Column ("Col.") 1, for Einsteinium-254m (Atomic No. 99), as the previous use of "Bone Surf" was incorrect.

In addition, Figure: 25 TAC §289.202(ggg)(2)(F) adds a superscripted "1" after the word "Submersion," in the column headed "Class," for the radionuclides Nitrogen-13 (Atomic No. 7) and Oxygen-15 (Atomic No. 8); a superscripted "1" is placed after the word "Submersion," in the column headed "Class," for the radionuclides Nitrogen-13 (Atomic No. 7) and Oxygen-15 (Atomic No. 8); a subscripted "3" is added in two places following "SrTiO" under the "Class" column for Strontium-80 (Atomic No. 38); and a subscripted "2" is added following "MoS" in the "Class" column for Molybdenum-90 (Atomic No. 42) and following "PuO" in two places in the "Class" column for Plutonium-234 (Atomic No. 94) to correct previous omissions.

The following are additional changes made in Figure: 25 TAC §289.202(ggg)(2)(F), due to typographical errors and/or omissions. In Table I, "Occupational Values," Column (labeled "Col.") 1, the stomach wall (labeled "St wall") oral ingestion ALI for Chlorine-38 (Atomic No. 17) is changed to read "(3E+4)"; in Table I, Column 1, the thyroid ALI for Iodine-120m (Atomic No. 53) is changed to read "(1E+4)," and, for Iodine-121 (Atomic No. 53), is changed to read "(3E+4)"; in Column 2, the thyroid ALI for Iodine-120 (Atomic No. 53) is changed to read "(1E+4)"; and in Table I, Column ("Col.") 2, the non-stochastic bone surface ALI for Gadolinium-148 (Atomic No. 64), Class D, for all compounds except those given for W, is corrected to read "8E-3," and the stochastic ALI is corrected to read "(2E-2)."

Further changes to Figure: 25 TAC §289.202(ggg)(2)(F) include the following corrections. In the "Class" column for Fluorine-18[2] (Atomic No. 9), "RB" is replaced with "Rb" to reflect the correct symbol for the element. In the "Radionuclide" column, an "m" is added to correct the entry for "Niobium-89[2] (66 min)" (Atomic Number 41), to now read Niobium-89m,[2] which is correct. In the "Class" column for Uranium-230 (Atomic No. 92), the letter strings "D, UF, UOF, UO(NO)," " W, UO, UF, UCl," and "Y, UO, UO" are replaced with "D, UF^6, UO^2F^2, $UO^2(NO^3)^2$" "W, UO^3, UF^4, UCl^4," and "Y, UO^2, U^3O^8," respectively. In Table I, Column 2, the inhalation ALI for the "W" class of Uranium-238 (Atomic No. 92) is input to read "(8E-1)." In the radionuclide column for Neptunium-236 (22.5 h) (Atomic No. 93) an "m" is placed after "236." In addition, rule references are added in footnotes 2 and 3 and the "?" symbol in the final formula in numbered note 4 under "NOTES" is corrected to read "<."

Figure: 25 TAC §289.202(ggg)(4)(A)(iii)(V) is replaced to change "five years" to "5 years" for consistency of usage throughout the chapter.

The time requirements for the record keeping table in Figure: 25 TAC §289.202(ggg)(5) is revised to add the portable and mobile device utilization records category, which is a new requirement in §289.202(y)(5). The names of the record were changed for subsection (ll)(4) to delete the word "additional," and, for subsection (nn)(1), to replace "package surveys" with "package monitoring" to more accurately reflect the record types. In the "Specific Subsection" column, "(nn)(2)" is deleted and replaced with "(nn)(3)" as new paragraph (nn)(2) was added to the rule text, and the (B) is deleted in "(qq)(B)" to accurately reflect the subsection reference.

Further changes to Figure: 25 TAC §289.202(ggg)(5) include the replacement in the time interval column for (rr)(1) - (3) of the words "Update annually" with "Entries at no >1 year intervals, by April 30 each year" to accurately reflect the time interval required by rule for those records. In addition, the words "after the record was made" were added to the "Time Interval Required for Record Keeping" column for subsections (y)(5), (nn)(1), and (pp) (for the entry addressing records used to prepare RC Form 202-2), in order to clearly reflect the date from which the time period is to be measured.

Language is revised in footnote f of Figure: 25 TAC §289.202(ggg)(6) to more clearly state the limits for the average and maximum radiation levels associated with surface contamination resulting from beta-gamma emitters. The last sentence of footnote f is added as it was inadvertently omitted in current rule. In addition, the word "shall" is substituted for the word "should" in footnotes a, e, f, and g so they will not be read as discretionary or merely advisory.

Figure: 25 TAC §289.202(ggg)(7) is revised to correct the annual generator disposal limit for Iodine-123 (I-123) in the table for concentration and activity limits of nuclides for disposal in a Type I municipal solid waste site or a hazardous waste facility.

Other changes to §289.202 are made to correct, clarify, or improve terminology, phrasing, grammar and usage, punctuation, and consistency within the section and/or chapter; to add, define, or remove acronyms or their definitions; to eliminate unnecessary or redundant verbiage; to renumber citations and rule provisions based on added and deleted provisions; and to make corrections to units of measure misstated in current rule.

Section 289.251(d)(3) is revised to add the phrase, "to the extent that such person," based upon requirements for compatibility with NRC rule language.

Based upon requirements for compatibility with NRC regulations, §289.251(d)(3)(B)(i) and (ii) revises the exemptions for source material relating to glazed ceramic tableware and glassware, including revisions to add the words "manufactured before August 27, 2013."

In §289.251(d)(3)(E), an exemption to certain counterweights containing depleted uranium which are manufactured in accordance with an NRC license is deleted; in §289.251(d)(3)(E)(i) and (ii), exemptions to counterweights manufactured under a specific license issued by the Atomic Energy Commission are added; and in §289.251(d)(3)(E)(iii), the words "or other" are added and the words "or labeling" are deleted. These changes are made to ensure that, as an agreement state, Texas meets requirements for compatibility with NRC regulations.

In reference to finished optical lenses under exemptions for source materials, the terms "uranium" and "mirror" are added and the words "10% by weight of thorium or uranium or, for lenses manufactured before August 27, 2013," are added in §289.251(d)(3)(G) based upon requirements for compatibility with NRC regulations.

Based upon requirements for compatibility with NRC regulations, new §289.251(d)(5) is added to prohibit unauthorized persons from initially transferring for sale or distribution a product con-

taining source material to persons who are exempt under specified regulations.

Changes are made to §289.251(e)(1)(B) and (C), removing "or the general license provided in §289.252(ee) of this title," from subparagraph (B), and "any agreement state, or any licensing state" from subparagraph (C), based upon requirements for compatibility with NRC regulations.

References to "the agency," "the NRC," or "any agreement state," or the regulations of these agencies, are revised to be consistent with language used throughout the chapter. Revisions are made in §289.251(e)(2)(E); (e)(3)(A)(i)(IV); (e)(3)(C)(iii); (f)(4)(D)(iii)(III); (f)(4)(H)(ii); (f)(4)(H)(iv)(III)(-c-); and (f)(4)(H)(iv)(VII) and (IX); and (f)(4)(K)(ii)(VI).

The term "licensing state" has been removed throughout §289.251 because the SSRCR as written by the CRCPD no longer uses the terminology. Revisions are reflected in §289.251(e)(1)(B) and (C); (e)(2)(D) and (E); (e)(3)(A)(i)(IV); (e)(3)(C)(iii); (f)(4)(D)(ii) and (iii)(III); (f)(4)(G)(ii)(IV); (f)(4)(G)(iii)(I); (f)(4)(H)(ii); and (f)(4)(H)(iv)(III)(-c-), (VII), and (IX).

The word "commission" is replaced with "NRC" in §289.251(e)(2)(E) to accurately reflect the current standard federal agency nomenclature.

Changes are made to §289.251(e)(3)(A)(i)(IV) and (V), removing "any agreement state, or any licensing state," from (IV) and deleting (V), based upon requirements for compatibility with NRC regulations.

A category for a general license for small quantities of source material is added to §289.251(f)(3)(A) with the revision and deletion of current language and the addition of requirements under the new category of general license, based upon requirements for compatibility with NRC regulations.

Figures: 25 TAC §289.251(f)(4)(D)(iii)(II)(-b-) and §289.251(f)(4)(G)(iii)(II)(-b-) are replaced to remove the term "licensing state" because the SSRCR as written by the CRCPD no longer uses the terminology. In addition, the words "or equivalent regulations of the NRC or any agreement state" are added to be consistent with language used throughout the chapter.

In §289.251(f)(4)(F)(i) and (ii), rule references are added to specify, under clause (i), exceptions to the sections of the chapter from which persons who transport and store radioactive material in accordance with a general license under that paragraph are exempt, and, under clause (ii), to specify the provisions in accordance with which the referenced incident notifications are to be filed with the department.

Language is revised in §289.251(f)(4)(H)(iv)(XV) to clarify general license requirements regarding holding devices that are not in use for longer than 24 months.

Section 289.251(f)(4)(H)(iv)(XV)(-b-) adds language providing an alternative to disposal for an agency-approved plan for future use.

In §289.251(f)(4)(K)(ii)(V) and (VI), to improve compatibility with the NRC, the words, "or under equivalent regulations of the NRC, or any agreement state" are added to subclause (V), and "the NRC, or any agreement state" are added to subclause (VI), relating to general license requirements for certain items and self-luminous products containing radium-226.

In addition, §289.251(f)(4)(K)(ii)(VI) replaces "Radiation Safety Licensing Branch" with the word "agency," and places "agency at the beginning of the string to be consistent with wording used throughout the chapter.

To maintain appropriate compatibility with NRC regulations, the elements Polonium (84) and Radium (88) are deleted from Figure: 25 TAC §289.251(l)(1), and the elements Beryllium-7, Radon-222, and Strontium-87m are deleted from Figure: 25 TAC §289.251(l)(2). In addition, minor typographical corrections are made to Figure: 25 TAC §289.251(l)(1).

Other changes to §289.251 are made to correct, clarify, or improve terminology, phrasing, grammar and usage, punctuation, and consistency within the section and/or chapter; to include becquerel as well as curie values where both are not included in current rule; to correct or update rule citations, or to renumber citations and rule provisions based on added and deleted provisions; to add, define, or remove acronyms or their definitions; to replace existing numerical references that were spelled out with their corresponding Arabic numerals; and to eliminate unnecessary or redundant verbiage.

In §289.252(d)(8)(A), the words "Division of Licensing, Registration and Standards" are replaced with the word "agency" to be consistent with language used throughout the chapter.

References to "the agency," "the NRC," or "any agreement state," or the regulations of these agencies, are revised to be consistent with language and wording used throughout the chapter. Revisions are made in §289.252(d)(9)(A) and (10); (l)(1) and (3); (l)(4)(B) and (F); (l)(7)(C) and (D); (n)(2); (o)(2); (s)(4)(G); (v)(8)(B)(i); (cc)(3) and (4)(B); and (ee)(1), (1)(E)(i), (2), and (2)(B).

The term "licensing state" has been removed throughout §289.252 because the SSRCR as written by the CRCPD no longer uses the terminology. Revisions are reflected in §289.252(d)(9)(A); (l)(1) and (3); (l)(4)(B) and (F); (l)(7)(C), (C)(iii), and (D); (l)(8); (n)(2); (o)(2); (cc)(2)(D), (3), and (4)(B); and (ee)(1), (ee)(1)(E)(i), (2) and (2)(B).

In §289.252(f)(4)(C)(iii), the words "Nuclear" and "Medical" are transposed to correctly reflect the name of the certification of Nuclear Medical Physics.

The figures in §289.252(l)(1)(C)(iii)(II) and (p)(3)(B) are revised to remove wording relating to "licensing state" because the SSRCR as written by the CRCPD no longer uses the terminology. In addition, reference is added to "the agency, the NRC, or any agreement state" for improved compatibility with the NRC.

Recordkeeping language is revised in §289.252(l)(7)(D), (r)(2)(C), (r)(3)(G), (s)(4)(G), (x)(10), (gg)(7) and (ll)(2), due to the addition of a new records retention table in §289.252(mm), and to use consistent language within the chapter and with NRC compatibility requirements, both in the provisions referring to the records retention table in §289.252(mm) and in those imposing recordkeeping requirements without such reference.

To improve requisite compatibility with NRC regulations, throughout §289.252(v), the words "certificate of" are added in front of the term "registration" relating to sealed source or device evaluations.

The term "Radiation Safety Licensing Branch" is replaced with the word "agency" in §289.252(v)(2), (v)(10)(A), and (x)(6) to be consistent with language used throughout the chapter.

New §289.252(x)(11) adds language concerning radioactive waste or sources or devices that are not in use for longer than 24 months to ensure they are being disposed of in a timely fashion. The new language also adds provisions allowing licensees to submit a plan for sources and devices kept in standby for future use or for an alternative timeline for disposal, if the 24-month timeframe cannot be met.

The words "at an entire site" are added to §289.252(y)(4)(C) and the words "in accordance with §289.202(p) of this title" are added to §289.252(y)(15)(B)(ii) to clarify requirements for the expiration and termination of licenses and decommissioning of sites.

New §289.252(cc)(6) adds requirements for the transfer of small quantities of source material for purposes of compatibility with NRC regulations in Title 10, CFR, §40.54 and §40.55.

Current §289.252(ii), relating to "Increased Controls" for "quantities of concern" is replaced with the new "Physical protection requirements of Category 1 and Category 2 quantities of radioactive material" because, as an agreement state, Texas must adopt rules that meet the requirements for compatibility with NRC regulations adopted in Title 10, CFR, Part 37. These new provisions include requirements relating to background investigations and access authorization programs; physical protection requirements during use; physical protection in transit; and recordkeeping requirements.

Current Figure: 25 TAC §289.252(jj)(2) is replaced with a new table to place a "T" before the "c" in "Tc-98" in the second to last line of the second group of radionuclides in Figure: 25 TAC §289.252(jj)(2), since it erroneously appears as "c-98" in the figure bearing the same title in current rule.

Current Figure: 25 TAC §289.251(jj)(7) is replaced with a new table to correct the formatting of the alpha and gamma symbols to properly display as such in Figure: 25 TAC §289.251(jj)(7), which they do not in the Figure with the same label published in the current rule. The lettering for the word "emitter" in the third to last row under the third column bearing the title "Radioactive Material" is also corrected in the new table.

Section 289.252(jj)(9) and Figure: 25 TAC §289.252(jj)(9) are revised to reflect and refer to Category 1 and Category 2 quantities of Radioactive Material, and to delete language in current §289.252(jj)(9) and the current Figure: 25 TAC §289.252(jj)(9) relating to "quantities of concern." These changes are made based upon requirements for compatibility with NRC regulations.

New §289.252(mm) is added to provide one all-inclusive location that specifies the applicable record/document retention timeframes for records required throughout §289.252. Change is reflected in new Figure: 25 TAC §289.252(mm).

Other changes to §289.252 are made to correct, clarify, or improve terminology, phrasing, grammar and usage, punctuation, and consistency within the section and/or chapter; to add, define, or remove acronyms or their definitions; to replace existing numerical references that were spelled out with their corresponding Arabic numerals; and to include becquerel as well as curie values where both are not included in current rule.

Definitions for "freight forwarder," "registered freight forwarder," "registered shipper," "registered transporter," and "transporter" are added as §289.257(d)(19), (35), (36), (37), and (44), respectively, to clarify the different types of persons or entities that may be transporting radioactive material. Subsequent definitions are renumbered.

The words, "the following limits are not exceeded" is deleted from the definition of "SCO [Surface contaminated object]-II" in §289.257(d)(43)(B), since it is redundant of language contained in each clause that follows.

References to "the agency," or an agency license, are revised to be consistent with language used throughout the chapter. Revisions are made in §289.257(d)(20), (49), and (51).

The new paragraph title "Transporter proof of financial responsibility" is added to §289.257(e)(4) and the current paragraph is revised and divided into four subparagraphs to clarify the requirements for transporters providing proof of financial responsibility.

In §289.257(e)(4)(A), the term "Radiation Safety Licensing Branch" is replaced with the word "agency" to be consistent with language used throughout the chapter. In addition, the words "a registration letter" replace the words "approval of this documentation" to clarify the form in which transporters receive agency approval of their proof of financial responsibility.

Section 289.257(e)(4)(B) is added to specify the expiration date of the transporter registration.

Section 289.257(e)(4)(C) - (D) is revised to include financial responsibility requirements relating to the renewal of the transporter registration, and to add the requirement to provide new proof of financial responsibility if the amount of the liability coverage is reduced or a new policy is purchased.

Language is revised in §289.257(f)(2) regarding exemptions for certain transportation and storage of radioactive material.

The words "transporter and" are added to §289.257(p) to clarify that transporters, in addition to shippers, shall comply with the reports requirement.

References to "telegram" and "mailgram" are deleted in §289.257(p), as the terms are obsolete and language is added to include electronic media transmission as an acceptable mode for meeting the referenced reporting requirements.

In §289.257(q)(3), the words "the shipment" and "licensed" are added and the word "shipments" is deleted, based upon requirements for compatibility with NRC regulations.

Recordkeeping language is revised in §289.257(q)(4)(D) to be consistent with language used throughout the chapter.

The words "registration requirements" are added to the subsection in §289.257(r) and current language is revised as new §289.257(r)(1) to clarify how submission of an emergency plan is approved by the agency.

New §289.257(r)(2) - (4) are added to include specific details relating to the submission, application, expiration, and renewal of an emergency plan registration.

Inadvertent use of a cross-reference to "this subpart," an NRC regulatory, rather than state, rule cross-reference, was deleted and replaced with the specific applicable Chapter 289 rule references in §289.257(s)(1)(C)(ii) to correct the cross-references.

New §289.257(cc)(8) adds a requirement for shippers to submit a list of approved shipping containers intended for use to ship low level radioactive waste for disposal to ensure proper containers are being utilized. Quality assurance documentation and proof of control measures is also required of shippers licensed in Texas who hold a "CoC," a Certificate of Compliance.

Language is deleted to remove reference to "the board" in §289.257(dd)(3) as the term referencing the "Board of Health" is obsolete.

Other changes to §289.257 are made to correct, clarify, or improve terminology, phrasing, grammar and usage, punctuation, and consistency within the section and/or chapter; to add, define, or remove acronyms or abbreviations, or their definitions; to replace existing numerical references that were spelled out with their corresponding Arabic numerals; and to renumber rule provisions based on added and deleted provisions.

FISCAL NOTE

Jon Huss, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five years that §§289.201, 289.202, 289.251, 289.252, and 289.257 are in effect, there will be no fiscal implications to state governments as a result of enforcing and administering the sections as proposed, which can be accomplished utilizing existing staff and resources. There will be no fiscal implications to local governments related to §§289.201, 289.202, 289.251 and 289.257, as proposed, but there will be fiscal implications to local government as a result of §289.252. This is because local Texas law enforcement agencies will continue to collect $9.95 for each fingerprint record licensees are required to obtain to submit to the NRC for security clearance under §289.252(ii)(4)(A)(i).

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Huss also has determined that there are anticipated economic costs to small businesses or micro-businesses required to comply with §§289.201, 289.202, 289.251, 289.252, and 289.257 as proposed. The rule amendments primarily refine existing rule requirements and license conditions imposed under existing rule, so that licensees subject to the specific provisions added with the proposed rule amendments will not incur new implementation costs, but will continue to incur annual costs for maintaining compliance with the specific rule provisions for physical protection of Category 1 and Category 2 quantities of radioactive materials provided for in the new §289.252(ii) proposed to be added with this set of rule amendments.

The continuing cost to the licensee required to comply with §289.252(ii) will be the annual cost to maintain the required security and any new and renewal fingerprinting costs. Costs may include those related to: program review of the licensee's security and access authorization program; security-related training; coordination with local law enforcement; security measures; transportation security; and compliance with recordkeeping and reporting requirements. It is estimated that approximately 33 of the 237 Texas licensees subject to the rules being proposed for physical protection of Category 1 and Category 2 quantities of radioactive material would be small and micro-businesses. Considering the NRC's figures and calculations in its fiscal analysis in adopting Title 10, CFR, Part 37, the average annual cost for small and micro-businesses alone, as compared to the estimated annual cost of $21,736 averaged across affected licensees of all sizes, could be expected to be approximately $16,220 per licensee, since certain costs associated with security maintenance can be expected to be lower for smaller companies with fewer employees. This would reduce the economic burden for affected small and micro-businesses below the average annual costs anticipated for affected licensees in general. The fingerprinting costs can be covered by the licensee or the licensee could require employees subject to fingerprinting to cover the cost as a stipulation of employment. Moreover, new licensees can be expected to consider security costs as part of the cost of starting a business involving Category 1 or Category 2 quantities of radioactive material, and will be required to be prepared, when applying for a license, to meet the ongoing costs of compliance.

Estimated costs to small and micro-businesses are the result of amendments being proposed to ensure rule compatibility with NRC radiation control regulations, required of Agreement States, including Texas. Such compatibility is also consistent with the statutory mandate under Health and Safety Code, §401.059, that the department, within its jurisdiction, maintain compatibility with federal regulations in developing its regulatory program, including in the development of radiation control rules, and with other compatibility provisions of Health and Safety Code, Chapter 401, established to protect occupational and public health and safety and the environment. As amendments based upon legislative directive to protect public health and safety and the environment, and on Texas's status as an Agreement State committed to maintaining such compatibility, any alternative rule provisions or exemptions to further reduce costs to small and micro-businesses would dilute the protection afforded by the rules; compromise compatibility with federal regulations and Texas' obligations as an Agreement State; and impede national consistency in the control of radiation. Since any alternative to the rules being proposed would be inconsistent with the health, safety, environmental, and economic welfare of the state, they would be impermissible alternatives under Government Code, §2006.002, and therefore were not considered for proposal.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

In general, licensees subject to the amended rule provisions will be subject to an estimated annual cost of compliance per licensee, averaged across licensees of all sizes, of $21,736, as well as to the same options for saving those costs, and considerations outlined above for affected small and micro-business licensees. Overall costs and certain cost components for security maintenance can be expected to be higher for medium and large businesses than for small and micro-businesses, but those larger businesses can also be expected to have greater resources to meet those costs. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Mr. Huss also 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 public benefit anticipated as the result of enforcing or administering these sections is to ensure continued, enhanced protection of the public, patients, workers, and the environment from unnecessary exposure to radiation by ensuring that the rules are clear and specific, and through implementation and enforcement of the new and amended rule provisions, including those relating to Physical Protection of Category 1 and Category 2 quantities of radioactive material.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule," as defined by Government Code, §2001.0225, nor will it otherwise meet the conditions for Government Code, §2001.0225, to apply. "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."

The definition is not met because the costs resulting from the proposed amendment will not have a material adverse impact in any of the areas specified and will positively impact public health, safety, and the environment by further protecting the public and the environment from risks associated with radioactive materials and the dangers of diversion. Annual costs to licensees will not create a material adverse effect on those licensees, since the added costs will also result in greater safety and protection and a reduction in risk of liability or higher decommissioning or other decontamination-related costs if the licensed radioactive materials are not adequately safeguarded. Moreover, Government Code, §2001.0225, does not apply even to a major environmental rule unless it has one of the results specified in that section, including exceeding applicable state or federal standards or requirements. Since the proposed amendments for which licensees would incur ongoing costs are proposed to ensure, rather than exceed, federal compatibility requirements, and are also consistent with requirements of state law, Government Code, §2001.0225, does not apply.

TAKING 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 to Chuck Flynn, Radiation Group, Policy/Standards Quality Assurance Unit, Division of Regulatory Services, Environmental and Consumer Safety Section, Department of State Health Services, Mail Code 1987, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6770, extension 2821, or by email to Chuck.Flynn@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas 78754. The meeting date will be posted on the Radiation Control website (www.dshs.state.tx.us/radiation). Please contact Chuck Flynn at (512) 834-6770, extension 2821, or Chuck.Flynn@dshs.state.tx.us if you have questions.

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.

SUBCHAPTER D. GENERAL

25 TAC §289.201, §289.202

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure at 25 TAC §289.202(ggg)(2)(F) is not included in the print version of the Texas Register. The figure is available in the on-line version of the November 20, 2015, issue of the Texas Register.)

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, Chapter 401, which provides for the department's radiation control rules and regulatory program to be compatible with federal standards and regulation; §401.065, which permits Texas to enter an agreement with the federal government to perform functions relating to radiation control, in cooperation with the federal government, and Texas' status thereto as an Agreement State, under which it is required to comply with NRC requirements for compatibility with its regulations; §401.051, which provides the required authority to adopt rules and guidelines relating to the control of sources of radiation; §401.052, which provides authority for rules that provide for transportation and routing of radioactive material and waste in Texas; §401.103, which provides authority for licensing and registration for transportation of sources of radiation; §401.104 which provides for rulemaking authority for general or specific licensing of radioactive material and devices or equipment using radioactive material; §401.224, which provides rulemaking authority relating to the packaging of radioactive waste; and Government Code, §531.0055; and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies 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 review of the rules implements Government Code, §2001.039.

The amendments affect Health and Safety Code, Chapters 401 and 1001; and Government Code, Chapter 531.

§289.201. General Provisions for Radioactive Material.

(a) (No change.)

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

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

(3) Access control--Asystem for allowing only approved individuals to have unescorted access to the security zone and for ensuring that all other individuals are subject to escorted access.

(4) [~~(3)~~] Act--Texas Radiation Control Act, Health and Safety Code (HSC), Chapter 401.

(5) [~~(4)~~] Activity--The rate of disintegration or transformation or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

(6) [~~(5)~~] Adult--An individual 18 or more years of age.

(7) [~~(6)~~] Agency--The Department of State Health Services.

(8) Aggregated--Accessible by the breach of a single physical barrier that would allow access to radioactive material in any form, including any devices that contain the radioactive material, when the total activity equals or exceeds a category 2 quantity of radioactive material.

(9) [~~(7)~~] Agreement state--Any state with which NRC has entered into an effective agreement under §274b of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

(10) [~~(8)~~] Airborne radioactive material--Any radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

(11) [~~(9)~~] Airborne radioactivity area--A room, enclosure, or area in which airborne radioactive materials exist in concentrations:

(A) in excess of the derived air concentrations (DACs) specified in Table I, Column 3 of §289.202(ggg)(2)(F) of this title (relating to Standards for Protection Against Radiation from Radioactive Materials); or

(B) to such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6% of the annual limit on intake (ALI) or 12 DAC-hours.

(12) Approved individual--An individual whom the licensee has determined to be trustworthy and reliable for unescorted access in accordance with §289.252(ii)(2) - (8) of this title (relating to Licensing of Radioactive Material) and who has completed the training required by §289.252(ii)(10)(C) of this title.

(13) [~~(10)~~] As low as is reasonably achievable (ALARA)--Making every reasonable effort to maintain exposures to radiation as far below the dose limits in these regulations as is practical, consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of ionizing radiation and licensed sources of radiation in the public interest.

(14) Background investigation--The investigation conducted by a licensee or applicant to support the determination of trustworthiness and reliability.

(15) [~~(11)~~] Background radiation--Radiation from cosmic sources; non-technologically enhanced naturally occurring radioactive material, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents, such as Chernobyl, that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include radiation from sources of radiation regulated by the agency.

(16) [~~(12)~~] Becquerel (Bq)--The International System of Units (SI) unit of activity. One becquerel is equal to 1 disintegration or transformation per second (dps or tps). Commonly used multiples of the becquerel are the kBq (kilobecquerel, 10^3 Bq), MBq (megabecquerel, 10^6 Bq), GBq (gigabecquerel, 10^9 Bq), and TBq (terabecquerel, 10^{12} Bq). 1 Ci = 37 GBq.

(17) [~~(13)~~] Bioassay--The determination of kinds, quantities, or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement, in vivo counting, or by analysis and evaluation of materials excreted or removed from the human body. For purposes of this chapter, "radiobioassay" is an equivalent term.

(18) [~~(14)~~] Brachytherapy--A method of radiation therapy in which sealed sources are utilized to deliver a radiation dose at a distance of up to a few centimeters, by surface, intracavitary, or interstitial application.

(19) [~~(15)~~] Byproduct material--Byproduct material is defined as:

(A) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

(B) the tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition;

(C) any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or

(D) any material that has been made radioactive by use of a particle accelerator; and is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and

(E) any discrete source of naturally occurring radioactive material, other than source material, that is extracted or converted after extraction before, on, or after August 8, 2005, for use in a commercial, medical, or research activity and that the United States NRC, in consultation with the Administrator of the United States Environmental Protection Agency (EPA), the United States Secretary of Energy, the United States Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security.

(20) Category 1 quantity of radioactive material--A quantity of radioactive material meeting or exceeding the category 1 threshold in §289.252(jj)(9) of this title. This is determined by calculating the ratio of the total activity of each radionuclide to the category 1 threshold for that radionuclide and adding the ratios together. If the sum is equal to or exceeds 1, the quantity would be considered a category 1 quantity. Category 1 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

(21) Category 2 quantity of radioactive material--A quantity of radioactive material meeting or exceeding the category 2 threshold but less than the category 1 threshold in §289.252(jj)(9) of this title. This is determined by calculating the ratio of the total activity of each radionuclide to the category 2 threshold for that radionuclide and adding the ratios together. If the sum is equal to or exceeds 1, the quantity would be considered a category 2 quantity. Category 2 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

(22) [~~(16)~~] Certificate of registration--A form of permission given by the agency to an applicant who has met the requirements for registration or mammography system certification set out in the Act and this chapter.

(23) [~~(17)~~] Certification of mammography systems (state certification)--A form of permission given by the agency to an applicant who has met the requirements for mammography system certification set out in the Act and this chapter.

(24) [~~(18)~~] Collective dose--The sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(25) [~~(19)~~] Commercial--Having financial profit as the primary aim.

(26) [~~(20)~~] Committed dose equivalent ($H_{T,50}$)--The dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

(27) [~~(21)~~] Committed effective dose equivalent ($H_{E,50}$)--The sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues ($H_{E,50} = \Sigma W_T H_{T,50}$).

(28) [~~(22)~~] Consortium--An association of medical use licensees and a Positron Emission Tomography (PET) radionuclide production facility in the same geographical area that jointly own or share in the operation and maintenance costs of the PET radionuclide production facility that produces PET radionuclides for use in producing radioactive drugs within the consortium for noncommercial distributions among its associated members for medical use. The PET radionuclide production facility within the consortium shall be located at an educational institution or a medical facility.

(29) [~~(23)~~] Constraint (dose constraint)--A value above which specified licensee actions are required.

(30) [~~(24)~~] Critical group--The group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

(31) [~~(25)~~] Curie (Ci)--A unit of measurement of radioactivity. One curie (Ci) is that quantity of radioactive material that decays at the rate of 3.7×10^{10} disintegrations per second (dps). Commonly used submultiples of the curie are the millicurie (mCi) and the microcurie (μCi). One mCi = 1×10^{-3} Ci = 3.7×10^{7} dps. One μCi = 1×10^{-6} Ci = 3.7×10^{4} dps. One nanocurie (nCi) = 1×10^{-9} Ci = 3.7×10^{1} dps. One picocurie (pCi) = 1×10^{-12} Ci = 3.7×10^{-2} dps.

(32) [~~(26)~~] Decommission--To remove a facility or site safely from service and reduce residual radioactivity to a level that permits the following:

(A) release of the property for unrestricted use and/or termination of license; or

(B) release of the property under alternate requirements for license termination.

(33) [~~(27)~~] Deep dose equivalent (H_d), that applies to external whole body exposure--The dose equivalent at a tissue depth of 1 centimeter (cm) (1,000 milligrams per square centimeter (mg/cm^2)).

(34) [~~(28)~~] Depleted uranium--The source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

(35) [~~(29)~~] Discrete source--A radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

(36) [~~(30)~~] Distinguishable from background--The detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site, or, in the case of structures or equipment, in similar materials using adequate measurement technology, survey, and statistical techniques.

(37) [~~(31)~~] Distribution--The physical conveyance and authorized transfer of commodities from producers to consumers and any intermediate persons involved in that conveyance.

(38) Diversion--The unauthorized movement of radioactive material subject to §289.252(ii) of this title to a location different from the material's authorized destination inside or outside of the site at which the material is used or stored.

(39) [~~(32)~~] Dose--A generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of this chapter, "radiation dose" is an equivalent term.

(40) [~~(33)~~] Dose equivalent (H_T)--The product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

(41) [~~(34)~~] Dose limits--The permissible upper bounds of radiation doses established in accordance with this chapter. For purposes of this chapter, "limits" is an equivalent term.

(42) [~~(35)~~] Effective dose equivalent (H_E)--The sum of the products of the dose equivalent to each organ or tissue (H_T) and the weighting factor (W_T) [~~(w_T)~~] applicable to each of the body organs or tissues that are irradiated ($H_E = \Sigma W_T H_T$) [~~($H_E = \Sigma w_T H_T$)~~].

(43) [~~(36)~~] Embryo/fetus--The developing human organism from conception until the time of birth.

(44) [~~(37)~~] Entrance or access point--Any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed sources of radiation. This includes portals of sufficient size to permit human access, irrespective of their intended use.

(45) Escorted access--Accompaniment while in a security zone by an approved individual who maintains continuous direct visual surveillance at all times over an individual who is not approved for unescorted access.

(46) [~~(38)~~] Exposure--The quotient of dQ by dm where "dQ" is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass "dm" are completely stopped in air. The SI unit of exposure is the coulomb per kilogram (C/kg). The roentgen is the special unit of exposure. For purposes of this chapter, this term is used as a noun.

(47) [~~(39)~~] Exposure rate--The exposure per unit of time.

(48) [~~(40)~~] External dose--That portion of the dose equivalent received from any source of radiation outside the body.

(49) [~~(41)~~] Extremity--Hand, elbow, arm below the elbow, foot, knee, and leg below the knee. The arm above the elbow and the leg above the knee are considered part of the whole body.

(50) Fingerprint orders--The orders issued by the NRC or the legally binding requirements issued by agreement states that require fingerprints and criminal history records checks for individuals with unescorted access to category 1 and category 2 quantities of radioactive material or safeguards information-modified handling.

(51) [~~(42)~~] Generally applicable environmental radiation standards--Standards issued by the EPA under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(52) [~~(43)~~] Gray (Gy)--The SI unit of absorbed dose. One gray is equal to an absorbed dose of 1 joule per kilogram (J/kg) or 100 rad.

(53) [~~(44)~~] High radiation area--An area, accessible to individuals, in which radiation levels from sources of radiation external to the body could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 millisievert (mSv)) in one hour at 30 cm from any source of radiation or from any surface that the radiation penetrates.

(54) [~~(45)~~] Human use--The internal or external administration of radiation or radioactive material to human beings for healing arts purposes or research and/or development specifically authorized by the agency.

(55) [~~(46)~~] Individual--Any human being.

(56) [~~(47)~~] Individual monitoring--The assessment of:

(A) dose equivalent to an individual by the use of individual monitoring devices; or

(B) committed effective dose equivalent to an individual by bioassay or by determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours. (See the definition for DAC-hours in §289.202(c) of this title); or

(C) dose equivalent to an individual by the use of survey data.

(57) [~~(48)~~] Individual monitoring devices--Devices designed to be worn by a single individual for the assessment of dose equivalent. For purposes of this chapter, "personnel dosimeter" and "dosimeter" are equivalent terms. Examples of individual monitoring devices include, but are not limited to, film badges, thermoluminescence dosimeters (TLDs), optically stimulated luminescence dosimeters (OSLs), pocket ionization chambers (pocket dosimeters), electronic personal dosimeters, and personal air sampling devices.

(58) [~~(49)~~] Inspection--An official examination and/or observation including, but not limited to, records, tests, surveys, and monitoring to determine compliance with the Act and rules, orders, requirements, and conditions of the agency.

(59) [~~(50)~~] Internal dose--That portion of the dose equivalent received from radioactive material taken into the body.

(60) [~~(51)~~] Ionizing radiation--Any electromagnetic or particulate radiation capable of producing ions, directly or indirectly, in its passage through matter. Ionizing radiation includes gamma rays and x rays, alpha and beta particles, high-speed electrons, neutrons, and other nuclear particles.

(61) [~~(52)~~] Land disposal facility--The land, buildings, and equipment that are intended to be used for the disposal of low-level radioactive waste (LLRW) into the subsurface of the land.

(62) [~~(53)~~] Lens dose equivalent--The external dose equivalent to the lens of the eye at a tissue depth of 0.3 cm (300 mg/cm^2).

(63) [~~(54)~~] License--A form of permission given by the agency to an applicant who has met the requirements for licensing set out in the Act and this chapter.

(64) [~~(55)~~] Licensed material--Radioactive material received, possessed, used, or transferred under a general or specific license issued by the agency.

(65) [~~(56)~~] Licensee--Any person who is licensed by the agency in accordance with the Act and this chapter.

(66) [~~(57)~~] Licensing state--Any state with rules equivalent to the Suggested State Regulations for Control of Radiation relating to, and having an effective program for, the regulatory control of naturally occurring or accelerator-produced radioactive material (NARM) and has been designated as such by the Conference of Radiation Control Program Directors, Inc. For the purposes of evaluation and/or distribution of sealed sources, this includes Licensing State Status: Product Review Only.

(67) Local law enforcement agency (LLEA)--A public or private organization that has been approved by a federal, state, or local government to carry firearms and make arrests, and is authorized and has the capability to provide an armed response in the jurisdiction where the licensed category 1 or category 2 quantity of radioactive material is used, stored, or transported.

(68) [~~(58)~~] Lost or missing radioactive material--Radioactive material whose location is unknown. This definition includes licensed material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

(69) [~~(59)~~] Low-level radioactive waste (LLRW)--Radioactive material that meets the following criteria:

(A) LLRW is radioactive material that is:

(i) discarded or unwanted and is not exempt by rule adopted under the Texas Radiation Control Act (Act), HSC [~~Health and Safety Code~~], §401.106;

(ii) waste, as that term is defined in Title 10, CFR, §61.2; and

(iii) subject to:

(I) concentration limits established in Title 10, CFR, §61.55, or compatible rules adopted by the agency or the Texas Commission on Environmental Quality (TCEQ), as applicable; and

(II) disposal criteria established in Title 10, CFR, or established by the agency or TCEQ, as applicable.

(B) LLRW does not include:

(i) high-level radioactive waste as defined by Title 10, CFR, §60.2;

(ii) spent nuclear fuel as defined by Title 10, CFR, §72.3;

(iii) byproduct material defined in the Act, HSC [~~Health and Safety Code~~], §401.003(3)(B);

(iv) naturally occurring radioactive material (NORM) waste that is not oil and gas NORM waste;

(v) oil and gas NORM waste; or

(vi) transuranics greater than 100 nanocuries per gram.

(70) [~~(60)~~] Manufacture--To fabricate or mechanically produce.

(71) [~~(61)~~] Member of the public--Any individual, except when that individual is receiving an occupational dose.

(72) [~~(62)~~] Minor--An individual less than 18 years of age.

(73) Mobile device--A piece of equipment containing licensed radioactive material that either is mounted on a permanent base with wheels and/or casters, or otherwise equipped for moving while completely assembled and without dismounting; or is a portable device. Mobile devices do not include stationary equipment installed in a fixed location.

(74) [~~(63)~~] Monitoring--The measurement of radiation, radioactive material concentrations, surface area activities, or quantities of radioactive material and the use of the results of these measurements

to evaluate potential exposures and doses. For purposes of this chapter, "radiation monitoring" and "radiation protection monitoring" are equivalent terms.

(75) Movement control center--An operations center that is remote from transport activity and that maintains position information on the movement of radioactive material, receives reports of attempted attacks or thefts, provides a means for reporting these and other problems to appropriate agencies and can request and coordinate appropriate aid.

(76) [~~(64)~~] NARM--Any naturally occurring or accelerator-produced radioactive material except source material or special nuclear material.

(77) [~~(65)~~] Natural radioactivity--Radioactivity of naturally occurring nuclides whose location and chemical and physical form have not been altered by man.

(78) No-later-than arrival time--The date and time that the shipping licensee and receiving licensee have established as the time at which an investigation will be initiated if the shipment has not arrived at the receiving facility. The no-later-than arrival time may not be more than 6 hours after the estimated arrival time for shipments of category 2 quantities of radioactive material.

(79) [~~(66)~~] NRC--The United States Nuclear Regulatory Commission or its duly authorized representatives.

(80) [~~(67)~~] Occupational dose--The dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to sources of radiation from licensed/registered and unlicensed/unregistered sources of radiation, whether in the possession of the licensee/registrant or other person. Occupational dose does not include dose received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with this chapter, from voluntary participation in medical research programs, or as a member of the public.

(81) [~~(68)~~] Particle accelerator--Any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and designed to discharge the resultant particulate or other associated radiation at energies usually in excess of 1 million electron volts (MeV) [~~MeV~~].

(82) [~~(69)~~] Person--Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, local government, any other state or political subdivision or agency thereof, or any other legal entity, and any legal successor, representative, agent, or agency of the foregoing, other than NRC, and other than federal government agencies licensed or exempted by NRC.

(83) [~~(70)~~] Personnel monitoring equipment (See definition for individual monitoring devices.)

(84) [~~(71)~~] Pharmacist--An individual licensed by the Texas State Board of Pharmacy to compound and dispense drugs, prescriptions, and poisons.

(85) [~~(72)~~] Physician--An individual licensed by the Texas Medical Board.

(86) Portable device--A piece of equipment containing licensed radioactive material that is designed by the manufacturer to be hand carried during use.

(87) [~~(73)~~] Positron emission tomography (PET) radionuclide production facility--A facility operating a cyclotron or accelerator for the purpose of producing PET radionuclides.

(88) [~~(74)~~] Principal activities--Activities authorized by the license that are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(89) [~~(75)~~] Public dose--The dose received by a member of the public from exposure to sources of radiation released by a licensee, or to any other source of radiation under the control of a licensee/registrant. It does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with this chapter, or from voluntary participation in medical research programs.

(90) [~~(76)~~] Quality factor (Q)--The modifying factor listed in subsection (n)(1) and (2) of this section that is used to derive dose equivalent from absorbed dose.

(91) [~~(77)~~] Quarter (calendar quarter)--A period of time equal to one-fourth of the year observed by the licensee, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(92) [~~(78)~~] Rad--The special unit of absorbed dose. One rad is equal to an absorbed dose of 100 ergs per gram (erg/g) or 0.01 J/kg (0.01 Gy [~~gray~~]).

(93) [~~(79)~~] Radiation--One or more of the following:

(A) gamma and x rays; alpha and beta particles and other atomic or nuclear particles or rays;

(B) emission of radiation from any electronic device to such energy density levels as to reasonably cause bodily harm; or

(C) sonic, ultrasonic, or infrasonic waves from any electronic device or resulting from the operation of an electronic circuit in an electronic device in the energy range to reasonably cause detectable bodily harm.

(94) [~~(80)~~] Radiation area--Any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 mSv) in one hour at 30 cm from the source of radiation or from any surface that the radiation penetrates.

(95) [~~(81)~~] Radiation machine--Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(96) [~~(82)~~] Radiation safety officer (RSO)--An individual who has a knowledge of and the authority and responsibility to apply appropriate radiation protection rules, standards, and practices, who must be specifically authorized on a radioactive material license, and who is the primary contact with the agency. Specific training and responsibilities for an RSO are listed in §289.252 of this title [~~(relating to Licensing of Radioactive Material)~~], §289.253 of this title (relating to Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies), §289.255 of this title (relating to Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography), and §289.256 of this title (relating to Medical and Veterinary Use of Radioactive Material).

(97) [~~(83)~~] Radioactive material--Any material (solid, liquid, or gas) that emits radiation spontaneously.

(98) [~~(84)~~] Radioactive waste--For purposes of this chapter, this term is equivalent to LLRW.

(99) [~~(85)~~] Radioactivity--The disintegration of unstable atomic nuclei with the emission of radiation.

(100) [~~(86)~~] Radiobioassay (See definition for bioassay.)

(101) [~~(87)~~] Registrant--Any person issued a certificate of registration by the agency in accordance with the Act and this chapter.

(102) [~~(88)~~] Regulation (See definition for rule.)

(103) [~~(89)~~] Regulations of the United States Department of Transportation (DOT)--The requirements in Title 49, CFR, Parts 100 - 189.

(104) [~~(90)~~] Rem--The special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor (1 rem = 0.01 sievert (Sv)).

(105) [~~(91)~~] Research and development--Research and development is defined as:

(A) theoretical analysis, exploration, or experimentation; or

(B) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(106) [~~(92)~~] Residential location--Any area where a structure or structures are located in which people lodge or live, and the grounds on which these structures are located including, but not limited to, houses, apartments, condominiums, and garages.

(107) [~~(93)~~] Residual radioactivity--The radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of Title 10, CFR, Part 20.

(108) [~~(94)~~] Restricted area--An area, access to which is limited by the licensee for the purpose of protecting individuals against undue risks from exposure to sources of radiation. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

(109) Reviewing official--The individual who shall make the trustworthiness and reliability determination of an individual to determine whether the individual may have, or continue to have, unescorted access to the category 1 or category 2 quantities of radioactive materials that are possessed by the licensee.

(110) [~~(95)~~] Roentgen (R)--The special unit of exposure. One roentgen (R) equals 2.58 x 10^{-4} C/kg of air. (See definition for exposure.)

(111) [~~(96)~~] Rule (as defined in the Government Code, Chapters 2001 and 2002, as amended)--Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendment or repeal of a prior section but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures. The word "rule" was formerly referred to as "regulation."

(112) Sabotage--The deliberate damage, with malevolent intent, to a category 1 or category 2 quantity of radioactive material, a device that contains a category 1 or category 2 quantity of radioactive material, or the components of the security system.

(113) Safe haven--A readily recognizable and readily accessible site at which security is present or from which, in the event of an emergency, the transport crew can notify and wait for the local law enforcement authorities.

(114) [~~(97)~~] Sealed source--Radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material.

(115) Security zone--Any temporary or permanent area determined and established by the licensee for the physical protection of category 1 or category 2 quantities of radioactive material.

(116) [~~(98)~~] Shallow dose equivalent (H_s) (that applies to the external exposure of the skin of the whole body or the skin of an extremity)--The dose equivalent at a tissue depth of 0.007 cm (7 mg/cm^2).

(117) [~~(99)~~] SI--The abbreviation for the International System of Units.

(118) [~~(100)~~] Sievert--The SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 Sv = 100 rem).

(119) [~~(101)~~] Site boundary--That line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.

(120) [~~(102)~~] Source material--Source material is defined as:

(A) uranium or thorium, or any combination thereof, in any physical or chemical form; or

(B) ores that contain by weight 0.05% or more of uranium, thorium, or any combination thereof; and

(C) does not include special nuclear material.

(121) [~~(103)~~] Source of radiation--Any radioactive material, or any device or equipment emitting or capable of producing radiation.

(122) [~~(104)~~] Special form radioactive material--Radioactive material that satisfies the following conditions.

(A) It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(B) The piece or capsule has at least one dimension not less than 5 millimeters (mm) (0.2 inch); and

(C) It satisfies the requirements specified by NRC. A special form encapsulation designed in accordance with NRC requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation designed in accordance with NRC requirements in effect on March 31, 1996, and constructed prior to April 1, 1998, may continue to be used. A special form encapsulation either designed or constructed after April 1, 1998, must meet the requirements of this definition applicable at the time of its design or construction.

(123) [~~(105)~~] Special nuclear material--Special nuclear material is defined as:

(A) plutonium (Pu), uranium-233 (U-233), uranium enriched in the isotope 233 or in the isotope 235, and any other material

that NRC, in accordance with the provisions of the Atomic Energy Act of 1954, §51 as amended, determines to be special nuclear material, but does not include source material; or

(B) any material artificially enriched by any of the foregoing, but does not include source material.

(124) [~~(106)~~] Special nuclear material in quantities not sufficient to form a critical mass--Uranium enriched in the isotope 235 in quantities not exceeding 350 grams (g) of contained uranium-235; uranium-233 in quantities not exceeding 200 g; plutonium in quantities not exceeding 200 g; or any combination of them in accordance with the following formula.

(A) For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed "1" (i.e., unity).

(B) For example, the following quantities in combination would not exceed the limitation and are within the formula:
Figure: 25 TAC §289.201(b)(124)(B)
[~~Figure: 25 TAC §289.201(b)(106)(B)~~]

(125) [~~(107)~~] Special units--The conventional units historically used by licensees, for example, curie (activity), rad (absorbed dose), and rem (dose equivalent).

(126) Stationary device--A piece of equipment containing licensed radioactive material that is installed in a fixed location.

(127) [~~(108)~~] Survey--An evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, and/or presence of sources of radiation. When appropriate, such survey includes, but is not limited to, tests, physical examination of location of materials and equipment, measurements of levels of radiation or concentration of radioactive material present, and evaluation of administrative and/or engineered controls.

(128) Telemetric position monitoring system--A data transfer system that captures information by instrumentation and/or measuring devices about the location and status of a transport vehicle or package between the departure and destination locations.

(129) [~~(109)~~] Termination--A release by the agency of the obligations and authorizations of the licensee under the terms of the license. It does not relieve a person of duties and responsibilities imposed by law.

(130) [~~(110)~~] Test--A method of determining the characteristics or condition of sources of radiation or components thereof.

(131) [~~(111)~~] Texas Regulations for Control of Radiation (TRCR)--All sections of Title 25, TAC, Chapter 289.

(132) [~~(112)~~] Total effective dose equivalent (TEDE)--The sum of the effective dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

(133) [~~(113)~~] Total organ dose equivalent (TODE)--The sum of the deep dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in §289.202(rr)(1)(F) of this title.

(134) [~~(114)~~] Transport index--The dimensionless number (rounded up to the next tenth) placed on the label of a package, to designate the degree of control to be exercised by the carrier during transportation. The transport index is determined as follows:

(A) For non-fissile material packages, the number determined by multiplying the maximum radiation level in millisievert per hour (mSv/hr) at 1 meter (m) (3.3 feet) from the external surface of the package by 100 (equivalent to the maximum radiation level in millirem per hour (mrem/hr) at 1 m (3.3 feet); or

(B) For fissile material packages, the number determined by multiplying the maximum radiation level in mSv/hr at 1 m (3.3 feet) from the external surface of the package by 100 (equivalent to the maximum radiation level in mrem/hr at 1 m (3.3 feet), or, for criticality control purposes, the number obtained as described in Title 10, CFR, §71.59 whichever is larger.

(135) Trustworthiness and reliability--Characteristics of an individual considered dependable in judgment, character, and performance, such that unescorted access to category 1 or category 2 quantities of radioactive material by that individual does not constitute an unreasonable risk to the public health and safety or security. A determination of trustworthiness and reliability for this purpose is based upon the results from a background investigation.

(136) [~~(115)~~] Type A quantity--A quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material or A_2 for normal form radioactive material, where A_1 and A_2 are given in §289.257(ee) of this title (relating to Packaging and Transportation of Radioactive Material) or may be determined by procedures described in §289.257(ee) of this title.

(137) [~~(116)~~] Type B quantity--A quantity of radioactive material greater than a type A quantity.

(138) Unescorted access--Solitary access to an aggregated category 1 or category 2 quantity of radioactive material or the devices that contain the material.

(139) [~~(117)~~] Unrefined and unprocessed ore-- Ore in its natural form prior to any processing, such as grinding, roasting or[~~,~~] beneficiating, or refining. Processing does not include sieving or encapsulation of ore or preparation of samples for laboratory analysis.

(140) [~~(118)~~] Unrestricted area (uncontrolled area)--An area, or access to, which is neither limited nor controlled by the licensee. For purposes of this chapter, "uncontrolled area" is an equivalent term.

(141) [~~(119)~~] Very high radiation area--An area, accessible to individuals, in which radiation levels from sources of radiation external to the body could result in an individual receiving an absorbed dose in excess of 500 rads (5 Gy [~~grays~~] in one hour at 1 meter (m) from a source of radiation or from any surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose, gray and rad, are appropriate, rather than units of dose equivalent, Sv and rem.

(142) [~~(120)~~] Veterinarian--An individual licensed by the Texas State Board of Veterinary Medical Examiners.

(143) [~~(121)~~] Waste--Low-level radioactive wastes containing source, special nuclear, or byproduct material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in paragraph (19)(B) - (E) [~~paragraph (15)(B) - (E)~~] of this subsection.

(144) [~~(122)~~] Week--Seven consecutive days starting on Sunday.

(145) [~~(123)~~] Whole body--For purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

(146) [~~(124)~~] Worker--An individual engaged in work under a license or certificate of registration issued by the agency and controlled by a licensee or registrant, but does not include the licensee or registrant.

(147) [~~(125)~~] Working level (WL)--Any combination of short-lived radon daughters in 1 liter of air that will result in the ultimate emission of 1.3 x 10^5 MeV [~~million electron volts (MeV)~~] of potential alpha particle energy. The short-lived radon daughters are--for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212.

(148) [~~(126)~~] Working level month (WLM)--An exposure to one working level for 170 hours--2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month.

(149) [~~(127)~~] Year--The period of time beginning in January used to determine compliance with the provisions of this chapter. The licensee may change the starting date of the year used to determine compliance by the licensee provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

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

(g) Tests for leakage and/or contamination of sealed sources.

(1) The licensee in possession of any sealed source shall assure that:

(A) each sealed source, except as specified in paragraph (2) of this subsection and §289.253(i) of this title [~~(relating to Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies)~~], is tested for leakage or contamination and the test results are received before the sealed source is put into use unless the licensee has a certificate from the transferor indicating that the sealed source was tested within 6 [~~six~~] months before transfer to the licensee;

(B) each sealed source that is not designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed 6 [~~six~~] months or at alternative intervals approved by the agency, the [~~or by~~] NRC, or any [~~an~~] agreement state[~~, or a licensing state~~] after evaluation of information specified in §289.252(v) of this title or equivalent regulations of the NRC or any agreement state;

(C) each sealed source that is designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed 3 [~~three~~] months or at alternative intervals approved by the agency, the NRC, or any agreement state after evaluation of information specified in §289.252(v) of this title, or equivalent regulations of the [~~by~~] NRC, or any [~~an~~] agreement state[~~, or a licensing state~~];

(D) - (F) (No change.)

(G) tests for contamination from radium daughters shall be taken on the interior surface of brachytherapy source storage containers and shall be capable of detecting the presence of 0.005 µCi (185 Bq) of a radium daughter that has a half-life greater than 4 [~~four~~] days; and

(H) tests for leakage or contamination shall be performed using a leak test kit or method approved by the agency, the NRC, or any [~~an~~] agreement state[~~, or a licensing state~~].

(2) A licensee need not perform tests for leakage or contamination on the following sealed sources:

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

(C) sealed sources containing 100 µCi (3.7 MBq [~~megabecquerels (MBq)~~]) or less of beta or gamma-emitting material or 10 µCi (370 kBq [~~kilobecquerels (kBq)~~]) or less of alpha or neutron-emitting material;

(D) - (F) (No change.)

(3) Analysis of tests for leakage or contamination from sealed sources shall be performed by persons specifically authorized by the agency, the NRC, or any [~~an~~] agreement state, [~~or a licensing state,~~] to perform such services.

(4) (No change.)

(5) The following shall be considered evidence that a sealed source is leaking:

(A) the presence of 0.005 µCi (185 [~~becquerels~~] Bq) or more of removable contamination on any test sample;

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

(6) - (7) (No change.)

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

(k) Communications.

(1) Except where otherwise specified, all communications and reports concerning this chapter and applications filed under them should be addressed to Radiation Control, Department of State Health Services, [~~1100 West 49th Street,~~] P.O. Box 149347, Austin, Texas, 78714-9347. Communications, reports, and applications may be delivered in person to the agency's office located at 8407 Wall Street, Austin, Texas.

(2) Documents transmitted to the agency will be deemed submitted on the date of the postmark, facsimile [~~telegram, telefacsimile~~], or other electronic media transmission.

(l) (No change.)

(m) Open records.

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

(4) Requests for information.

(A) All requests for open records information must be in writing and refer to documents currently in possession of the agency.

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

(n) (No change.)

(o) Units of activity. For purposes of this chapter, activity is expressed in the special unit of curie (Ci), (Bq), or its multiples, or disintegrations or transformations per second (dps or tps).

(1) 1 Ci = 3.7 x 10^{10} dps or tps = 3.7 x 10^{10} Bq [~~(Bq)~~] = 2.22 x 10^{12} disintegrations or transformations per minute (dpm or tpm).

(2) (No change.)

§289.202. Standards for Protection Against Radiation from Radioactive Materials.

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

(e) Radiation protection programs.

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

(4) To implement the ALARA requirement in paragraph (2) of this subsection and notwithstanding the requirements in subsection (n) of this section, a constraint on air emissions of radioactive material to the environment, excluding radon-222 and its daughters, shall be established by licensees such that the individual member of the pub-

lic likely to receive the highest dose will not be expected to receive a total effective dose equivalent (TEDE) in excess of 10 millirems (mrem) (0.1 millisievert (mSv)) per year from these emissions. If a licensee subject to this requirement exceeds this dose constraint, the licensee shall report the exceedance as required in subsection (yy) of this section and promptly take appropriate corrective action to ensure against recurrence.

(5) (No change.)

(f) - (i) (No change.)

(j) Determination of occupational dose for the current year.

(1) (No change.)

(2) In complying with the requirements of paragraph (1) of this subsection, a licensee may:

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

(C) obtain reports of the individual's dose equivalent from prior or other current employer(s) for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee, by telephone, [~~telegram,~~] facsimile, [~~or~~] letter, or other electronic media transmission. The licensee shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.

(3) (No change.)

(4) If the licensee is unable to obtain a complete record of an individual's current occupational dose while employed by any other licensee, the licensee shall assume in establishing administrative controls in accordance with subsection (f)(7) of this section for the current year, that the allowable dose limit for the individual is reduced by 1.25 rems (12.5 mSv [~~millisieverts (mSv)~~]) for each quarter; or 416 mrem (4.16 mSv) for each month for which records were unavailable and the individual was engaged in activities that could have resulted in occupational radiation exposure.

(5) - (6) (No change.)

(k) Planned special exposures. A licensee may authorize an adult worker to receive doses in addition to and accounted for separately from the doses received under the limits specified in subsection (f) of this section provided that each of the following conditions is satisfied.

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

(5) In complying with the requirements of paragraph (4)(C) of this subsection, a licensee may:

(A) (No change.)

(B) obtain reports of the individual's dose equivalent from prior employer(s) for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee, by telephone, [~~telegram,~~] facsimile, [~~or~~] letter, or other electronic media transmission. The licensee shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.

(6) - (9) (No change.)

(l) (No change.)

(m) Dose equivalent to an embryo/fetus.

(1) (No change.)

(2) The licensee shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman so as to satisfy the limit in paragraph (1) of this subsection. The National Council on Radiation Protection and Measurements (NCRP) recommended in NCRP Report No. 91 "Recommendations on Limits for Exposure to Ionizing Radiation" (June 1, 1987), that no more than 0.05 rem (0.5 mSv) to the embryo/fetus be received in any one month.

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

(n) - (o) (No change.)

(p) General surveys and monitoring.

(1) (No change.)

(2) In addition to subsection (nn) of this section, records from surveys describing the location and amount of subsurface residual radioactivity identified at the site shall be kept with records important for decommissioning, and such records shall be maintained and retained in accordance with §289.252(gg) of this title (relating to Licensing of Radioactive Material).

(3) The licensee shall ensure that instruments and equipment used for quantitative radiation measurements, for example, dose rate and effluent monitoring, are operable and calibrated:

(A) by a person licensed or registered by the agency, [~~another agreement state, a licensing state, or~~] the United States Nuclear Regulatory Commission (NRC), or any agreement state to perform such service;

(B) - (E) (No change.)

(4) - (5) (No change.)

(q) - (x) (No change.)

(y) Security and control of licensed sources of radiation.

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

(4) Utilization records shall be maintained for portable and mobile devices which contain radioactive material, and which are transported from a licensed site temporarily for use by the licensee and then returned to the licensed site of origin. The information required by subparagraphs (A) - (D) of this paragraph shall be recorded when a device is removed from the licensed site. The information in subparagraph (E) of this paragraph shall be recorded when a device is returned to the licensed site:

(A) the manufacturer, model, and serial number of the device;

(B) the name of the individual(s) transporting and using the device;

(C) the location(s) where each device is used;

(D) the date each device is removed from storage; and

(E) the date each device is returned to storage.

(5) Utilization records shall be maintained at the licensed site where the devices are stored for inspection by the agency in accordance with subsection (ggg)(5) of this section.

(z) - (cc) (No change.)

(dd) Exemptions to labeling requirements. A licensee is not required to label:

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

(4) containers when they are in transport and packaged and labeled in accordance with the rules of the DOT (labeling of packages containing radioactive materials is required by the DOT if the amount

and type of radioactive material exceeds the limits for an excepted quantity or article as defined and limited by DOT regulations Title 49, CFR, §§173.403(m) and (w) and 173.424);

(5) - (6) (No change.)

(ee) Procedures for receiving and opening packages.

(1) Each licensee who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity, as defined in §289.201(b) of this title (relating to General Provisions for Radioactive Material) and specified in §289.257(ee) of this title (relating to Packaging and Transportation of Radioactive Material), shall make arrangements to receive:

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

(2) Each licensee shall:

(A) (No change.)

(B) monitor the external surfaces of a labeled package, labeled with a Radioactive White I, Yellow II, or Yellow III label as specified in DOT regulations Title 49, CFR, §§172.403 and 172.436 - 440, for radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, as defined in §289.201(b) of this title and specified in §289.257(ee) of this title; and

(C) (No change.)

(3) (No change.)

(4) The licensee shall immediately notify the final delivery carrier and, by telephone [~~and telegram, mailgram~~], [~~or~~] facsimile, or other electronic media transmission, the agency when removable radioactive surface contamination or external radiation levels exceed the limits established in subparagraphs (A) and (B) of this paragraph.

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

(5) - (6) (No change.)

(ff) General requirements for waste management.

(1) Unless otherwise exempted, a licensee shall discharge, treat, or decay licensed material or transfer waste for disposal only:

(A) by transfer to an authorized recipient as provided in subsection (jj) of this section, §289.252 of this title [~~(relating to Licensing of Radioactive Material)~~], §289.257 of this title, §289.259 of this title, or to the United States Department of Energy (DOE);

(B) (No change.)

(C) by release in effluents within the limits in subsection (n) of this section in accordance with the applicable requirements of the Texas Commission on Environmental Quality (TCEQ) or the Railroad Commission of Texas (RRC); [~~or~~]

(D) as authorized in accordance with paragraph (2) of this subsection, and subsections (gg), (hh), and (fff) of this section; or[~~.~~]

(E) by transfer of residual radiopharmaceutical waste for decay in storage only to persons who manufactured, compounded, and supplied the radiopharmaceutical and who otherwise meet the requirements for exemption under Title 30, Texas Administrative Code (TAC), §336.1209.

(2) Upon agency approval, emission control dust and other material from electric arc furnaces or foundries contaminated as a result of inadvertent melting of cesium-137 or americium-241 sources may be transferred for disposal to a hazardous waste disposal facility authorized by TCEQ [~~the Texas Commission on Environmental Quality (Commission)~~] or its successor, another state's regulatory agency with jurisdiction to regulate hazardous waste as classified under Subtitle C of the Resource Conservation and Recovery Act (RCRA), or the EPA. The material may be transferred for disposal without regard to its radioactivity if the following conditions are met.

(A) - (I) (No change.)

(J) The licensee transferring the cesium-137 or americium-241 contaminated incident-related material shall consult with the agency, the TCEQ [~~Commission~~] or its successor, another state's regulatory agency with jurisdiction to regulate hazardous waste as classified under RCRA, or the EPA and other authorized parties, including state and local governments, and obtain all necessary approvals, in addition to those of the NRC and/or any [~~appropriate~~] agreement state [~~states~~], for the transfers described in paragraph (2) of this subsection.

(K) (No change.)

(L) The total incident-related cesium-137 activity described in paragraph (2) of this subsection received by a facility over its operating life shall not exceed 1 Ci (37 gigabequerels (GBq)). The total incident-related americium-241 activity described in paragraph (2) of this subsection received by a facility over its operating life shall not exceed 30 mCi (1.11 GBq [~~megabequerels (MBq)~~]). The agency will maintain a record of the total incident-related cesium-137 or americium-241 activity shipped by a person licensed by the agency. Upon consultation with the TCEQ [~~Commission~~], the agency will determine if the total incident-related activity received by a hazardous waste disposal facility over its operating life has reached 1 Ci (37 GBq) of cesium-137 or 30 mCi (1.11 GBq [~~MBq~~]) of americium-241. The agency will not approve shipments of cesium-137 or americium-241 contaminated incident-related material that will cause this limit to be exceeded.

(3) Radioactive waste exempted by TCEQ for disposal in a hazardous waste disposal facility that holds a TCEQ permit issued under Subtitle C of the RCRA may be transferred for disposal as authorized by TCEQ.

(4) [~~(3)~~] A person shall be specifically licensed to receive waste containing licensed material from other persons for:

(A) treatment prior to disposal;

(B) treatment by incineration;

(C) decay in storage;

(D) disposal at an authorized land disposal facility; or

(E) storage until transferred to a storage or disposal facility authorized to receive the waste.

(5) [~~(4)~~] Byproduct material as defined in §289.201(b)(19)(C) - (E) [~~§289.201(b)(15)(C) - (E)~~] of this title may be disposed of in accordance with Title 10, CFR, Part 61, even though it is not defined as low level radioactive waste. Therefore, any byproduct material being disposed of at a facility, or transferred for ultimate disposal at a facility licensed under Title 10, CFR, Part 61, shall meet the requirements of this chapter.

(6) [~~(5)~~] A licensee may dispose of byproduct material, as defined in §289.201(b)(19)(C) - (E) [~~§289.201(b)(15)(C) - (E)~~] of this title, at a disposal facility authorized to dispose of such material in accordance with any Federal or State solid or hazardous waste law.

(7) [~~(6)~~] Any licensee shipping byproduct material as defined in §289.201(b)(19)(C) - (E) [~~§289.201(b)(15)(C) - (E)~~] of this title intended for ultimate disposal at a land disposal facility licensed under Title 10, CFR, Part 61, shall document the information required on the

NRC's Uniform Low-Level Radioactive Waste Manifest and transfer this recorded manifest information to the intended consignee in accordance with §289.257(gg) of this title.

(gg) - (ll) (No change.)

(mm) Records of radiation protection programs.

(1) (No change.)

(2) The licensee shall make, maintain, and retain the records required by paragraphs (1)(A) and (1)(B) [~~paragraph (1)(A)~~] of this subsection for inspection by the agency in accordance with subsection (ggg)(5) of this section. [~~until the agency terminates each pertinent license requiring the record. The licensee shall retain the records required by paragraph (1)(B) of this subsection for three years after the record is made.~~]

(nn) Records of surveys.

(1) Each licensee shall make, maintain, and retain records documenting [~~showing~~] the results of surveys and calibrations required by subsections (p) and (ee)(2) of this section and include a unique identification of survey instrument(s). The licensee shall maintain [~~retain~~] these records for inspection by the agency in accordance with subsection (ggg)(5) of this section [~~for three years after the record is made~~].

(2) Record of the calibration shall include:

(A) the manufacturer's name, model and serial number of each calibrated source and/or device;

(B) the complete date of the calibration; and

(C) the name of the individual recording the information.

(3) [~~(2)~~] The licensee shall make, maintain, and retain each of the following records for inspection by the agency in accordance with subsection (ggg)(5) of this section [~~until the agency terminates each pertinent license requiring the record~~]:

(A) the results of surveys to determine the dose from external sources of radiation used, in the absence of or in combination with individual monitoring data, in the assessment of individual dose equivalents; and

(B) the results of measurements and calculations used to determine individual intakes of radioactive material and used in the assessment of internal dose; and

(C) the results of air sampling, surveys, and bioassays required in accordance with subsection (x)(1)(C)(i) and (ii) of this section; and

(D) the results of measurements and calculations used to evaluate the release of radioactive effluents to the environment.

(oo) Records of tests for leakage or contamination of sealed sources. Records of tests for leakage or contamination of sealed sources required by §289.201(g) of this title shall be kept in units of becquerel or microcurie and maintained and retained for inspection by the agency in accordance with subsection (ggg)(5) of this section [~~for five years after the records are made~~].

(pp) Records of lifetime cumulative occupational radiation dose. The licensee shall make, maintain, and retain the records of lifetime cumulative occupational radiation dose as specified in subsection (k) of this section on RC Form 202-2 or equivalent and the [~~until the agency terminates each pertinent license requiring this record. The licensee shall retain~~] records used in preparing RC Form 202-2 or equivalent for inspection by the agency in accordance with subsection (ggg)(5) of this section [~~for three years after the record is made~~].

(qq) - (vv) (No change.)

(ww) Reports of stolen, lost, or missing licensed sources of radiation.

(1) (No change.)

(2) Each licensee required to make a report in accordance with paragraph (1) of this subsection shall, within 30 days after making the telephone report, make a written report to the agency setting forth the following information:

(A) a description of the licensed source of radiation involved, including, for radioactive material, the kind, quantity, [~~and~~] chemical and physical form, source and/or device manufacturer, model number, and serial number;

(B) - (F) (No change.)

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

(xx) Notification of incidents.

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

(3) Licensees shall make the initial notification reports required by paragraphs (1) and (2) of this subsection by telephone to the agency and shall confirm the initial notification report within 24 hours by [~~telegram, mailgram, or~~] facsimile or other electronic media transmission to the agency.

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

(7) Each licensee shall notify the agency within 24 hours after the discovery of any of the following events involving radioactive material:

(A) an unplanned contamination event that:

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

(iii) has access to the area restricted for a reason other than to allow isotopes with a half-life of less than 24 hours to decay prior to decontamination;[~~.~~]

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

(8) Preparation and submission of reports. Reports made by licensees in response to the requirements of paragraphs (6) and (7) of this subsection shall be made as follows.

(A) Licensees shall make reports required by paragraphs (6) and (7) of this subsection by telephone to the agency. To the extent that the information is available at the time of notification, the information provided in these reports shall include:

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

(iv) the isotopes, quantities, and chemical and physical form of the radioactive material involved; [~~and~~]

(v) any personnel radiation exposure data available; and[~~.~~]

(vi) the source and/or device manufacturer, model, and serial number.

(B) Each licensee who makes a report required by paragraphs (6) and (7) of this subsection shall submit to the agency a written follow-up report within 30 days of the initial report. Written reports prepared in accordance with other requirements of this chapter may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. The reports must include the following:

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

(iii) the isotopes, quantities, [~~and~~] chemical and physical form of the radioactive material involved, and the source and/or device manufacturer, model number, and serial number;

(iv) - *(vi)* (No change.)

(yy) Reports of exposures, radiation levels, and concentrations of radioactive material exceeding the limits.

(1) In addition to the notification required by subsection (xx) of this section, each licensee shall submit a written report within 30 days after learning of any of the following occurrences:

(A) - (C) (No change.)

(D) for licensees subject to the provisions of the EPA's generally applicable environmental radiation standards in Title 40, CFR, §190, levels of radiation or releases of radioactive material in excess of those standards, or of license conditions related to those requirements.

(2) Each report required by paragraph (1) of this subsection shall describe the extent of exposure of individuals to radiation and radioactive material, including, as appropriate:

(A) (No change.)

(B) the levels of radiation, dose limit exceeded, [~~and~~] concentrations of radioactive material involved, and the source and/or device manufacturer, model number, and serial number;

(C) - (D) (No change.)

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

(zz) - (aaa) (No change.)

(bbb) Reports of leaking or contaminated sealed sources. The licensee shall immediately notify the agency if the test for leakage or contamination required in accordance with §289.201(g) of this title indicates a sealed source is leaking or contaminated. A written report of a leaking or contaminated source shall be submitted to the agency within 5 [~~five~~] days. The report shall include the equipment involved, including the device manufacturer, model and serial number; the test results;[,] the date of the test;[,] model and serial number;[,] if assigned, of the leaking source, the radionuclide and its estimated activity;[,] and the corrective action taken.

(ccc) (No change.)

(ddd) Radiological requirements for license termination.

(1) (No change.)

(2) Radiological requirements for unrestricted use.

[~~(A)~~] A site will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a TEDE to an average member of the critical group that does not exceed 25 mrem (0.25 mSv) per year, including that from groundwater sources of drinking water, and the residual radioactivity has been reduced to levels that are ALARA. Determination of the levels that are ALARA shall take into account consideration of any detriments, such as deaths from transportation accidents, expected to potentially result from decontamination and waste disposal.

(3) Criteria for license termination under restricted conditions. A site will be considered acceptable for license termination under restricted conditions if:

(A) the licensee can demonstrate that further reductions in residual radioactivity necessary to comply with the requirements of paragraph (2) of this subsection would result in net public or environmental harm or were not being made because the residual levels associated with restricted conditions are ALARA. Determination of the levels which are ALARA shall take into account consideration of any detriments, such as traffic accidents, expected to potentially result from decontamination and waste disposal;

(B) the licensee has made provisions for legally enforceable institutional controls that provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 25 mrem (0.25 mSv) per year;

(C) [~~(B)~~] the [~~The~~] licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site. Acceptable financial assurance mechanisms are:

(i) funds placed into a trust segregated from the licensee's assets and outside the licensee's administrative control, and in which the adequacy of the trust funds is to be assessed based on an assumed annual 1% real rate of return on investment;

(ii) a statement of intent in the case of federal, state, or local government licensees, as described in §289.252(gg) of this title; or

(iii) when a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity.

(D) [~~(C)~~] the [~~The~~] licensee has submitted a decommissioning plan or License Termination Plan (LTP) to the agency indicating the licensee's intent to decommission in accordance with §289.252(y) of this title, and specifying that the licensee intends to decommission by restricting use of the site. The licensee shall document in the LTP or decommissioning plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and incorporated, as appropriate, following analysis of that advice.

(i) Licensees proposing to decommission by restricting use of the site shall seek advice from such affected parties regarding the following matters concerning the proposed decommissioning:

(I) whether provisions for institutional controls proposed by the licensee;

(-a-) will provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 25 mrem (0.25 mSv) TEDE per year;

(-b-) will be enforceable; and

(-c-) will not impose undue burdens on the local community or other affected parties; and

(II) whether the licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site.

(ii) In seeking advice on the issues identified in clause (i) of this subparagraph, the licensee shall provide for:

(I) participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(II) an opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(III) a publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues; and

(E) [~~(D)~~] residual [~~Residual~~] radioactivity at the site has been reduced so that if the institutional controls were no longer in effect, there is reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group is ALARA and would not exceed either:

(i) 100 mrem (1 mSv) per year; or

(ii) 500 mrem (5 mSv) per year provided the licensee:

(I) demonstrates that further reductions in residual radioactivity necessary to comply with the 100 mrem/y (1 mSv/y) value of clause (i) of this subparagraph are not technically achievable, would be prohibitively expensive, or would result in net public or environmental harm;

(II) makes provisions for durable institutional controls; and

(III) provides sufficient financial assurance to enable a responsible government entity or independent third party, including a governmental custodian of a site, both to carry out periodic rechecks of the site no less frequently than every 5 years to assure that the institutional controls remain in place as necessary to meet the criteria of paragraph (2) of this subsection [~~subparagraph (A) of this paragraph~~] and to assume and carry out responsibilities for any necessary control and maintenance of those controls. Acceptable financial assurance mechanisms are those in subparagraph (C) [~~(B)~~] of this paragraph.

(4) [~~(3)~~] Alternate requirements for license termination.

(A) The agency may terminate a license using alternate requirements greater than the dose requirements specified in paragraph (2) of this subsection if the licensee does the following:

(i) provides assurance that public health and safety would continue to be protected, and that it is unlikely that the dose from all man-made sources combined, other than medical, would be more than the 1 mSv per year (100 mrem per year) limit specified in subsection (o) of this section, by submitting an analysis of possible sources of exposure;

(ii) reduces doses to ALARA levels, taking into consideration any detriments such as traffic accidents expected to potentially result from decontamination and waste disposal;

(iii) has submitted a decommissioning plan to the agency indicating the licensee's intent to decommission in accordance with the requirements in §289.252(y) of this title, and specifying that the licensee proposes to decommission by use of alternate requirements. The licensee shall document in the decommissioning plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and addressed, as appropriate, following analysis of that advice. In seeking such advice, the licensee shall provide for the following:

(I) participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(II) an opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(III) a publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues; and

(iv) has provided sufficient financial assurance in the form of a trust fund to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site.

(B) The use of alternate requirements to terminate a license requires the approval of the agency after consideration of the agency's recommendations that will address any comments provided by the EPA and any public comments submitted in accordance with paragraph (5) [~~(4)~~] of this subsection.

(5) [~~(4)~~] Public notification and public participation. Upon receipt of a decommissioning plan from the licensee, or a proposal from the licensee for release of a site pursuant to paragraphs (3) and (4) [~~in accordance with paragraph (3)~~] of this subsection, or whenever the agency deems such notice to be in the public interest, the agency will do the following:

(A) notify and solicit comments from the following:

(i) local and state governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning; and

(ii) the EPA for cases where the licensee proposes to release a site in accordance with paragraph (4) [~~(3)~~] of this subsection; and

(B) publish a notice in the *Texas Register* and a forum, such as local newspapers, letters to state or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site, and solicit comments from affected parties.

(6) [~~(5)~~] Minimization of contamination.

(A) Applicants for licenses, other than renewals, after October 1, 2000, shall describe in the application how facility design and procedures for operation will minimize, to the extent practical, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practical, the generation of LLRW.

(B) Licensees shall, to the extent practical, conduct operations to minimize the introduction of residual radioactivity into the site, including the subsurface, in accordance with the existing radiation protection requirements and radiological criteria for license termination in this subsection.

(eee) (No change.)

(fff) Exemption of specific wastes.

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

(4) Any licensee may, upon agency approval of procedures required in paragraph (6) of this subsection, discard licensed material included in subsection (ggg)(7) of this section, provided that it does not exceed the concentration and total curie limits contained therein, in a Type I municipal solid waste site as defined in the Municipal Solid Waste Regulations of the authorized regulatory agency (Title 30, Texas Administrative Code, Chapter 330), unless such licensed material also contains hazardous waste, as defined in §361.003(12) of the Solid Waste Disposal Act, Health and Safety Code, Chapter 361. Any licensed material included in subsection (ggg)(7) of this section and which is a hazardous waste as defined in the Solid Waste Disposal Act

may be discarded at a facility authorized to manage hazardous waste by the authorized regulatory agency.

(5) - (9) (No change.)

(ggg) Appendices.

(1) (No change.)

(2) Annual limits on intake (ALI) and derived air concentrations (DAC) of radionuclides for occupational exposure; effluent concentrations; concentrations for release to sanitary sewerage.

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

(C) Effluent concentrations.

(i) - (iv) (No change.)

(v) The water concentrations were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3×10^7. The factor of 7.3×10^7 milliliters (ml) includes the following components:

(I) (No change.)

(II) a factor of 7.3×10^5 ml [~~(ml)~~] which is the annual water intake of "Reference Man."

(vi) (No change.)

(D) Releases to sewers. The monthly average concentrations for release to sanitary sewerage are applicable to the provisions in subsection (gg) of this section. The concentration values were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3×10^6 ml [~~(ml)~~]. The factor of 7.3×10^6 ml [~~(ml)~~] is composed of a factor of 7.3×10^5 ml [~~(ml)~~], the annual water intake by "Reference Man," and a factor of 10, such that the concentrations, if the sewage released by the licensee were the only source of water ingested by a "Reference Man" during a year, would result in a committed effective dose equivalent of 0.5 rem.

(E) (No change.)

(F) Tables--Values for annual limits. The following tables contain values for annual limits on intake (ALI) and derived air concentrations (DAC) of radionuclides for occupational exposure; effluent concentrations; concentrations for release to sanitary sewerage:
Figure: 25 TAC §289.202(ggg)(2)(F)
[~~Figure: 25 TAC §289.202(ggg)(2)(F)~~]

(3) (No change.)

(4) Classification and characteristics of low-level radioactive waste (LLRW).

(A) Classification of radioactive waste for land disposal.

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

(iii) Classification determined by long-lived radionuclides. If the radioactive waste contains only radionuclides listed in subclause (V) of this clause, classification shall be determined as follows.

(I) - (IV) (No change.)

(V) Classification table for long-lived radionuclides.
Figure: 25 TAC §289.202(ggg)(4)(A)(iii)(V)
[~~Figure: 25 TAC §289.202(ggg)(4)(A)(iii)(V)~~]

(iv) (No change.)

(v) Classification determined by both long- and short-lived radionuclides. If the radioactive waste contains a mixture of radionuclides, some of which are listed in clause (iii)(V) of this subparagraph and some of which are listed in clause (iv)(VI) of this subparagraph, classification shall be determined as follows.[~~:~~]

(I) - (II) (No change.)

(vi) - (viii) (No change.)

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

(5) Time requirements for record keeping.
Figure: 25 TAC §289.202(ggg)(5)
[~~Figure: 25 TAC §289.202(ggg)(5)~~]

(6) Acceptable surface contamination levels.
Figure: 25 TAC §289.202(ggg)(6)
[~~Figure: 25 TAC §289.202(ggg)(6)~~]

(7) Concentration and activity limits of nuclides for disposal in a Type I municipal solid waste site or a hazardous waste facility (for use in subsection (fff) of this section). The following table contains concentration and activity limits of nuclides for disposal in a Type I municipal solid waste site or a hazardous waste facility.
Figure: 25 TAC §289.202(ggg)(7)
[~~Figure: 25 TAC §289.202(ggg)(7)~~]

(8) Cumulative occupational exposure form. [~~The following~~] RC Form 202-2, found in the attached graphic, Figure: 25 TAC §289.202(ggg)(8), or other equivalent clear and legible record[~~,~~] of all the information required on that form, must [~~is to~~] be used to document cumulative occupational exposure history: [~~(Please find RC Form 202-2 at the end of this section.)~~]
Figure: 25 TAC §289.202(ggg)(8) (No change.)

(9) Occupational exposure form. [~~The following,~~] RC Form 202-3, found in the attached graphic, Figure: 25 TAC §289.202(ggg)(9), or other equivalent clear and legible record[~~,~~] of all the information required on that form, must [~~is to~~] be used to document occupational exposure record for a monitoring period: [~~(Please find RC Form 202-3 at the end of this section.)~~]
Figure: 25 TAC §289.202(ggg)(9) (No change.)

(hhh) (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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Lisa Hernandez
General Counsel
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SUBCHAPTER F. LICENSE REGULATIONS

25 TAC §§289.251, 289.252, 289.257

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, Chapter 401, which provides for the department's radiation control rules and regulatory program to be compatible with federal

standards and regulation; §401.065, which permits Texas to enter an agreement with the federal government to perform functions relating to radiation control, in cooperation with the federal government, and Texas' status thereto as an Agreement State, under which it is required to comply with NRC requirements for compatibility with its regulations; §401.051, which provides the required authority to adopt rules and guidelines relating to the control of sources of radiation; §401.052, which provides authority for rules that provide for transportation and routing of radioactive material and waste in Texas; §401.103, which provides authority for licensing and registration for transportation of sources of radiation; §401.104 which provides for rulemaking authority for general or specific licensing of radioactive material and devices or equipment using radioactive material; §401.224, which provides rulemaking authority relating to the packaging of radioactive waste; and Government Code, §531.0055; and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies 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 review of the rules implements Government Code, §2001.039.

The amendments affect Health and Safety Code, Chapters 401 and 1001; and Government Code, Chapter 531.

§289.251. Exemptions, General Licenses, and General License Acknowledgements.

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

(d) Exemptions for source material.

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

(3) Any person is exempt from this section and §289.252 of this title to the extent [~~if~~] that such person receives, possesses, uses, or transfers:

(A) (No change.)

(B) source material contained in the following products:

(i) glazed ceramic [~~ceramics, for example~~] tableware manufactured before August 27, 2013, provided that the glaze contains not more than 20% by weight source material;

(ii) glassware containing not more than 2% [~~10%~~] by weight source material[~~,~~] or, for glassware manufactured before August 27, 2013, 10% by weight source material; but not including commercially manufactured glass brick, pane glass, ceramic tile, or other glass or ceramic used in construction;

(iii) - (iv) (No change.)

(C) - (D) (No change.)

(E) depleted uranium contained in counterweights installed in aircraft, rockets, projectiles, and missiles, or stored or handled in connection with installation or removal of such counterweights, provided that:

~~*(i)* the counterweights are manufactured in accordance with a specific license issued by the United States Nuclear Regulatory Commission (NRC) authorizing distribution by the licensee in accordance with Title 10, Code of Federal Regulations (CFR), Part 40;~~]

(i) [~~(ii)~~] each counterweight has been impressed with the following legend clearly legible through any plating or other covering: "DEPLETED URANIUM" (The requirements specified in this clause need not be met by counterweights manufactured prior to December 31, 1969, provided that such counterweights were manufactured under a specific license issued by the Atomic Energy Commission and were [~~are~~] impressed with the legend, "CAUTION - RADIOACTIVE MATERIAL - URANIUM," [~~as previously~~] required at that time [~~by this chapter~~]);

(ii) [~~(iii)~~] each counterweight is durably and legibly labeled or marked with the identification of the manufacturer and the statement: "UNAUTHORIZED ALTERATIONS PROHIBITED" (The requirements specified in this clause need not be met by counterweights manufactured prior to December 31, 1969, provided that such counterweights were manufactured under a specific license issued by the Atomic Energy Commission and were [~~are~~] impressed with the legend, "CAUTION - RADIOACTIVE MATERIAL - URANIUM" [~~as previously~~] required at that time [~~by this chapter~~]); and

(iii) [~~(iv)~~] the exemption contained in this subparagraph shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of any such counterweights other than repair or restoration of any plating or other[~~,~~] covering[~~, or labeling~~];

(F) (No change.)

(G) thorium or uranium contained in or on finished optical lenses and mirrors, provided that each lens or mirror does not contain more than 10% by weight of thorium or uranium or, for lenses manufactured before August 27, 2013, 30% by weight of thorium;[~~,~~] and that the exemption contained in this subparagraph shall not be deemed to authorize either:

(i) the shaping, grinding, or polishing of such lens or mirror or manufacturing processes other than the assembly of such lens or mirror into optical systems and devices without any alteration of the lens or mirror; or

(ii) the receipt, possession, use, or transfer of uranium or thorium contained in contact lenses, or in spectacles, or in eyepieces in binoculars or in other optical instruments;

(H) uranium contained in detector heads for use in fire detection units, provided that each detector head contains not more than 0.005 microcurie (μCi) (185 becquerels (Bq)) of uranium; or

(I) (No change.)

(4) (No change.)

(5) No person may initially transfer for sale or distribution a product containing source material to persons exempt under subsection (d)(3) of this section, Title 10, CFR, §40.13(c), or equivalent regulations of an agreement state, unless authorized by a license issued under Title 10, CFR, §40.52, to initially transfer such products for sale or distribution.

(A) Persons initially distributing source material in products covered by the exemptions in subsection (d)(3) of this section before August 27, 2013, without specific authorization may continue such distribution for 1 year beyond this date. Initial distribution may also be continued until the agency takes final action on a pending application for license or license amendment to specifically authorize distribution submitted no later than 1 year beyond this date.

(B) Persons authorized by the agency, the NRC, or any agreement state to manufacture, process, or produce these materials or products containing source material, and persons who import finished products or parts, for sale or distribution must be authorized by a license issued under Title 10, CFR, §40.52, for distribution only. These persons are exempt from the requirements of §289.202 (relating to Standards for Protection Against Radiation from Radioactive Materials),

§289.203 (relating to Notices, Instructions, and Reports to Workers; Inspections), and §289.252(e)(1) and (2) of this title.

(e) Exemptions for radioactive material other than source material.

(1) Exempt concentrations.

(A) (No change.)

(B) No person may introduce radioactive material into a product or material, including waste, knowing or having reason to believe that it will be transferred to persons exempt in accordance with subparagraph (A) of this paragraph or equivalent regulations of the NRC or[~~,~~] any agreement state, [~~or any licensing state,~~] except in accordance with a specific license issued under [~~in accordance with~~] §289.252(i) of this title [~~or the general license provided in §289.252(ee) of this title~~].

(C) A manufacturer, processor, or producer of a product or material is exempt from the requirements for a license, as specified in §289.252 of this title, if the manufacturer, processor, or producer transfers radioactive material contained in a product or material that does not exceed the concentrations specified in subsection (l)(1) of this section, and that has been introduced into the product or material by a licensee holding a specific license issued by the NRC[~~, any agreement state, or any licensing state~~] that expressly authorizes such introduction. The exemption specified in this subparagraph does not apply to the transfer of radioactive material contained in any food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

(2) Exempt quantities.

(A) - (C) (No change.)

(D) No person may, for purposes of commercial distribution, transfer radioactive material in quantities greater than the individual quantities set forth in subsection (l)(2) of this section, knowing or having reason to believe that such quantities of radioactive material will be transferred to persons exempt under this paragraph or equivalent regulations of the NRC or[~~,~~] any agreement state, [~~or any licensing state,~~] except in accordance with a specific license issued by the NRC in accordance with Title 10, CFR, §32.18 or by the agency in accordance with §289.252(j) of this title, which states that the radioactive material may be transferred by the licensee to persons exempt in accordance with this paragraph or the equivalent regulations of the NRC or[~~,~~] any agreement state[~~, or any licensing state~~].

(E) The schedule of quantities set forth in subsection (l)(2) of this section applies only to radioactive materials distributed as exempt quantities under [~~in accordance with~~] a specific license issued by the agency, [~~another licensing state, or~~] the NRC, or any agreement state [~~commission~~]. Subsection (l)(2) of this section does not apply to radioactive materials that have decayed from quantities not originally exempt and does not make such material, or the sources or devices in which the material is contained exempt [~~except~~] from the licensing requirements in this section or §289.252 of this title.

(F) (No change.)

(3) Exempt items.

(A) Certain items containing radioactive material.

(i) Except for persons who apply radioactive material to, or persons who incorporate radioactive material into the following products, any person is exempt from this chapter if that person receives, possesses, uses, transfers, or acquires the following products:

(l) timepieces, hands, or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified levels of radiation:

(-a-) (No change.)

(-b-) 5 mCi (185 MBq) of tritium per hand;

(-c-) 15 mCi (555 MBq) of tritium per dial (bezels when used shall be considered as part of the dial);

(-d-) 100 µCi (3.7 MBq) of promethium-147 per watch or 200 µCi (7.4 MBq) of promethium-147 per any other timepiece;

(-e-) 20 µCi (0.74 MBq) of promethium-147 per watch hand or 40 µCi (1.48 MBq) of promethium-147 per other timepiece hand;

(-f-) 60 µCi (2.22 MBq) of promethium-147 per watch dial or 120 µCi (4.44 MBq) of promethium-147 per other timepiece dial (bezels when used shall be considered as part of the dial);

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

(II) - (III) (No change.)

(IV) such devices authorized before October 23, 2012, for use under a general license issued under [~~in accordance with~~] this section or equivalent regulations of the NRC or any [~~an~~] agreement state and manufactured, tested, and labeled by the manufacturer in accordance with the specifications contained in a specific license issued by the NRC[~~, any agreement state, or any licensing state~~];

~~[(V) lock illuminators containing not more than 15 mCi (555 MBq) of tritium or not more than 2 mCi (74 MBq) of promethium-147 installed in automobile locks. The levels of radiation from each lock illuminator containing promethium-147 will not exceed 1 mrad/hr at 1 cm from any surface when measured through 50 mg/cm² of absorber;]~~

(V) [~~(VI)~~] balances of precision containing not more than 1 mCi (37 MBq) of tritium per balance or not more than 0.5 mCi (18.5 MBq) of tritium per balance part manufactured before December 17, 2007;

(VI) [~~(VII)~~] marine compasses containing not more than 750 mCi (27.75 MBq) of tritium gas and other marine navigational instruments containing not more than 250 mCi (9.25 GBq) of tritium gas manufactured before December 17, 2007;

(VII) [~~(VIII)~~] electron tubes, provided that each tube does not contain more than one of the following specified quantities of radioactive material and that the levels of radiation from each electron tube containing radioactive material do not exceed 1 mrad/hr at 1 cm from any surface when measured through 7 mg/cm² of absorber (For purposes of this clause, "electron tubes" include spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwave tubes, indicator tubes, pick-up tubes, radiation detection tubes, and any other completely sealed tube designed to control electrical currents):

(-a-) 150 mCi (5.55 GBq) of tritium per microwave receiver protector tube or 10 mCi (0.37 GBq) of tritium per any other electron tube;

(-b-) 1 µCi (0.037 MBq) of cobalt-60;

(-c-) 5 µCi (0.185 GBq) of nickel-63;

(-d-) 30 µCi (1.11 GBq) of krypton-85;

(-e-) 5 µCi (0.185 GBq) of cesium-137; or

(-f-) 0 µCi (1.11 GBq) of promethium-147;

(VIII) [~~(IX)~~] ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, a source of radioactive material not exceeding:

(-a-) the applicable quantity set forth in subsection (l)(2) of this section or 0.05 μCi (1.85 kilobecquerels (kBq)) of americium-241; and

(-b-) each instrument contains no more than 10 exempt quantities. For purposes of this subclause, an instrument's source(s) shall contain either one type or different types of radionuclides and an individual exempt quantity shall be composed of fractional parts of one or more of the exempt quantities in accordance with subsection (l)(2) of this section, provided that the sum of such fractions shall not exceed unity.

(IX) [~~(X)~~] ionization chamber smoke detectors containing not more than 1 μCi (37 kBq) of americium-241 per detector in the form of a foil and designed to protect life and property from fires.

(ii) (No change.)

(iii) Any person who desires to apply radioactive material to, or to incorporate radioactive material into, the products exempted in clause (i) of this subparagraph [~~subparagaph~~], or who desires to initially transfer for sale or distribution such products containing radioactive material, shall apply for a specific license issued by the NRC in accordance with Title 10, CFR, §32.14, which license states that the product may be distributed by the licensee to persons exempt from the regulations pursuant to clause (i) of this subparagraph.

(B) (No change.)

(C) Gas and aerosol detectors containing radioactive material.

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

(iii) Gas and aerosol detectors previously manufactured and distributed to general licensees in accordance with a specific license issued by any [~~an~~] agreement state [~~or a licensing state~~] shall be considered exempt in accordance with clause (i) of this subparagraph, provided that the devices are labeled in accordance with the specific license authorizing distribution of the generally licensed device, and provided further that they meet the requirements of §289.252 of this title.

(D) (No change.)

(4) Exemption for capsules containing carbon-14 urea for "in vivo" diagnostic use in humans.

(A) Except as provided in subparagraphs (B) and (C) of this paragraph, a person is exempt from the requirements of this section and §289.256 of this title provided that such person receives, possesses, uses, transfers, owns, or acquires capsules containing 1 μCi (37 kBq [~~kilobecquerels~~]) or less of carbon-14 urea each (allowing for nominal variation that may occur during the manufacturing process), for "in vivo" diagnostic use in humans.

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

(f) General licenses. In addition to the requirements of this section, all general licenses, unless otherwise specified, are subject to the requirements of §289.201 of this title (relating to General Provisions for Radioactive Material), §289.202(ww) and (xx) of this title [~~(relating to Standards for Protection Against Radiation from Radioactive Materials)~~], §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.205 of this title (relating to Hearing and Enforcement Procedures), and §289.257 of this title (relating to Packaging and Transportation of Radioactive Material).

(1) Compliance history. In making a determination whether to revoke, suspend, or restrict a general license, the agency may consider the technical competence and compliance history of a general licensee. After an opportunity for a hearing, the agency may revoke, suspend, or restrict a general license if the general licensee's compliance history reveals that at least 3 [~~three~~] agency actions have been issued against the general licensee, within the previous 6 [~~six~~] years, that assess administrative or civil penalties against the general licensee, or that revoke or suspend the general license.

(2) (No change.)

(3) General licenses for source material.

(A) General license for small quantities of source material.

(i) [~~(A)~~] A general license is hereby issued authorizing commercial and industrial firms, research, educational and medical institutions, and federal, state and local government agencies to receive, possess, use, and transfer uranium and thorium, in their natural isotopic concentrations and in the form of depleted uranium, [~~not more than 15 pounds of source material at any one time~~] for research, development, educational, commercial, or operational purposes in the following forms and quantities:[~~.~~]

(I) no more than 1.5 kg (3.3 lb) of uranium and thorium in dispersible forms (e.g., gaseous, liquid, powder, etc.) at any one time.

(-a-) Any material processed by the general licensee that alters the chemical or physical form of the material containing source material must be accounted for as a dispersible form.

(-b-) A person authorized to possess, use, and transfer source material as specified in this clause may not receive more than a total of 7 kg (15.4 lb) of uranium and thorium in any 1 calendar year.

(-c-) Persons possessing source material in excess of these limits as of August 27, 2013, may continue to possess up to 7 kg (15.4 lb) of uranium and thorium at any one time until the NRC takes final action on any pending application submitted on or before August 27, 2014, for a specific license for such material; and may receive up to 70 kg (154 lb) of uranium or thorium in any one calendar year until the NRC takes final action on a pending application submitted on or before August 27, 2014, for a specific license for such material; and

(II) no more than a total of 7 kg (15.4 lb) of uranium and thorium at any one time.

(-a-) A person authorized to possess, use, and transfer source material as specified in this clause may not receive more than a total of 70 kg (154 lb) of uranium and thorium in any 1 calendar year.

(-b-) A person may not alter the chemical or physical form of the source material possessed as specified in this clause unless it is accounted for in accordance with the limits of clause (i)(I) of this subparagraph; or

(III) no more than 7 kg (15.4 lb) of uranium, removed during the treatment of drinking water, at any one time. A person may not remove more than 70 kg (154 lb) of uranium from drinking water during a calendar year under this clause; or

(IV) no more than 7 kg (15.4 lb) of uranium and thorium at laboratories for the purpose of determining the concentration of uranium and thorium contained within the material being analyzed at any one time. A person authorized to possess, use, and transfer source material as specified in this clause may not receive more than a total of 70 kg (154 lb) of source material in any 1 calendar year.

[~~(i) A person authorized to use or transfer source material, in accordance with this general license, may not possess more than a total of 150 pounds of source material in any one calendar year.~~]

(ii) Any person who receives, possesses, uses, or transfers [~~Persons who receive, possess, use, or transfer~~] source material in accordance with the general license in clause (i) of this subparagraph: [~~subparagraph (A) of this paragraph~~]

(I) is [~~are~~] prohibited from administering source material, or the radiation therefrom, either externally or internally, to human beings [~~humans~~] except as may be authorized by the agency in a specific license;[~~.~~]

(II) shall not abandon such source material. Source material may be disposed of as follows:

(-a-) a cumulative total of 0.5 kg (1.1 lb) of source material in a solid, non-dispersible form may be transferred each calendar year, by a person authorized to receive, possess, use, and transfer source material in accordance with the general license to persons receiving the material for permanent disposal. The recipient of source material transferred in accordance with this item is exempt from the requirements to obtain a license as specified in subsection (f)(3) of this section to the extent the source material is permanently disposed. This provision does not apply to any person who is in possession of source material under a specific license issued under §289.252 of this title; or

(-b-) in accordance with §289.202(ff) of this title;

(III) is subject to the regulations in subsection (f)(2), (h)(2), and (i) of this section and §§289.201(a), (b), (d) - (f), (i), (k), and (l); 289.202 (vv), (xx)(6) - (8) and (vv); 289.203(g)(3); 289.252(a), (w)(2), (x)(1) - (4), and (cc); and 289.257(b)(1) of this title; and

(IV) shall not export such source material except in accordance with Title 10, CFR, Part 110.

(iii) Any person who receives, possesses, uses, or transfers source material in accordance with clause (i) of this subparagraph shall conduct activities so as to minimize contamination of the facility and the environment. When activities involving such source material are permanently ceased at any site, if evidence of significant contamination is identified, the general licensee shall notify the agency about such contamination and may consult with the agency as to the appropriateness of sampling and restoration activities to ensure that any contamination or residual source material remaining at the site where source material was used in accordance with this general license is not likely to result in exposures that exceed the limits in §289.202(ddd)(2) of this title.

(iv) Any person who receives, possesses, uses, or transfers source material in accordance with the general license granted in (i) of this subparagraph is exempt from the regulations in §§289.202, 289.203 and 289.205 of this title to the extent that such receipt, possession, use, and transfer are within the terms of this general license, except that such person shall comply with the regulations of §289.202(ff) and (ddd)(2)(A) of this title to the extent necessary to meet the requirements of clauses (ii)(II) and (iii) of this subparagraph. However, this exemption does not apply to any person who also holds a specific license issued under §289.252 of this title.

(v) No person may initially transfer or distribute source material to persons generally licensed as specified in clause (i)(I) or (II) of this subparagraph, or equivalent regulations of any agreement state, unless authorized by a specific license issued in accordance with §289.252(cc)(6)(A) of this title or equivalent regulations of the NRC or any agreement state. This prohibition does not apply to analytical laboratories returning processed samples to the client who initially provided the sample. Initial distribution of source material to persons generally licensed by clause (i) of this subparagraph may be continued until the NRC takes final action on a pending application for license or license amendment to specifically authorize distribution submitted on or before August 27, 2014.

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

(D) A general license is issued to receive, acquire, possess, use, or transfer depleted uranium contained in products or devices for the purpose of providing shielding, including beam shaping and collimation, in accordance with [~~the provisions of~~] clauses (i) - (iv) of this subparagraph.

(i) - (iv) (No change.)

(v) Any person receiving, acquiring, possessing, using, or transferring depleted uranium in accordance with the general license in this paragraph is exempt from the requirements of §289.202 of this title and §289.203 of this title [~~(relating to Notices, Instructions, and Reports to Workers; Inspections)~~] with respect to the depleted uranium covered by that general license.

(4) General licenses for radioactive material other than source material.

(A) General licenses for static elimination devices and ion generating tubes. A general license is issued to transfer, receive, acquire, possess, and use radioactive material incorporated in the devices or equipment specified in the following clauses (i) and (ii) of this paragraph that have been manufactured, tested, and labeled by the manufacturer in accordance with a specific license issued to the manufacturer by the NRC. In addition to the provisions of subsection (f) of this section, this general license is subject to the provisions of subsection (e)(1)(B) of this section and §289.252(cc) of this title:

(i) static elimination devices designed for use as static eliminators that contain, as a sealed source or sources, radioactive material totaling not more than 500 µCi (18.5 MBq) of polonium-210 per device; or

(ii) ion generating tubes designed for ionization of air that contain, as a sealed source or sources, radioactive material totaling not more than 500 µCi (18.5 MBq) of polonium-210 per device or a total of not more than 50 mCi (1.85 GBq) of tritium per device.

(B) General license for luminous safety devices for aircraft.

(i) A general license is issued to receive, acquire, possess, and use tritium or promethium-147 contained in luminous safety devices for use in aircraft, provided:

(I) each device contains not more than 10 curies (Ci) (370 GBq) of tritium or 300 mCi (11.1 GBq) of promethium-147; and

(II) (No change.)

(ii) - (iii) (No change.)

(C) (No change.)

(D) General license for calibration, stabilization, and reference sources.

(i) (No change.)

(ii) The general license in clause (i) of this subparagraph applies only to calibration, stabilization, or reference sources that have been manufactured or initially transferred in accordance with the specifications contained in a specific license issued to the manufacturer

or importer of the sources by the NRC in accordance with Title 10, CFR, §32.57 or Title 10, CFR, §70.39 or that have been manufactured or initially transferred in accordance with the authorizations contained in a specific license issued to the manufacturer by the agency or[~~,~~] any agreement state, [~~or any licensing state,~~] in accordance with licensing requirements equivalent to those contained in Title 10, CFR, §32.57 or Title 10, CFR, §70.39.

(iii) Persons who own, receive, acquire, possess, use, or transfer one or more calibration or reference sources in accordance with these general licenses:

(I) shall not possess at any one time, at any one location of storage or use, more than 5 µCi (185 kBq) each of americium-241, plutonium-238, plutonium-239, and radium-226 in such sources;

(II) shall not receive, possess, use, or transfer such source unless the source or the storage container bears a label that includes the following statements, or a substantially similar statement that contains the information in the following statements:

(-a-) (No change.)

(-b-) option 2, as appropriate:

Figure: 25 TAC §289.251(f)(4)(D)(iii)(II)(-b-)

[~~Figure: 25 TAC §289.251(f)(4)(D)(iii)(II)(-b-)~~]

(III) shall not transfer, abandon, or dispose of such source except by transfer to a person authorized by a specific license from the agency, the NRC, or any [~~an~~] agreement state[~~, or a licensing state~~] to receive the source;

(IV) - (V) (No change.)

(iv) (No change.)

(E) General license for ice detection devices.

(i) A general license is issued to own, receive, acquire, possess, use, and transfer strontium-90 contained in ice detection devices, provided each device contains not more than 50 µCi (1.85 MBq) of strontium-90 and each device has been manufactured or initially transferred in accordance with a specific license issued by the NRC or each device has been manufactured in accordance with the authorizations contained in a specific license issued by the agency or any agreement state to the manufacturer of such device in accordance with licensing requirements equivalent to those in Title 10, CFR, §32.61.

(ii) - (iii) (No change.)

(F) General license for intrastate transportation of radioactive material.

(i) A general license is issued to any common or contract carrier to transport and store radioactive material in the regular course of their carriage for another or storage incident to transport, provided the transportation and storage is in accordance with the applicable requirements of §289.257 of this title insofar as such requirements relate to the loading and storage of packages, placarding of the transporting vehicle, and incident reporting. Any notification of incidents referred to in those requirements shall be filed with the agency and the United States Department of Transportation (DOT). Persons who transport and store radioactive material in accordance with the general license in this paragraph are exempt from the requirements of §289.202 and §289.203 of this title except for §289.202(ww) - (yy) of this title.

(ii) A general license is issued to any private carrier to transport radioactive material, provided the transportation is in accordance with the applicable requirements, appropriate to the mode of transport, of the DOT insofar as such requirements relate to the loading and storage of packages, placarding of the transporting vehicle, and incident reporting. Any notification of incidents referred to in those requirements shall be filed with the DOT, and with the agency in accordance with §289.202(ww) - (yy) of this title [~~and the DOT~~].

(G) General license for the use of radioactive material for certain *in vitro* clinical or laboratory testing, not to include research and development. (The New Drug provisions of the Federal Food, Drug, and Cosmetic Act also govern the availability and use of any specific diagnostic drugs in interstate commerce.)

(i) A general license is issued to any physician, veterinarian, clinical laboratory, or hospital to receive, acquire, possess, transfer, or use, for any of the following stated tests, in accordance with [~~the provisions of~~] clauses (ii) - (iii) of this subparagraph, the following radioactive materials in prepackaged units:

(I) iodine-125, in units not exceeding 10 µCi (0.37 MBq) each for use in *in vitro* clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to humans or animals;

(II) iodine-131, in units not exceeding 10 µCi (0.37 MBq) each for use in *in vitro* clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to humans or animals;

(III) carbon-14, in units not exceeding 10 µCi (0.37 MBq) each for use in *in vitro* clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to humans or animals;

(IV) hydrogen-3 (tritium), in units not exceeding 50 µCi (1.85 MBq) each for use in *in vitro* clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to humans or animals;

(V) iron-59, in units not exceeding 20 µCi (0.74 MBq) each for use in *in vitro* clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to humans or animals;

(VI) selenium-75, in units not to exceed 10 µCi (0.37 MBq) each for use in *in vitro* clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to humans or animals;

(VII) mock iodine-125 reference or calibration sources, in units not exceeding 0.05 µCi (1850 Bq) of iodine-129 and 0.005 µCi of americium-241 each for use in *in vitro* clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to humans or animals; or

(VIII) cobalt-57, in units not exceeding 10 µCi (0.37 MBq) each for use in *in vitro* clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to humans or animals.

(ii) A person who receives, acquires, possesses, or uses radioactive material in accordance with the general license in clause (i) of this subparagraph shall comply with the following.

(I) The general licensee shall not possess at any one time, at any one location of storage or use, a total amount of iodine-125, iodine-131, selenium-75, iron-59, and/or cobalt-57 in excess of 200 µCi (7.4 MBq).

(II) - (III) (No change.)

(IV) The general licensee shall not transfer the radioactive material to a person who is not authorized to receive it in ac-

cordance with a specific license issued by the agency, the NRC, or any agreement state, [~~or any licensing state,~~] nor transfer the radioactive material in any manner other than in the unopened, labeled shipping container as received from the supplier.

(V) (No change.)

(iii) The general licensee shall not receive, acquire, possess, or use radioactive material in accordance with the general license in clause (i) of this subparagraph:

(I) except as prepackaged units that are labeled in accordance with the provisions of an applicable specific license issued in accordance with §289.252(p) of this title or in accordance with the requirements [~~provisions~~] of a specific license issued by the NRC or[~~,~~] any agreement state[~~, or any licensing state~~] that authorizes the manufacture and distribution of iodine-125, iodine-131, carbon-14, hydrogen-3 (tritium), iron-59, selenium-75, cobalt-57, or mock iodine-125 to general licensees in accordance with this subparagraph or its equivalent; and

(II) unless one of the statements in the following figures, as appropriate, or a substantially similar statement that contains the information called for in one of the following statements, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure that accompanies the package:

(-a-) (No change.)

(-b-) option 2, as appropriate:

Figure: 25 TAC §289.251(f)(4)(G)(iii)(II)(-b-)

[~~Figure: 25 TAC §289.251(f)(4)(G)(iii)(II)(-b-)~~]

(iv) (No change.)

(H) General license for certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere.

(i) (No change.)

(ii) The general license in clause (i) of this subparagraph applies only to radioactive material contained in devices that have been manufactured or initially transferred and labeled in accordance with the specifications contained in a specific license issued by the agency in accordance with §289.252(l) of this title or in a specific license issued by the NRC or any[~~, an~~] agreement state[~~, or a licensing state~~] that authorizes distribution of devices to persons generally licensed by the NRC or any[~~, an~~] agreement state[~~, or a licensing state~~].

(iii) (No change.)

(iv) Any person who receives, acquires, possesses, uses, or transfers radioactive material in a device in accordance with the general license in this subparagraph shall do the following:

(I) (No change.)

(II) assure that the device is tested for leakage of radioactive material and proper operation of the "on-off" mechanism and indicator, if any, at no longer than 6-month [~~six-month~~] intervals or at such other intervals as specified in the label; however:

(-a-) (No change.)

(-b-) devices containing only tritium or not more than 100 µCi (3.7 MBq) of other beta and/or gamma emitting material or 10 µCi (0.37 MBq) of alpha emitting material and devices held in storage in the original shipping container prior to initial installation need not be tested for any purpose, provided that each source is tested for leakage within 6 [~~six~~] months prior to being used or transferred;

(III) assure that the tests required by subclause (II) of this clause and other testing, installation (removal of the manufacturer's lock and initial alignment of the radiation beam), servicing, and removal from location of installation involving the radioactive materials, its shielding or containment, are performed:

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

(-c-) by a person holding a specific license from the agency, the NRC, or any [~~an~~] agreement state[~~, or a licensing state~~] to perform such activities;

(IV) maintain records for inspection by the agency documenting [~~showing~~] compliance with the requirements of subclauses (II) and (III) of this clause. The records shall include [~~show~~] the test results. The records also shall identify the device tested by manufacturer, model and serial number of the device, serial number of the sealed source, and show the dates of performance of and the names of persons performing testing, installation, servicing, and removal from location of installation, of the radioactive material, its shielding or containment. Retention shall be as follows:

(-a-) records for tests for leakage of radioactive material required by subclause (II) of this clause shall be kept for 3 [~~three~~] years after the next required leak test is performed or until the sealed source is transferred or disposed of;

(-b-) records of the test of the on-off mechanism and indicator required by subclause (II) of this clause shall be kept for 3 [~~three~~] years after the next required test of the on-off mechanism and indicator is performed or until the sealed source is transferred or disposed of; and

(-c-) records of the testing, installation (removal of the manufacturer's lock and initial alignment of the radiation beam), servicing, and removal from location of installation involving the radioactive materials, its shielding or containment required by subclause (III) of this clause shall be kept for 3 [~~three~~] years from the date of the recorded event or until the device is transferred or disposed of;

(V) - (VI) (No change.)

(VII) immediately suspend operation of the device if there is a failure of, or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the "on-off" mechanism, or indicator, or upon the detection of 185 Bq [~~becquerels~~] (0.005 µCi) or more of removable radioactive material. The device shall not be operated until it has been repaired by the manufacturer or other person holding a specific license from the agency, the NRC, or any [~~an~~] agreement state[~~, or a licensing state~~] to repair such devices. The device and any radioactive material from the device may only be disposed of by transfer to a person authorized by a specific license to receive the radioactive material in the device. A report, prepared in accordance with §289.202(xx) and (yy) of this title, containing a brief description of the event and the remedial action taken and in the case of detection of 185 Bq [~~becquerels~~] (0.005 µCi) or more removable radioactive material or failure of, or damage to a source likely to result in contamination of the premises or the environs, a plan for ensuring that the premises and environs are acceptable for unrestricted use shall be furnished to the agency within 30 days. Under these circumstances, the requirements in §289.202(ddd) of this title may be applicable, as determined by the agency on a case-by-case basis;

(VIII) (No change.)

(IX) transfer or dispose of the device containing radioactive material only by export in accordance with Title 10, CFR, Part 110, by transfer to another general licensee as authorized in subclauses (XII) and (XVI) of this clause or to a person authorized to receive the device by a specific license issued by the agency in accordance with §289.252(l) of this title, or an equivalent specific license issued by the NRC or any[~~, an~~] agreement state, [~~or a licensing state,~~] or as otherwise approved under subclause (XI) of this clause;

(X) furnish a report to the agency within 30 days after the transfer or export of a device to a specific licensee. The report must contain the following:

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

(-c-) date of the transfer;[.]

(XI) obtain written agency approval before transferring the device to any other specific licensee not specifically identified in subclause (IX) of this clause; however, a holder of a specific license may transfer a device for possession and use in accordance with [under] its own specific license without prior approval, if, the holder:

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

(-d-) reports the transfer as specified in [under] subclause (X) of this clause;[.]

(XII) transfer the device to another general licensee only if:

(-a-) (No change.)

(-b-) the device is held in storage by an intermediate person in the original shipping container at its intended location of use prior to initial use by a general licensee;[.]

(XIII) - (XIV) (No change.)

(XV) not hold devices that are not in use for longer than 24 months following the last principal activity use [two years].

(-a-) If devices with shutters are not being used, the shutter shall be locked in the closed position. The testing required by clause (iv) of this subparagraph need not be performed during the period of storage only. However, when devices are put back into service or transferred to another person, and have not been tested within the required test interval, they shall be tested for leakage before use or transfer and the shutter tested before use.

(-b-) Devices kept in standby for future use are excluded from the 24-month [two-year] time limit if the agency approves a plan for future use submitted by the licensee. Licensees shall submit plans at least 30 days prior to the end of the 24 months of nonuse.

(-c-) The general licensee shall perform [performs] quarterly physical inventories of these devices while they are in standby. The licensee shall make, [and] maintain, and retain for intervals of 5 [five] years, records of the quarterly physical inventories for inspection by the agency;

(XVI) - (XIX) (No change.)

(I) - (J) (No change.)

(K) General license for certain items and self-luminous products containing radium-226.

(i) (No change.)

(ii) Any person who acquires, receives, possesses, uses, or transfers radioactive material in accordance with this subparagraph shall do the following.

(I) - (IV) (No change.)

(V) Dispose of products containing radium-226 at a disposal facility authorized to dispose of radioactive material in accordance with any federal or state solid or hazardous waste law, including the Solid Waste Disposal Act, as authorized under the Energy Policy Act of 2005, by transfer to a person authorized to receive radium-226 by a specific license issued under [in accordance with] this section, or under equivalent regulations of the NRC, or any agreement state.

(VI) Respond to written requests from the agency, the NRC, or any agreement state to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by providing the agency, the NRC, or any agreement state [agency's Radiation Safety Licensing Branch] a written justification for the request.

(g) - (k) (No change.)

(l) Appendices.

(1) Exempt concentrations.

Figure: 25 TAC §289.251(l)(1)

[Figure: 25 TAC §289.251(l)(1)]

(2) Exempt quantities.

Figure: 25 TAC §289.251(l)(2)

[Figure: 25 TAC §289.251(l)(2)]

§289.252. Licensing of Radioactive Material.

(a) Purpose. The intent of this section is as follows.

(1) (No change.)

(2) Unless otherwise exempted, no person shall receive, possess, use, transfer, own, or acquire radioactive material except as authorized by the following:

(A) a specific license issued in accordance with this section and/or any of the following sections:

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

(iii) §289.258 of this title (relating to Licensing and Radiation Safety Requirements for Irradiators); and/or

(iv) (No change.)

(B) (No change.)

(3) (No change.)

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

(d) Filing application for specific licenses. The agency may, at any time after the filing of the original application, require further statements in order to enable the agency to determine whether the application should be denied or the license should be issued.

(1) - (6) (No change.)

(7) If facility drawings submitted in conjunction with the application for a license are prepared by a professional engineer or engineering firm, those drawings shall be final and shall be signed, sealed and dated in accordance with the requirements of the Texas Board of Professional Engineers, Title 22, Texas Administrative Code (TAC), Chapter 131.

(8) Applications for licenses shall be processed in accordance with the following time periods.

(A) The first period is the time from receipt of an application by the agency [Division of Licensing, Registration and Standards] to the date of issuance or denial of the license or a written notice outlining why the application is incomplete or unacceptable. This time period is 60 days.

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

(9) Except as provided in this paragraph, an application for a specific license to use radioactive material in the form of a sealed source or in a device that contains the sealed source shall:

(A) identify the source or device by manufacturer and model number as registered in accordance with subsection (v) of this section or with equivalent regulations of the United States Nuclear Regulatory Commission (NRC) or any [~~NRC, an~~] agreement state, [~~or a licensing state,~~] or for a source or a device containing radium-226 or accelerator-produced radioactive material registered in accordance with subsection (v) of this section; or

(B) (No change.)

(10) For sources or devices manufactured before October 23, 2012, that are not registered in accordance with subsection (v) of this section or with equivalent regulations of the NRC or any[~~, an~~] agreement state, [~~or a licensing state,~~] and for which the applicant is unable to provide all categories of information specified in subsection (v)(3) - (4) of this section, the application shall include:

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

(11) - (15) (No change.)

(e) (No change.)

(f) Radiation safety officer.

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

(3) The specific duties of the RSO include, but are not limited to, the following:

(A) - (K) (No change.)

(L) to perform a physical inventory of the radioactive sealed sources authorized for use on the license every 6 [~~six~~] months and make, [~~and~~] maintain, and retain records of the inventory of the radioactive sealed sources authorized for use on the license every 6 [~~six~~] months, to include, but not be limited to the following:

(i) - (vi) (No change.)

(vii) signature of person performing the inventory;[~~.~~]

(M) - (O) (No change.)

(4) Requirements for RSOs for specific licenses for broad scope authorization for research and development. In addition to the requirements in paragraphs (1) and (3) of this subsection, the RSO's qualifications for specific licenses for broad scope authorization for research and development shall include evidence of the following:

(A) a bachelor's degree in health physics, radiological health, physical science or a biological science with a physical science minor and 4 [~~four~~] years of applied health physics experience in a program with radiation safety issues similar to those in the program to be managed;

(B) a master's degree in health physics or radiological health and 3 [~~three~~] years of applied health physics experience in a program with radiation safety issues similar to those in the program to be managed;

(C) 2 [~~two~~] years of applied health physics experience in a program with radiation safety issues similar to those in the program to be managed and one of the following:

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

(iii) certification by the American Board of Radiology in Nuclear Medical [~~Nuclear~~] Physics;

(iv) certification by the American Board of Science in Nuclear Medicine in Radiation Protection; or

(v) (No change.)

(D) (No change.)

(5) (No change.)

(g) Duties and responsibilities of the Radiation Safety Committee (RSC). The duties and responsibilities of the RSC [~~Radiation Safety Committee (RSC)~~] include but are not limited to the following:

(1) meeting as often as necessary to conduct business but no less than 3 [~~three~~] times a year;

(2) - (11) (No change.)

(h) Specific licenses for broad scope authorization for multiple quantities or types of radioactive material for use in research and development.

(1) In addition to the requirements in subsection (e) of this section, a specific license for multiple quantities or types of radioactive material for use in research and development, not to include the internal or external administration of radiation or radioactive material to humans, will be issued if the agency approves the following documentation submitted by the applicant:

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

(C) establishment of an RSC, including names and qualifications, with duties and responsibilities in accordance with subsection (g) of this section. The RSC shall be composed of an RSO, a representative of executive management, and 1 [~~one~~] or more persons trained or experienced in the safe use of radioactive materials.

(2) (No change.)

(3) Unless specifically authorized, in accordance with a separate license, persons licensed according to paragraph (1) of this subsection shall not:

(A) receive, acquire, own, possess, use, or transfer devices containing 100,000 curies (Ci) (3700 terabecquerels) or more of radioactive material in sealed sources used for irradiation of materials;

(B) conduct activities for which a specific license issued by the agency in accordance with subsections (i) - (u) of this section and §[§]289.255, §289.256, and §289.259 of this title as [~~is~~] required;

(C) - (D) (No change.)

(i) Specific licenses for introduction of radioactive material into products in exempt concentrations.

(1) In addition to the requirements in subsection (e) of this section, a specific license authorizing the introduction of radioactive material into a product or material in the possession of the licensee or another to be transferred to persons exempt from this chapter in accordance with §289.251(e)(1)(A) of this title will be issued if the agency approves the following information submitted by the applicant:

(A) - (G) (No change.)

(H) procedures for disposition of unwanted or unused radioactive material.[~~; and~~]

(2) The [~~the~~] applicant shall provide [~~provides~~] reasonable assurance that:

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

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

(j) - (k) (No change.)

(l) Specific licenses for the manufacture and commercial distribution of devices to persons generally licensed in accordance with §289.251(f)(4)(H) of this title.

(1) In addition to the requirements in subsection (e) of this section, a specific license to manufacture or commercially distribute devices containing radioactive material to persons generally licensed in accordance with §289.251(f)(4)(H) of this title or equivalent requirements of the NRC or any[, an] agreement state[, or a licensing state] will be issued if the agency approves the following information submitted by the applicant:

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

(C) each device bears a durable, legible, clearly visible label or labels approved by the agency that contain the following in a clearly identified and separate statement:

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

(iii) the information called for in one of the following statements, as appropriate, in the same or substantially similar form:

(I) (No change.)

(II) For NARM, the following statement is appropriate:
Figure: 25 TAC §289.252(l)(1)(C)(iii)(II)
[Figure: 25 TAC §289.252(l)(1)(C)(iii)(II)]

(III) (No change.)

(D) - (F) (No change.)

(2) In the event the applicant desires that the device be required to be tested at intervals longer than 6 [six] months, either for proper operation of the "on-off" mechanism and indicator, if any, or for leakage of radioactive material, or for both, the applicant shall include in the application sufficient information to demonstrate that the longer interval is justified by performance characteristics of the device or similar devices and by design features that have a significant bearing on the probability or consequences of radioactive material leakage from the device or failure of the "on-off" mechanism and indicator. In determining the acceptable interval for the test for radioactive material leakage, the agency will consider information that includes, but is not limited to the following:

(A) - (J) (No change.)

(3) In the event the applicant desires that the general licensee in accordance with §289.251(f)(4)(H) of this title or in accordance with equivalent regulations of the NRC or any[, an] agreement state, [or a licensing state,] be authorized to mount the device, collect the sample to be analyzed by a specific licensee for radioactive material leakage, perform maintenance of the device consisting of replacement of labels, rust and corrosion prevention, and for fixed gauges, repair and maintenance of sealed source holder mounting brackets, test the "on-off" mechanism and indicator, or remove the device from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated annual doses associated with such activity or activities, and bases for such estimates. The submitted information shall demonstrate that performance of such activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices in accordance with the general license, is unlikely to cause that individual to receive an annual dose in excess of 10% of the limits specified in §289.202(f) of this title.

(4) Before the device may be transferred, each person licensed in accordance with this subsection to commercially distribute devices to generally licensed persons shall furnish:

(A) (No change.)

(B) a copy of the general license in the NRC's or any[,] agreement state's [, or licensing state's] regulation equivalent to §289.251(f)(4)(H) of this title, or alternatively, a copy of the general license in §289.251(f)(4)(H) of this title to each person to whom the licensee directly commercially distributes radioactive material in a device for use in accordance with the general license of the NRC or any[, the] agreement state[, or the licensing state]. If certain requirements of the regulations do not apply to the particular device, those requirements may be omitted. If a copy of the general license in §289.251(f)(4)(H) of this title is furnished to such a person, it shall be accompanied by an explanation that the use of the device is regulated by the NRC or any[,] agreement state[, or licensing state] in accordance with requirements substantially the same as those in §289.251(f)(4)(H) of this title;

(C) - (E) (No change.)

(F) the name or position, address, and phone number of a contact person at the agency, the NRC, or any [an] agreement state, [or licensing state, or the NRC] from which additional information may be obtained; and

(G) (No change.)

(5) - (6) (No change.)

(7) Each person licensed in accordance with this subsection to commercially distribute devices to generally licensed persons shall:

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

(C) report to the agency or any [appropriate] agreement state [or licensing state] all transfers of devices manufactured and commercially distributed in accordance with this subsection for use in accordance with a general license in that state's requirements equivalent to §289.251(f)(4)(H) of this title and all receipts of devices from general licensees.

(i) The report shall:

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

(VI) include the type, model and serial number of the device, and serial number of sealed source commercially distributed;

(VII) include the quantity and type of radioactive material contained in the device; and

(VIII) include the date of receipt.

(ii) (No change.)

(iii) If no commercial distributions have been made to persons in the agreement state [or licensing state] during the reporting period, the report shall so indicate.

(iv) (No change.)

(D) make, maintain, and retain records required by this paragraph for inspection by the agency in accordance with subsection (mm) of this section, including [keep records for three years following the date of the recorded event, showing] the name, address, and the point of contact for each general licensee to whom the licensee directly or through an intermediate person commercially distributes radioactive material in devices for use in accordance with the general license provided in §289.251(f)(4)(H) of this title, or equivalent requirements of the NRC or any[, an] agreement state[, or a licensing state].

(i) The records shall include [show] the following:

(I) the date of each commercial distribution;

(II) - (IV) (No change.)

(ii) (No change.)

(8) If a notification of bankruptcy has been made in accordance with subsection (x)(6) of this section or the license is to be terminated, each person licensed in accordance with [~~under~~] this subsection shall provide, upon request to the NRC and to any appropriate agreement state [~~or licensing state~~], records of final disposition required in accordance with [~~under~~] subsection (y)(16)(A) of this section.

(9) (No change.)

(m) (No change.)

(n) Specific licenses for the manufacture or initial transfer of calibration sources containing americium-241 or radium-226 for commercial distribution to persons generally licensed in accordance with §289.251(f)(4)(D) of this title.

(1) (No change.)

(2) Each person licensed in accordance with this subsection shall perform a dry wipe test on each source containing more than 0.1 µCi (3.7 kilobecquerels (kBq)) of americium-241 or radium-226 before transferring the source to a general licensee in accordance with §289.251(f)(4)(D) of this title or equivalent regulations of the NRC or any[~~, an~~] agreement state[~~, or a licensing state~~]. This test shall be performed by wiping the entire radioactive surface of the source with a filter paper with the application of moderate finger pressure. The radioactivity on the filter paper shall be measured by using radiation detection instrumentation capable of detecting 0.005 µCi (0.185 kBq) of americium-241 or radium-226. If a source has been shown to be leaking or losing more than 0.005 µCi (0.185 kBq) of americium-241 or radium-226 by methods described in this paragraph, the source shall be rejected and shall not be transferred to a general licensee in accordance with [~~under~~] §289.251(f)(4)(D) of this title or equivalent regulations of the NRC or any[~~, an~~] agreement state[~~, or a licensing state~~].

(o) Specific licenses for the manufacture and commercial distribution of sealed sources or devices containing radioactive material for medical use. In addition to the requirements in subsection (e) of this section, a specific license to manufacture and commercially distribute sealed sources and devices containing radioactive material to persons licensed in accordance with §289.256 of this title for use as a calibration, transmission, or reference source or for use of sealed sources listed in §289.256(q), (rr), (bbb), and (ddd) of this title will be issued if the agency approves the following information submitted by the applicant:

(1) (No change.)

(2) documentation that the label affixed to the sealed source or device, or to the permanent storage container for the sealed source or device, contains information on the radionuclide, quantity, and date of assay, and a statement that the name of the sealed source or device is licensed by the agency for commercial distribution to persons licensed for use of sealed sources in the healing arts or by equivalent licenses of the NRC or any[~~, an~~] agreement state[~~, or a licensing state~~];

(3) documentation that in the event the applicant desires that the sealed source or device be required to be tested for radioactive material leakage at intervals longer than 6 [~~six~~] months, the applicant shall include in the application sufficient information to demonstrate that the longer interval is justified by performance characteristics of the sealed source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of radioactive material leakage from the sealed source;

(4) - (5) (No change.)

(p) Specific licenses for the manufacture and commercial distribution of radioactive material for certain *in vitro* clinical or laboratory testing in accordance with the general license. In addition to the requirements in subsection (e) of this section, a specific license to manufacture or commercially distribute radioactive material for use in accordance with the general license in §289.251(f)(4)(G) of this title will be issued if the agency approves the following information submitted by the applicant:

(1) documentation that the radioactive material will be prepared for distribution in prepackaged units of:

(A) iodine-125 in units not exceeding 10 µCi (0.37 megabecquerel (MBq)) each;

(B) iodine-131 in units not exceeding 10 µCi (0.37 MBq [~~megabecquerel~~]) each;

(C) carbon-14 in units not exceeding 10 µCi (0.37 MBq [~~megabecquerel~~]) each;

(D) hydrogen-3 (tritium) in units not exceeding 50 µCi (1.85 MBq [~~megabecquerel~~]) each;

(E) iron-59 in units not exceeding 20 µCi (0.74 MBq [~~megabecquerel~~]) each;

(F) cobalt-57 in units not exceeding 10 µCi (0.37 MBq [~~megabecquerel~~]) each;

(G) selenium-75 in units not exceeding 10 µCi (0.37 MBq [~~megabecquerel~~]) each; or

(H) mock iodine-125 in units not exceeding 0.05 µCi (1.85 kBq [~~kilobecquerels~~]) of iodine-129 and 0.005 µCi (0.185 kBq [~~kilobecquerel~~]) of americium-241 each;

(2) evidence that each prepackaged unit will bear a durable, clearly visible label:

(A) identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed 10 µCi (0.37 MBq [~~megabecquerel~~]) of iodine-125, iodine-131, carbon-14, cobalt-57, or selenium-75; 50 µCi (1.85 MBq [~~megabecquerels~~]) of hydrogen-3 (tritium); 20 µCi (0.74 MBq [~~megabecquerel~~]) of iron-59; or mock iodine-125 in units not exceeding 0.05 µCi (1.85 kBq [~~kilobecquerels~~]) of iodine-129 and 0.005 µCi (0.185 kBq [~~kilobecquerel~~]) of americium-241; and

(B) (No change.)

(3) that one of the following statements, as appropriate, or a substantially similar statement appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure that accompanies the package:

(A) (No change.)

(B) option 2:
Figure: 25 TAC §289.252(p)(3)(B)
[~~Figure: 25 TAC §289.252(p)(3)(B)~~]

(4) (No change.)

(q) (No change.)

(r) Specific licenses for the manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing radioactive materials for medical use.

(1) In addition to the requirements in subsection (e) of this section, a specific license to manufacture, prepare, or transfer for commercial distribution, radioactive drugs containing radioactive material for use by persons authorized in accordance with §289.256 of this title will be issued if the agency approves the following information submitted by the applicant:

(A) evidence that the applicant is at least one of the following:

(i) - (iv) (No change.)

(v) a positron emission tomography (PET) drug production facility registered with a state agency;[.]

(B) radionuclide data relating to the following:

(i) (No change.)

(ii) maximum activity per vial, syringe, generator, or other container of the radioactive drug; and

(iii) (No change.)

(C) labeling requirements including the following:

(i) that each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution shall include the following:

(I) the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL;"

(II) the name of the radioactive drug or its abbreviation; and

(III) the quantity of radioactivity at a specified date and time (the time may be omitted for radioactive drugs with a half life greater than 100 days); and

(ii) (No change.)

(2) A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs and shall have procedures for the use of the instrumentation. The licensee shall measure, by direct measurement or by a combination of measurements and calculations, the amount of radioactivity in dosages of alpha, beta, or photon-emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

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

(C) make, maintain, and retain records of the tests and checks required in this paragraph [~~for a minimum of three years~~] for inspection by the agency in accordance with subsection (mm) of this section.

(3) A licensee described in paragraph (1)(A)(iii) or (iv) of this subsection shall prepare radioactive drugs for medical use as defined in §289.256 of this title with the following provisions.

(A) - (C) (No change.)

(D) A licensee may [~~May~~] designate a pharmacist, as defined in §289.256 of this title, as an authorized nuclear pharmacist if:

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

(E) The licensee shall provide [~~Provide~~] the following to the agency:

(i) - (v) (No change.)

(F) (No change.)

(G) If the authorized nuclear pharmacist elutes generators or processes radioactive material with the reagent kit in a manner that deviates from instructions furnished by the manufacturer on the label attached to or in the leaflet or brochure that accompanies the generator or reagent kit or in the accompanying leaflet or brochure, a complete description of the deviation shall be made and maintained for inspection by the agency in accordance with subsection (mm) of this section [~~for a period of three years~~].

(4) (No change.)

(s) Specific licenses for the manufacture and commercial distribution of products containing depleted uranium for mass-volume applications.

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

(4) Each person licensed in accordance with paragraph (1) of this subsection shall:

(A) - (F) (No change.)

(G) make, maintain, and retain [~~keep~~] records including [~~showing~~] the name, address, and point of contact for each general licensee to whom the licensee commercially distributes depleted uranium in products or devices for use in accordance with the general license provided in §289.251(f)(3)(D) of this title or equivalent requirements of the NRC or any [~~of an~~] agreement state. The records shall be maintained for inspection by the agency in accordance with subsection (mm) of this section [~~for a period of two years for inspection by the agency~~] and shall include [~~show~~] the date of each commercial distribution, the quantity of depleted uranium in each product or device commercially distributed, and compliance with the report requirements of this section.

(t) - (u) (No change.)

(v) Sealed source or device evaluation.

(1) (No change.)

(2) The request for review shall be sent to the agency [~~Radiation Safety Licensing Branch~~] in accordance with §289.201(k) of this title and shall be submitted in duplicate accompanied by the appropriate fee specified in §289.204 of this title.

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

(6) After completion of the evaluation, the agency issues a sealed source and device (SS & D) certificate of registration to the person making the request. The SS & D certificate of registration acknowledges the availability of the submitted information for inclusion in an application for a specific license proposing use of the product, or concerning use under an exemption from licensing or general license as applicable for the category of SS & D certificate of registration.

(7) The person submitting the request for evaluation and SS & D certificate of registration of safety information about the product shall manufacture and distribute the product in accordance with:

(A) (No change.)

(B) the provisions of the SS & D certificate of registration.

(8) Authority to manufacture or initially distribute a sealed source or device to specific licensees shall be provided in the license without the issuance of a SS & D certificate of registration in the following cases:

(A) (No change.)

(B) the intended recipients are qualified by training and experience and have sufficient facilities and equipment to safely use and handle the requested quantity of radioactive material in any form in the case of unregistered sources or, for registered sealed sources contained in unregistered devices, are qualified by training and experience and have sufficient facilities and equipment to safely use and handle

the requested quantity of radioactive material in unshielded form, as specified in their licenses; and

(i) the intended recipients are licensed in accordance with this section or equivalent regulations of the NRC or any[~~, an~~] agreement state[~~, or a licensing state~~]; or

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

(9) After the SS & D certificate of registration is issued, the agency may conduct an additional review as it determines is necessary to ensure compliance with current regulatory standards. In conducting its review, the agency will complete its evaluation in accordance with criteria specified in this section. The agency may request such additional information as it considers necessary to conduct its review and the SS & D certificate of registration holder shall provide the information as requested.

(10) Inactivation of SS & D certificate(s) of registration [~~registrations~~].

(A) An SS & D certificate of registration holder who no longer manufactures or initially transfers any of the sealed source(s) or device(s) covered by a particular SS & D certificate of registration issued by the agency shall request inactivation of the SS & D certificate of registration. Such a request shall be made to the agency [~~Radiation Safety Licensing Branch~~] by an appropriate method in accordance with §289.201(k) of this title and shall normally be made no later than 2 [~~two~~] years after initial distribution of all of the source(s) or device(s) covered by the SS & D certificate of registration has ceased. However, if the SS & D certificate of registration holder determines that an initial transfer was in fact the last initial transfer more than 2 [~~two~~] years after that transfer, the SS & D certificate of registration holder shall request inactivation of the SS & D certificate of registration within 90 days of this determination and briefly describe the circumstances of the delay.

(B) If a distribution license is to be terminated in accordance with subsection (y) of this section, the licensee shall request inactivation of its SS & D certificate of registration(s) associated with that distribution license before the agency will terminate the license. Such a request for inactivation of the SS & D certificate(s) of registration [~~registration(s)~~] shall indicate that the license is being terminated and include the associated specific license number.

(C) A specific license to manufacture or initially transfer a source or device covered only by an inactivated SS & D certificate of registration no longer authorizes the licensee to initially transfer such sources or devices for use. Servicing of devices shall be in accordance with any conditions in the SS & D certificate of registration, including in the case of an inactive SS & D certificate of registration.

(w) (No change.)

(x) Specific terms and conditions of licenses.

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

(6) Each licensee shall notify the agency [~~agency's Radiation Safety Licensing Branch~~], in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy by the licensee or its parent company, if the parent company is involved in the bankruptcy.

(7) - (9) (No change.)

(10) Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators or rubidium-82 from strontium-82/rubidium-82 generators shall test the generator eluates for molybdenum-99 breakthrough or strontium-82 and strontium-85 contamination, respectively, in accordance with §289.256 of this title. The licensee shall make, maintain, and retain a record of the results of each test [~~and retain each record for 3 years after the record is made~~] for inspection by the agency in accordance with subsection (mm) of this section.

(11) Licensees shall not hold radioactive waste, sources, or devices not authorized for disposal by decay in storage, and that are not in use for longer than 24 months following the last principal activity use. Sources and devices kept in standby for future use may be excluded from the 24-month time limit if the agency approves a plan for future use. A plan for an alternative disposal timeframe may be submitted by the licensee if the 24-month time limit cannot be met. Licensees shall submit plans to the agency at least 30 days prior to the end of the 24 months of nonuse.

(y) Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

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

(4) Within 60 days of the occurrence of any of the following, each licensee shall provide notification to the agency in writing and either begin decommissioning a site, or any separate building or outdoor area that contains residual radioactivity, so that the building and/or outdoor area is suitable for release in accordance with §289.202(eee) of this title, or submit within 12 months of notification a decommissioning plan, if required by paragraph (7) of this subsection, and begin decommissioning upon approval of that plan if:

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

(C) no principal activities at an entire site as specified in [~~under~~] the license have been conducted for a period of 24 months; or

(D) (No change.)

(5) - (14) (No change.)

(15) As the final step in decommissioning, the licensee shall do the following:

(A) (No change.)

(B) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in accordance with the radiological requirements for license termination specified in §289.202(ddd) of this title. The licensee shall do the following, as appropriate:

(i) (No change.)

(ii) specify the manufacturer's name and model and serial number of survey instrument(s) used and certify that each instrument is properly calibrated in accordance with §289.202(p) of this title and tested.

(16) - (17) (No change.)

(z) - (bb) (No change.)

(cc) Transfer of material.

(1) (No change.)

(2) Except as otherwise provided in a license and subject to the provisions of paragraphs (3) and (4) of this subsection, any licensee may transfer radioactive material:

(A) - (C) (No change.)

(D) to any person authorized to receive such material in accordance with the terms of a general license or its equivalent, or a specific license or equivalent licensing document, issued by the agency,

the NRC, or any agreement state, [~~or any licensing state,~~] or to any person otherwise authorized to receive such material by the federal government or any agency of the federal government, the agency, or any agreement state[~~, or any licensing state~~]; or

(E) (No change.)

(3) Before transferring radioactive material to a specific licensee of the agency, the NRC, or any [~~an~~] agreement state, [~~or a licensing state,~~] or to a general licensee who is required to register with the agency, the NRC, or any [~~an~~] agreement state[~~, or a licensing state~~] prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(4) The following methods for the verification required by paragraph (3) of this subsection are acceptable.

(A) (No change.)

(B) When a current copy of the transferee's specific license described in subparagraph (A) of this paragraph is not readily available or when a transferor desires to verify that information received is correct or up-to-date, the transferor may obtain and record confirmation from the agency, the NRC, or any [~~the licensing agency of an~~] agreement state [~~or a licensing state~~] that the transferee is licensed to receive the radioactive material.

(5) (No change.)

(6) Requirements for transfer of small quantities of source material.

(A) An application for a specific license to initially transfer source material for use in accordance with §289.251(f)(3) of this title; Title 10, CFR, §40.22; or equivalent regulations of any agreement state, will be approved if:

(i) the applicant satisfies the general requirements specified in subsection (e) of this section; and

(ii) the applicant submits adequate information on, and the agency approves the methods to be used for quality control, labeling, and providing safety instructions to recipients.

(B) Quality control, labeling, safety instructions, and records and reports. Each person licensed under subparagraph (A) of this paragraph shall:

(i) label the immediate container of each quantity of source material with the type of source material and quantity of material and the words, "radioactive material."

(ii) ensure that the quantities and concentrations of source material are as labeled and indicated in any transfer records.

(iii) provide the information specified in this clause to each person to whom source material is transferred for use under §289.251(f)(3) of this title; Title 10, CFR, §40.22; or equivalent regulations of any agreement state. This information must be transferred before the source material is transferred for the first time in each calendar year to the particular recipient. The required information includes:

(I) a copy, as applicable, of §289.251(f)(3) of this title; Title 10, CFR, §40.22; or the equivalent agreement state regulation that applies; and of this subsection; Title 10, CFR, §40.51; or the equivalent agreement state regulations that apply; and

(II) appropriate radiation safety precautions and instructions relating to handling, use, storage, and disposal of the material.

(iv) report transfers as follows:

(I) File a report with the agency and the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. The report shall include the following information:

(-a-) the name, address, and license number of the person who transferred the source material;

(-b-) for each general licensee under §289.251(f)(3) of this title; Title 10, CFR, §40.22; or equivalent regulations of any agreement state to whom greater than 50 grams (0.11 lb) of source material has been transferred in a single calendar quarter, the name and address of the general licensee to whom source material is distributed; a responsible agent, by name and/or position and phone number, of the general licensee to whom the material was sent; and the type, physical form, and quantity of source material transferred; and

(-c-) the total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients.

(II) File a report with each responsible agreement state agency that identifies all persons, operating under §289.251(f)(3) of this title; Title 10, CFR, §40.22, or equivalent regulations of any agreement state to whom greater than 50 grams (0.11 lb) of source material has been transferred within a single calendar quarter. The report shall include the following information specific to those transfers made to the agreement state being reported to:

(-a-) the name, address, and license number of the person who transferred the source material; and

(-b-) the name and address of the general licensee to whom source material was distributed; a responsible agent, by name and/or position and phone number, of the general licensee to whom the material was sent; and the type, physical form, and quantity of source material transferred; and

(-c-) the total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients within the agreement state.

(III) The following are to be submitted to the agency by January 31 of each year:

(-a-) each report required by subclauses (I) and (II) of this clause covering all transfers for the previous calendar year;

(-b-) if no transfers were made during the current period to persons generally licensed in accordance with §289.251(f)(3) of this title; Title 10, CFR, §40.22; or equivalent regulations of any agreement state, a report to the agency indicating so; and

(-c-) if no transfers have been made to general licensees in a particular agreement state during the reporting period, this information shall be reported to the responsible agreement state upon request of that agency; and

(v) maintain all information that supports the reports required by this subparagraph concerning each transfer to a general licensee for inspection by the agency in accordance with subsection (mm) of this section.

(dd) (No change.)

(ee) Reciprocal recognition of licenses.

(1) Subject to this section, any person who holds a specific license from the NRC or[,] any agreement state, [~~or any licensing state,~~] and issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, is granted a general license to conduct the activities authorized in such licensing document within the State of Texas provided that:

(A) (No change.)

(B) the out-of-state licensee notifies the agency in writing at least three working days prior to engaging in such activity. If, for a specific case, the three-working-day period would impose an undue hardship on the out-of-state licensee, the licensee may, upon application to the agency, obtain permission to proceed sooner. The agency may waive the requirement for filing additional written notifications during the remainder of the calendar year following the receipt of the initial notification from a person engaging in activities in accordance with the general license provided in this subsection. Such notification shall include:

(i) - (v) (No change.)

(vi) a fee as specified in §289.204 of this title;[~~,~~]

(C) - (D) (No change.)

(E) the [~~The~~] out-of-state licensee shall not transfer or dispose of radioactive material possessed or used in accordance with the general license provided in this subsection except by transfer to a person:

(i) specifically licensed by the agency, the NRC, or any [~~another~~] agreement state[~~, or another licensing state~~] to receive such material; or

(ii) (No change.)

(F) the [~~The~~] out-of-state licensee shall have the following documents in their possession at all times when conducting work in Texas, and make them available for agency review upon request:

(i) - (v) (No change.)

(2) In addition to the provisions of paragraph (1) of this subsection, any person who holds a specific license issued by the NRC or any[~~, an~~] agreement state[~~, or a licensing state~~] authorizing the holder to manufacture, transfer, install, or service the device described in §289.251(f)(4)(H) of this title, within areas subject to the jurisdiction of the licensing body, is granted a general license to install, transfer, demonstrate, or service the device in the State of Texas provided that:

(A) the person files a report with the agency within 30 days after the end of each calendar quarter in which any device is transferred to or installed in the State [~~state~~] of Texas. Each report shall identify by name and address, each general licensee to whom the device is transferred, the type of device transferred by manufacturer's name, model and serial number of the device, and serial number of the sealed source, and the quantity and type of radioactive material contained in the device;

(B) the device has been manufactured, labeled, installed, and serviced in accordance with applicable provisions of the specific license issued to the person by the NRC or any[~~, an~~] agreement state[~~, or a licensing state~~];

(C) - (D) (No change.)

(3) (No change.)

(ff) (No change.)

(gg) Financial assurance and record keeping for decommissioning.

(1) The applicant for a specific license or renewal of a specific license, or holder of a specific license, authorizing the possession and use of radioactive material shall submit and receive written authorization for a decommissioning funding plan as described in paragraph (4) of this subsection in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license for the following situations:

(A) - (C) (No change.)

(D) when radioactive material requested or authorized on the license is in quantities more than 100 mCi (3.7 gigabecquerels (GBq)) of source material in a readily dispersible form.

(2) (No change.)

(3) The required amount of financial assurance for decommissioning is determined by the quantity of material authorized by the license and is determined as follows:

(A) $1,125,000 for quantities of material greater than 10^4 but less than or equal to 10^5 times the applicable quantities in subsection (jj)(2) of this section in unsealed form. (For a combination of radionuclides, if R, as defined in paragraph (1) of this subsection, divided by 10^4 is greater than 1 but R divided by 10^5 is less than or equal to 1);

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

(D) $225,000 for quantities of source material greater than 10 mCi (0.37 GBq) but less than or equal to 100 mCi (3.7 GBq) in a readily dispersible form.

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

(7) Each person licensed in accordance with this section shall make, maintain, and retain [~~keep~~] records of information important to the safe and effective decommissioning of the facility in an identified location for inspection by the agency in accordance with §289.252(mm) of this section [~~until the license is terminated by the agency~~]. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the agency considers important to decommissioning consists of the following:

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

(8) (No change.)

(hh) (No change.)

(ii) Physical protection of category 1 and category 2 quantities of radioactive material.

(1) Specific exemptions. A licensee that possesses radioactive waste that contains category 1 or category 2 quantities of radioactive material is exempt from the requirements of paragraphs (2) - (23) of this subsection, except that any radioactive waste that contains discrete sources, ion-exchange resins, or activated material that weighs less than 2,000 kilograms (4,409 pounds) is not exempt from the requirements of this subsection. The licensee shall implement the following requirements to secure the radioactive waste:

(A) use continuous physical barriers that allow access to the radioactive waste only through established access control points;

(B) use a locked door or gate with monitored alarm at the access control point;

(C) assess and respond to each actual or attempted unauthorized access to determine whether an actual or attempted theft, sabotage, or diversion occurred; and

(D) immediately notify the local law enforcement agency (LLEA) and request an armed response from the LLEA upon determination that there was an actual or attempted theft, sabotage, or diversion of the radioactive waste that contains category 1 or category 2 quantities of radioactive material.

(2) Personnel access authorization requirements for category 1 or category 2 quantities of radioactive material.

(A) General.

(i) Each licensee that possesses an aggregated quantity of radioactive material at or above the category 2 threshold shall establish, implement, and maintain its access authorization program in accordance with the requirements of this paragraph and paragraphs (3) - (8) of this subsection.

(ii) An applicant for a new license and each licensee that would become subject to the requirements of this paragraph and paragraphs (3) - (8) of this subsection upon application for modification of its license shall implement the requirements of this paragraph and paragraphs (3) - (8) of this subsection, as appropriate, before taking possession of an aggregated category 1 or category 2 quantity of radioactive material.

(iii) Any licensee that has not previously implemented the security orders or been subject to this paragraph and paragraphs (3) - (8) of this subsection shall implement the provisions of these paragraphs before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

(B) General performance objective. The licensee's access authorization program must ensure that the individuals specified in subparagraph (C)(i) of this paragraph are trustworthy and reliable.

(C) Applicability.

(i) Licensees shall subject the following individuals to an access authorization program:

(I) any individual whose assigned duties require unescorted access to category 1 or category 2 quantities of radioactive material or to any device that contains the radioactive material; and

(II) reviewing officials.

(ii) Licensees need not subject the categories of individuals listed in paragraph (6)(A)(i) - (xiii) of this subsection to the investigation elements of the access authorization program.

(iii) Licensees shall approve for unescorted access to category 1 or category 2 quantities of radioactive material only those individuals with job duties that require unescorted access to category 1 or category 2 quantities of radioactive material.

(iv) Licensees may include individuals needing access to safeguards information-modified handling in accordance with Title 10, CFR, Part 73, in the access authorization program under this paragraph and paragraphs (3) - (8) of this subsection.

(3) Access authorization program requirements.

(A) Granting unescorted access authorization.

(i) Licensees shall implement the requirements of paragraph (2), this paragraph, and paragraphs (4) - (8) of this subsection for granting initial or reinstated unescorted access authorization.

(ii) Individuals who have been determined to be trustworthy and reliable shall also complete the security training required by paragraph (10)(C) of this subsection before being allowed unescorted access to category 1 or category 2 quantities of radioactive material.

(B) Reviewing officials.

(i) Reviewing officials are the only individuals who may make trustworthiness and reliability determinations that allow individuals to have unescorted access to category 1 or category 2 quantities of radioactive materials possessed by the licensee.

(ii) Each licensee shall name one or more individuals to be reviewing officials. After completing the background investigation on the reviewing official, the licensee shall provide under oath or affirmation, a certification that the reviewing official is deemed trustworthy and reliable by the licensee. The fingerprints of the named reviewing official must be taken by a law enforcement agency, federal or state agencies that provide fingerprinting services to the public, or commercial fingerprinting services authorized by a state to take fingerprints. The licensee shall recertify that the reviewing official is deemed trustworthy and reliable every 10 years in accordance with paragraph (4)(B) of this subsection.

(iii) Reviewing officials must be permitted to have unescorted access to category 1 or category 2 quantities of radioactive materials or access to safeguards information or safeguards information-modified handling, if the licensee possesses safeguards information or safeguards information-modified handling.

(iv) Reviewing officials cannot approve other individuals to act as reviewing officials.

(v) A reviewing official does not need to undergo a new background investigation before being named by the licensee as the reviewing official if:

(I) the individual has undergone a background investigation that included fingerprinting and a Federal Bureau of Investigation (FBI) criminal history records check and has been determined to be trustworthy and reliable by the licensee; or

(II) the individual is subject to a category listed in paragraph (6)(A) of this subsection.

(C) Informed consent.

(i) Licensees may not initiate a background investigation without the informed and signed consent of the subject individual. This consent must include authorization to share personal information with other individuals or organizations as necessary to complete the background investigation. Before a final adverse determination, the licensee shall provide the individual with an opportunity to correct any inaccurate or incomplete information that is developed during the background investigation. Licensees do not need to obtain signed consent from those individuals that meet the requirements of paragraph (4)(B) of this subsection. A signed consent must be obtained prior to any reinvestigation.

(ii) The subject individual may withdraw his or her consent at any time. Licensees shall inform the individual that:

(I) if an individual withdraws his or her consent, the licensee may not initiate any elements of the background investigation that were not in progress at the time the individual withdrew his or her consent; and

(II) the withdrawal of consent for the background investigation is sufficient cause for denial or termination of unescorted access authorization.

(D) Personal history disclosure. Any individual who is applying for unescorted access authorization shall disclose the personal history information that is required by the licensee's access authorization program for the reviewing official to make a determination of the individual's trustworthiness and reliability. Refusal to provide, or the falsification of, any personal history information required by paragraph (2), this paragraph, and paragraphs (4) - (8) of this subsection is sufficient cause for denial or termination of unescorted access.

(E) Determination basis.

(i) The reviewing official shall determine whether to permit, deny, unfavorably terminate, maintain, or administratively withdraw an individual's unescorted access authorization based on an evaluation of all of the information collected to meet the requirements of paragraph (2), this paragraph, and paragraphs (4) - (8) of this subsection.

(ii) The reviewing official may not permit any individual to have unescorted access until the reviewing official has evaluated all of the information collected to meet the requirements of paragraph (2), this paragraph, and paragraphs (4) - (8) of this subsection and determined that the individual is trustworthy and reliable. The reviewing official may deny unescorted access to any individual based on information obtained at any time during the background investigation.

(iii) The licensee shall document the basis for concluding whether or not there is reasonable assurance that an individual is trustworthy and reliable.

(iv) The reviewing official may terminate or administratively withdraw an individual's unescorted access authorization based on information obtained after the background investigation has been completed and the individual granted unescorted access authorization.

(v) Licensees shall maintain a list of persons currently approved for unescorted access authorization. When a licensee determines that a person no longer requires unescorted access or meets the access authorization requirement, the licensee shall:

(I) remove the person from the approved list as soon as possible, but no later than 7 working days; and

(II) take prompt measures to ensure that the individual is unable to have unescorted access to the material.

(F) Procedures. Licensees shall develop, implement, and maintain written procedures for implementing the access authorization program. The procedures must:

(i) include provisions for the notification of individuals who are denied unescorted access;

(ii) include provisions for the review, at the request of the affected individual, of a denial or termination of unescorted access authorization; and

(iii) contain a provision to ensure that the individual is informed of the grounds for the denial or termination of unescorted access authorization and allow the individual an opportunity to provide additional relevant information.

(G) Right to correct and complete information.

(i) Prior to any final adverse determination, licensees shall provide each individual subject to paragraph (2), this paragraph, and paragraphs (4) - (8) of this subsection with the right to complete, correct, and explain information obtained as a result of the licensee's background investigation. Confirmation of receipt by the individual of this notification must be maintained by the licensee for inspection by the agency in accordance with subsection (mm) of this section.

(ii) If, after reviewing his or her criminal history record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, update, or explain anything in the record, the individual may initiate challenge procedures. These procedures include direct application by the individual challenging the record to the law enforcement agency that contributed the questioned information or a direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, WV 26306 as set forth in Title 28, CFR, §§16.30 - 16.34. In the latter case, the FBI will forward the challenge to the agency that submitted the data, and will request that the agency verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. Licensees shall provide at least 10 days for an individual to initiate action to challenge the results of an FBI criminal history records check after the record being made available for his or her review. The licensee may make a final adverse determination based upon the criminal history records only after receipt of the FBI's confirmation or correction of the record.

(H) Records. The licensee shall make, maintain, and retain the following records/documents for inspection by the agency in accordance with subsection (mm) of this section. The licensee shall maintain superseded versions or portions of the following records/documents for inspection by the agency in accordance with subsection (mm) of this section:

(i) documentation regarding the trustworthiness and reliability of individual employees;

(ii) a copy of the current access authorization program procedures; and

(iii) the current list of persons approved for unescorted access authorization.

(4) Background investigations.

(A) Initial investigation. Before allowing an individual unescorted access to category 1 or category 2 quantities of radioactive material or to the devices that contain the material, licensees shall complete a background investigation of the individual seeking unescorted access authorization. The scope of the investigation must encompass at least the 7 years preceding the date of the background investigation or since the individual's eighteenth birthday, whichever is shorter. The background investigation must include at a minimum:

(i) fingerprinting and an FBI identification and criminal history records check in accordance with paragraph (5) of this subsection;

(ii) verification of true identity. Licensees shall:

(I) verify the true identity of the individual who is applying for unescorted access authorization to ensure that the applicant is who he or she claims to be;

(II) review official identification documents (e.g., driver's license; passport; government identification; certificate of birth issued by the state, province, or country of birth) and compare the documents to personal information data provided by the individual to identify any discrepancy in the information;

(III) document the type, expiration, and identification number of the identification document, or maintain a photocopy of identifying documents on file in accordance with paragraph (7) of this subsection;

(IV) certify in writing that the identification was properly reviewed; and

(V) maintain the certification and all related documents for inspection by the agency in accordance with subsection (mm) of this section;

(iii) employment history verification. Licensees shall:

(I) complete an employment history verification, including military history; and

(II) verify the individual's employment with each previous employer for the most recent 7 years before the date of application;

(iv) verification of education. Licensees shall verify that the individual participated in the education process during the claimed period;

(v) character and reputation determination. Licensees shall complete reference checks to determine the character and reputation of the individual who has applied for unescorted access authorization. Unless other references are not available, reference checks may not be conducted with any person who is known to be a close member of the individual's family, including but not limited to the individual's spouse, parents, siblings, or children, or any individual who resides in the individual's permanent household. Reference checks as specified in paragraphs (2) and (3), this paragraph, and paragraphs (5) - (8) of this subsection must be limited to whether the individual has been and continues to be trustworthy and reliable;

(vi) the licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the individual (e.g., seek references not supplied by the individual); and

(vii) if a previous employer, educational institution, or any other entity with which the individual claims to have been engaged fails to provide information or indicates an inability or unwillingness to provide information within a time frame deemed appropriate by the licensee but at least after 10 business days of the request or if the licensee is unable to reach the entity, the licensee shall document the refusal, unwillingness, or inability in the record of investigation; and attempt to obtain the information from an alternate source.

(B) Grandfathering.

(i) Individuals who have been determined to be trustworthy and reliable for unescorted access to category 1 or category 2 quantities of radioactive material as specified in the fingerprint orders may continue to have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. These individuals shall be subject to the reinvestigation requirement.

(ii) Individuals who have been determined to be trustworthy and reliable in accordance with Title 10, CFR, Part 73, or the security orders for access to safeguards information, safeguards information-modified handling, or risk-significant material may have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. The licensee shall document that the individual was determined to be trustworthy and reliable under Title 10, CFR, Part 73, or a security order. Security order, in this context, refers to any order that was issued by the NRC that required fingerprints and an FBI criminal history records check for access to safeguards information, safeguards information-modified handling, or risk significant material such as special nuclear material or large quantities of uranium hexafluoride. These individuals shall be subject to the reinvestigation requirement.

(C) Reinvestigations. Licensees shall conduct a reinvestigation every 10 years for any individual with unescorted access to category 1 or category 2 quantities of radioactive material. The reinvestigation shall consist of fingerprinting and an FBI identification and criminal history records check in accordance with paragraph (5) of this subsection. The reinvestigations must be completed within 10 years of the date on which these elements were last completed.

(5) Requirements for criminal history records checks of individuals granted unescorted access to category 1 or category 2 quantities of radioactive material.

(A) General performance objective and requirements.

(i) Except for those individuals listed in paragraph (6) of this subsection and those individuals grandfathered under paragraph (4)(B) of this subsection, each licensee subject to the requirements of paragraphs (2) - (4), this paragraph, and paragraphs (6) - (8) of this subsection shall:

(I) fingerprint each individual who is to be permitted unescorted access to category 1 or category 2 quantities of radioactive material;

(II) transmit all collected fingerprints to the NRC for transmission to the FBI; and

(III) use the information received from the FBI as part of the required background investigation to determine whether to grant or deny further unescorted access to category 1 or category 2 quantities of radioactive materials for that individual.

(ii) The licensee shall notify each affected individual that his or her fingerprints will be used to secure a review of his or her criminal history record, and shall inform him or her of the procedures for revising the record or adding explanations to the record.

(iii) Fingerprinting is not required if a licensee is reinstating an individual's unescorted access authorization to category 1 or category 2 quantities of radioactive materials if:

(I) the individual returns to the same facility that granted unescorted access authorization within 365 days of the termination of his or her unescorted access authorization; and

(II) the previous access was terminated under favorable conditions.

(iv) Fingerprints do not need to be taken if an individual who is an employee of a licensee, contractor, manufacturer, or supplier has been granted unescorted access to category 1 or category 2 quantities of radioactive material, access to safeguards information, or safeguards information-modified handling by another licensee, based upon a background investigation conducted in accordance with paragraphs (2) - (4), this paragraph, and paragraphs (6) - (8) of this subsection, the fingerprint orders, or Title 10, CFR, Part 73. An existing criminal history records check file may be transferred to the licensee asked to grant unescorted access in accordance with the requirements of paragraph (7)(C) of this subsection.

(v) Licensees shall use the information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access authorization to category 1 or category 2 quantities of radioactive materials, access to safeguards information, or safeguards information-modified handling.

(B) Prohibitions.

(i) Licensees may not base a final determination to deny an individual unescorted access authorization to category 1 or category 2 quantities of radioactive material solely on the basis of information received from the FBI involving:

(I) an arrest more than one year old for which there is no information of the disposition of the case; or

(II) an arrest that resulted in dismissal of the charge or an acquittal.

(ii) Licensees may not use information received from a criminal history records check obtained under paragraphs (2) - (4), this paragraph, and paragraphs (6) - (8) of this subsection in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall licensees use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, gender, or age.

(C) Procedures for processing of fingerprint checks.

(i) For the purpose of complying with paragraphs (2) - (4), this paragraph, and paragraphs (6) - (8) of this subsection, licensees shall use an appropriate method listed in Title 10, CFR, §37.7, to submit to the U.S. Nuclear Regulatory Commission, Director, Division of Facilities and Security, 11545 Rockville Pike, ATTN: Criminal History Program/Mail Stop T-03B46M, Rockville, Maryland 20852-2738, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ), electronic fingerprint scan or, where practicable, other fingerprint record for each individual requiring unescorted access to category 1 or category 2 quantities of radioactive material. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by calling (630) 829-9565, or by email to FORMS.Resource@nrc.gov. Guidance on submitting electronic fingerprints can be found at http://www.nrc.gov/site-help/e-submittals.html.

(ii) Fees for the processing of fingerprint checks are due upon application. Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." (For guidance on making electronic payments, contact the Security Branch, Division of Facilities and Security at (301) 492-3531.) Combined payment for multiple applications is acceptable. The NRC publishes the amount of the fingerprint check application fee on the NRC's public website. (To find the current fee amount, go to the Electronic Submittals page at http://www.nrc.gov/site-help/e-submittals.html and see the link for the Criminal History Program under Electronic Submission Systems.)

(iii) The NRC will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history records checks.

(6) Relief from fingerprinting, identification, and criminal history records checks and other elements of background investigations for designated categories of individuals permitted unescorted access to certain radioactive materials.

(A) Fingerprinting, and the identification and criminal history records checks required by Section 149 of the Atomic Energy Act of 1954, as amended, and other elements of the background investigation are not required for the following individuals prior to granting unescorted access to category 1 or category 2 quantities of radioactive materials:

(i) an employee of the NRC or of the Executive Branch of the U.S. Government who has undergone fingerprinting for a prior U.S. Government criminal history records check;

(ii) a member of Congress;

(iii) an employee of a member of Congress or Congressional committee who has undergone fingerprinting for a prior U.S. Government criminal history records check;

(iv) the governor of a state or his or her designated state employee representative;

(v) federal, state, or local law enforcement personnel;

(vi) state radiation control program directors and state homeland security advisors or their designated state employee representatives;

(vii) agreement state employees conducting security inspections on behalf of the NRC under an agreement executed as specified in §274.i. of the Atomic Energy Act;

(viii) representatives of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who have been certified by the NRC;

(ix) emergency response personnel who are responding to an emergency;

(x) commercial vehicle drivers for road shipments of category 1 and category 2 quantities of radioactive material;

(xi) package handlers at transportation facilities such as freight terminals and railroad yards;

(xii) any individual who has an active federal security clearance, provided that he or she makes available the appropriate documentation. Written confirmation from the federal agency/employer that granted the federal security clearance or reviewed the criminal history records check must be provided to the licensee. The licensee shall maintain this documentation for inspection by the agency in accordance with subsection (mm) of this section; and

(xiii) any individual employed by a service provider licensee for which the service provider licensee has conducted the background investigation for the individual and approved the individual for unescorted access to category 1 or category 2 quantities of radioactive material. Written verification from the service provider must be provided to the licensee. The licensee shall maintain and retain the documentation for inspection by the agency in accordance with subsection (mm) of this section.

(B) Fingerprinting, and the identification and criminal history records checks required by Section 149 of the Atomic Energy Act of 1954, as amended, are not required for an individual who has had a favorably adjudicated U.S. Government criminal history records check within the last 5 years, under a comparable U.S. Government program involving fingerprinting and an FBI identification and criminal history records check provided that he or she makes available the appropriate documentation. Written confirmation from the federal agency/employer that reviewed the criminal history records check must be provided to the licensee. The licensee shall maintain this documentation for inspection by the agency in accordance with subsection (mm) of this section. These programs include, but are not limited to:

(i) National Agency Check;

(ii) Transportation Worker Identification Credentials (TWIC) under Title 49, CFR, Part 1572;

(iii) Bureau of Alcohol, Tobacco, Firearms, and Explosives background check and clearances under Title 27, CFR, Part 555;

(iv) Health and Human Services security risk assessments for possession and use of select agents and toxins under Title 42, CFR, Part 73;

(v) Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license under Title 49, CFR, Part 1572; and

(vi) Customs and Border Protection's Free and Secure Trade (FAST) Program.

(7) Protection of information.

(A) Each licensee who obtains background information on an individual under paragraphs (2) - (6), this paragraph, or paragraph (8) of this subsection shall establish and maintain a system of files and written procedures for protection of the record and the personal information from unauthorized disclosure.

(B) The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his or her representative, or to those who have a need to have access to the information in performing assigned duties in the process of granting or denying unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling. No individual authorized to have access to the information may disseminate the information to any other individual who does not have a need to know.

(C) The personal information obtained on an individual from a background investigation may be provided to another licensee:

(i) upon the individual's written request to the licensee holding the data to disseminate the information contained in his or her file; and

(ii) the recipient licensee verifies information such as name, date of birth, social security number, gender, and other applicable physical characteristics.

(D) The licensee shall make background investigation records obtained under paragraphs (2) - (6), this paragraph, and paragraph (8) of this subsection available for examination by an authorized representative of the agency to determine compliance with the regulations and laws.

(E) The licensee shall maintain all fingerprint and criminal history records on an individual (including data indicating no record) received from the FBI, or a copy of these records if the individual's file has been transferred, for inspection by the agency in accordance with subsection (mm) of this section.

(8) Access authorization program review.

(A) Each licensee shall be responsible for the continuing effectiveness of the access authorization program. Each licensee shall ensure that access authorization programs are reviewed to confirm compliance with the requirements of paragraphs (2) - (7) and this paragraph of this subsection and that comprehensive actions are taken to correct any noncompliance that is identified. The review program shall evaluate all program shall performance objectives and requirements. Each licensee shall review the access program content and implementation at least every 12 months.

(B) The results of the reviews, along with any recommendations, must be documented. Each review report must identify conditions that are adverse to the proper performance of the access authorization program, the cause of the condition(s), and, when appropriate, recommend corrective actions, and corrective actions taken. The licensee shall review the findings and take any additional corrective actions necessary to preclude repetition of the condition, including reassessment of the deficient areas where indicated.

(C) Review records must be maintained for inspection by the agency in accordance with subsection (mm) of this section.

(9) Security program.

(A) Applicability.

(i) Each licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material shall establish, implement, and maintain a security program in accordance with the requirements of this paragraph and paragraphs (10) - (17) of this subsection.

(ii) An applicant for a new license and each licensee that would become subject to the requirements of this paragraph and paragraphs (10) - (17) of this subsection upon application for modification of its license shall implement the requirements of this paragraph and paragraphs (10) - (17) of this subsection, as appropriate, before taking possession of an aggregated category 1 or category 2 quantity of radioactive material.

(iii) Any licensee that has not previously implemented the security orders or been subject to the provisions of this paragraph and paragraphs (10) - (17) of this subsection shall provide written notification to the agency at least 90 days before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

(B) General performance objective. Each licensee shall establish, implement, and maintain a security program that is designed to monitor and, without delay, detect, assess, and respond to an actual or attempted unauthorized access to category 1 or category 2 quantities of radioactive material.

(C) Program features. Each licensee's security program must include the program features, as appropriate, described in paragraphs (10) - (16) of this subsection.

(10) General security program requirements.

(A) Security plan.

(i) Each licensee identified in paragraph (9)(A) of this subsection shall develop a written security plan specific to its facilities and operations. The purpose of the security plan is to establish the licensee's overall security strategy to ensure the integrated and effective functioning of the security program required by paragraph (9), this paragraph, and paragraphs (11) - (17) of this subsection. The security plan must, at a minimum:

(I) describe the measures and strategies used to implement the requirements of paragraph (9), this paragraph, and paragraphs (11) - (17) of this subsection; and

(II) identify the security resources, equipment, and technology used to satisfy the requirements of paragraph (9), this paragraph, and paragraphs (11) - (17) of this subsection.

(ii) The security plan must be reviewed and approved by the individual with overall responsibility for the security program.

(iii) A licensee shall revise its security plan as necessary to ensure the effective implementation of agency and NRC requirements. The licensee shall ensure that:

(I) the revision has been reviewed and approved by the individual with overall responsibility for the security program; and

(II) the affected individuals are instructed on the revised plan before the changes are implemented.

(iv) The licensee shall maintain a copy of the current security plan as a record for inspection by the agency in accor-

dance with subsection (mm) of this section. If any portion of the plan is superseded, the licensee shall maintain the superseded material for inspection by the agency in accordance with subsection (mm) of this section.

(B) Implementing procedures.

(i) The licensee shall develop and maintain written procedures that document how the requirements of paragraph (9), this paragraph, and paragraphs (11) - (17) of this subsection and the security plan will be met.

(ii) The implementing procedures and revisions to these procedures must be approved in writing by the individual with overall responsibility for the security program.

(iii) The licensee shall maintain a copy of the current procedure as a record for inspection by the agency in accordance with subsection (mm) of this section. Superseded portions of the procedure shall be maintained for inspection by the agency in accordance with subsection (mm) of this section.

(C) Training.

(i) Each licensee shall conduct training to ensure that those individuals implementing the security program possess and maintain the knowledge, skills, and abilities to carry out their assigned duties and responsibilities effectively. The training must include instruction in:

(I) the licensee's security program and procedures to secure category 1 or category 2 quantities of radioactive material, and in the purposes and functions of the security measures employed;

(II) the responsibility to report promptly to the licensee any condition that causes or may cause a violation of the requirements of the agency;

(III) the responsibility of the licensee to report promptly to the local law enforcement agency and licensee any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material; and

(IV) the appropriate response to security alarms.

(ii) In determining those individuals who shall be trained on the security program, the licensee shall consider each individual's assigned activities during authorized use and response to potential situations involving actual or attempted theft, diversion, or sabotage of category 1 or category 2 quantities of radioactive material. The extent of the training must be commensurate with the individual's potential involvement in the security of category 1 or category 2 quantities of radioactive material.

(iii) Refresher training must be provided at a frequency not to exceed 12 months and when significant changes have been made to the security program. This training must include:

(I) review of the training requirements of this subparagraph of this paragraph and any changes made to the security program since the last training;

(II) reports on any relevant security issues, problems, and lessons learned;

(III) relevant results of inspections by the agency; and

(IV) relevant results of the licensee's program review and testing and maintenance.

(iv) The licensee shall maintain records of the initial and refresher training for inspection by the agency in accordance with subsection (mm) of this section. The training records shall include:

(I) the dates of the training;

(II) the topics covered;

(III) a list of licensee personnel in attendance; and

(IV) any related information.

(D) Protection of information.

(i) Licensees authorized to possess category 1 or category 2 quantities of radioactive material shall limit access to and unauthorized disclosure of their security plan, implementing procedures, and the list of individuals that have been approved for unescorted access.

(ii) Efforts to limit access shall include the development, implementation, and maintenance of written policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, the security plan and implementing procedures.

(iii) Before granting an individual access to the security plan or implementing procedures, licensees shall:

(I) evaluate an individual's need to know the security plan or implementing procedures; and

(II) if the individual has not been authorized for unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling, the licensee must complete a background investigation to determine the individual's trustworthiness and reliability. A trustworthiness and reliability determination shall be conducted by the reviewing official and shall include the background investigation elements contained in paragraph (4)(A)(ii) - (vii) of this subsection.

(iv) Licensees need not subject the following individuals to the background investigation elements for protection of information:

(I) the categories of individuals listed in paragraph (6)(A)(i) of this subsection; or

(II) security service provider employees, provided written verification that the employee has been determined to be trustworthy and reliable, by the required background investigation in paragraph (4)(A)(ii) - (vii) of this subsection, has been provided by the security service provider.

(v) The licensee shall document the basis for concluding that an individual is trustworthy and reliable and should be granted access to the security plan or implementing procedures.

(vi) Licensees shall maintain a list of persons currently approved for access to the security plan or implementing procedures. When a licensee determines that a person no longer needs access to the security plan or implementing procedures or no longer meets the access authorization requirements for access to the information, the licensee shall:

(I) remove the person from the approved list as soon as possible, but no later than 7 working days; and

(II) take prompt measures to ensure that the individual is unable to obtain the security plan or implementing procedures.

(vii) When not in use, the licensee shall store its security plan and implementing procedures in a manner to prevent unauthorized access. Information stored in nonremovable electronic form shall be password protected.

(viii) The licensee shall make, maintain, and retain as a record for inspection by the agency in accordance with subsection (mm) of this section:

(I) a copy of the information protection procedures; and

(II) the list of individuals approved for access to the security plan or implementing procedures.

(11) LLEA coordination.

(A) A licensee subject to paragraphs (9) and (10), this paragraph, and paragraphs (12) - (17) of this subsection shall coordinate, to the extent practicable, with an LLEA for responding to threats to the licensee's facility, including any necessary armed response. The information provided to the LLEA must include:

(i) a description of the facilities and the category 1 and category 2 quantities of radioactive materials along with a description of the licensee's security measures that have been implemented to comply with paragraphs (9) and (10), this paragraph, and paragraphs (12) - (17) of this subsection; and

(ii) a notification that the licensee will request a timely armed response by the LLEA to any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of material.

(B) The licensee shall notify the agency within 3 business days if:

(i) the LLEA has not responded to the request for coordination within 60 days of the coordination request; or

(ii) the LLEA notifies the licensee that the LLEA does not plan to participate in coordination activities.

(C) The licensee shall document its efforts to coordinate with the LLEA. The documentation must be kept for inspection by the agency in accordance with subsection (mm) of this section.

(D) The licensee shall coordinate with the LLEA at least every 12 months, or when changes to the facility design or operation adversely affect the potential vulnerability of the licensee's material to theft, sabotage, or diversion.

(12) Security zones.

(A) Licensees shall ensure that all aggregated category 1 and category 2 quantities of radioactive material are used or stored within licensee established security zones. Security zones may be permanent or temporary.

(B) Temporary security zones shall be established as necessary to meet the licensee's transitory or intermittent business activities, such as periods of maintenance, source delivery, and source replacement.

(C) Security zones must, at a minimum, allow unescorted access only to approved individuals through:

(i) isolation of category 1 and category 2 quantities of radioactive materials by the use of continuous physical barriers that allow access to the security zone only through established access control points. A physical barrier is a natural or man-made structure or formation sufficient for the isolation of the category 1 or category 2 quantities of radioactive material within a security zone; or

(ii) direct control of the security zone by approved individuals at all times; or

(iii) a combination of continuous physical barriers and direct control.

(D) For category 1 quantities of radioactive material during periods of maintenance, source receipt, preparation for shipment, installation, or source removal or exchange, the licensee shall, at a minimum, provide sufficient individuals approved for unescorted access to maintain continuous surveillance of sources in temporary security zones and in any security zone in which physical barriers or intrusion detection systems have been disabled to allow such activities.

(E) Individuals not approved for unescorted access to category 1 or category 2 quantities of radioactive material must be escorted by an approved individual when in a security zone.

(13) Monitoring, detection and assessment.

(A) Monitoring and detection.

(i) Licensees shall:

(I) establish and maintain the capability to continuously monitor and detect without delay all unauthorized entries into its security zones;

(II) provide the means to maintain continuous monitoring and detection capability in the event of a loss of the primary power source; or

(III) provide for an alarm and response in the event of a loss of this capability to continuously monitor and detect unauthorized entries.

(ii) Monitoring and detection must be performed by:

(I) a monitored intrusion detection system that is linked to an onsite or offsite central monitoring facility;

(II) electronic devices for intrusion detection alarms that will alert nearby facility personnel;

(III) a monitored video surveillance system;

(IV) direct visual surveillance by approved individuals located within the security zone; or

(V) direct visual surveillance by a licensee designated individual located outside the security zone.

(iii) A licensee subject to paragraphs (9) - (12), this paragraph, and paragraphs (14) - (17) of this subsection shall also have a means to detect unauthorized removal of the radioactive material from the security zone. This detection capability must provide:

(I) for category 1 quantities of radioactive material, immediate detection of any attempted unauthorized removal of the radioactive material from the security zone. Such immediate detection capability must be provided by:

(-a-) electronic sensors linked to an alarm;

(-b-) continuous monitored video surveillance; or

(-c-) direct visual surveillance; and

(II) for category 2 quantities of radioactive material, weekly verification through physical checks, tamper indicating devices, use, or other means to ensure that the radioactive material is present.

(B) Assessment. Licensees shall immediately assess each actual or attempted unauthorized entry into the security zone to

determine whether the unauthorized access was an actual or attempted theft, sabotage, or diversion.

(C) Personnel communications and data transmission. For personnel and automated or electronic systems supporting the licensee's monitoring, detection, and assessment systems, licensees shall:

(i) maintain continuous capability for personnel communication and electronic data transmission and processing among site security systems; and

(ii) provide an alternative communication capability for personnel, and an alternative data transmission and processing capability, in the event of a loss of the primary means of communication or data transmission and processing. Alternative communications and data transmission systems may not be subject to the same failure modes as the primary systems.

(D) Response. Licensees shall immediately respond to any actual or attempted unauthorized access to the security zones, or actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material at licensee facilities or temporary job sites. For any unauthorized access involving an actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material, the licensee's response shall include requesting, without delay, an armed response from the LLEA.

(14) Maintenance and testing.

(A) Each licensee subject to paragraphs (9) - (13), this paragraph, and paragraphs (15) - (17) of this subsection shall implement a maintenance and testing program to ensure that intrusion alarms, associated communication systems, and other physical components of the systems used to secure or detect unauthorized access to radioactive material are maintained in operable condition and are capable of performing their intended function when needed. The equipment relied on to meet the security requirements of this subsection must be inspected and tested for operability and performance at the manufacturer's suggested frequency. If there is no suggested manufacturer's suggested frequency, the testing must be performed at least annually, not to exceed 12 months.

(B) The licensee shall maintain records on the maintenance and testing activities for inspection by the agency in accordance with subsection (mm) of this section.

(15) Requirements for mobile devices. Each licensee that possesses mobile devices containing category 1 or category 2 quantities of radioactive material shall:

(A) have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee; and

(B) for devices in or on a vehicle or trailer, unless the health and safety requirements for a site prohibit the disabling of the vehicle, the licensee shall utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee. Licensees shall not rely on the removal of an ignition key to meet this requirement.

(16) Security program review.

(A) Each licensee shall be responsible for the continuing effectiveness of the security program. Each licensee shall ensure that the security program is reviewed to confirm compliance with the requirements of paragraphs (9) - (15), this paragraph, and paragraph (17) of this subsection, and that comprehensive actions are taken to correct any noncompliance that is identified. The review shall include the radioactive material security program content and implementation. Each licensee shall review the security program content and implementation at least every 12 months.

(B) The results of the review, along with any recommendations, must be documented.

(i) Each review report must:

(I) identify conditions that are adverse to the proper performance of the security program,

(II) identify the cause of the condition(s); and

(III) when applicable, recommend corrective actions, and identify and document any corrective actions taken.

(ii) The licensee shall review the findings and take any additional corrective actions necessary to preclude repetition of the condition, including reassessment of the deficient areas where indicated.

(C) The licensee shall make, maintain, and retain the documentation of the review required under subparagraph (B) of this paragraph for inspection by the agency in accordance with subsection (mm) of this section.

(17) Reporting of events.

(A) The licensee shall immediately notify the LLEA after determining that an unauthorized entry resulted in an actual or attempted theft, sabotage, or diversion of a category 1 or category 2 quantity of radioactive material. As soon as possible after initiating a response, but not at the expense of causing delay or interfering with the LLEA response to the event, the licensee shall notify the agency at (512) 458-7460. In no case shall the notification to the agency be later than 4 hours after the discovery of any attempted or actual theft, sabotage, or diversion.

(B) The licensee shall assess any suspicious activity related to possible theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material and notify the LLEA as appropriate. As soon as possible but not later than 4 hours after notifying the LLEA, the licensee shall notify the agency at (512) 458-7460.

(C) Each initial telephonic notification required by subparagraphs (A) and (B) of this paragraph must be followed within a period of 30 days by a written report submitted to the agency. The report must include sufficient information for agency analysis and evaluation, including identification of any necessary corrective actions to prevent future instances.

(18) Additional requirements for transfer of category 1 and category 2 quantities of radioactive material. A licensee transferring a category 1 or category 2 quantity of radioactive material to a licensee of the agency, the NRC, or any agreement state shall meet the license verification requirements listed below instead of those listed in subsection (cc)(4) of this section.

(A) Any licensee transferring category 1 quantities of radioactive material to a licensee of the agency, the NRC, or any agreement state, prior to conducting such transfer, shall verify with the NRC's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred and that the licensee is authorized to receive radioactive material at the location requested for delivery. If the verification is conducted by contacting the license issuing authority, the transferor shall document the verification. For transfers within the same organization, the licensee does not need to verify the transfer.

(B) Any licensee transferring category 2 quantities of radioactive material to a licensee of the agency, the NRC, or any agreement state, prior to conducting such transfer, shall verify with the NRC's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred. If the verification is conducted by contacting the license issuing authority, the transferor shall document the verification. For transfers within the same organization, the licensee does not need to verify the transfer.

(C) In an emergency where the licensee cannot reach the license issuing authority and the license verification system is nonfunctional, the licensee may accept a written certification by the transferee that it is authorized by license to receive the type, form, and quantity of radioactive material to be transferred.

(i) The certification must include:

(I) the license number;

(II) the current revision number;

(III) the issuing authority;

(IV) the expiration date; and

(V) for a category 1 shipment, the authorized address.

(ii) The licensee shall keep a copy of the certification.

(iii) The certification must be confirmed by use of the NRC's license verification system or by contacting the license issuing authority by the end of the next business day.

(D) The transferor shall keep a copy of the verification documentation required under this paragraph as a record for inspection by the agency in accordance with subsection (mm) of this section.

(19) Applicability of physical protection of category 1 and category 2 quantities of radioactive material during transit. The shipping licensee shall be responsible for meeting the requirements of paragraph (18), this paragraph, and paragraphs (20) - (23) of this subsection unless the receiving licensee has agreed in writing to arrange for the in-transit physical protection required under paragraph (18), this paragraph, and paragraphs (20) - (23) of this subsection.

(20) Preplanning and coordination of shipment of category 1 and category 2 quantities of radioactive material.

(A) Each licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 1 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall:

(i) preplan and coordinate shipment arrival and departure times with the receiving licensee;

(ii) preplan and coordinate shipment information with the governor or the governor's designee of any state through which the shipment will pass to:

(I) discuss the state's intention to provide law enforcement escorts; and

(II) identify safe havens; and

(iii) document the preplanning and coordination activities.

(B) Each licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 2 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall coordinate the shipment no-later-than arrival time and the expected shipment arrival with the receiving licensee. The licensee shall document the coordination activities.

(C) Each licensee who receives a shipment of a category 2 quantity of radioactive material shall confirm receipt of the shipment with the originator. If the shipment has not arrived by the no-later-than arrival time, the receiving licensee shall notify the originator.

(D) Each licensee, who transports or plans to transport a shipment of a category 2 quantity of radioactive material, and determines that the shipment will arrive after the no-later-than arrival time provided pursuant to subparagraph (B) of this paragraph, shall promptly notify the receiving licensee of the new no-later-than arrival time.

(E) The licensee shall make, maintain, and retain a copy of the documentation for preplanning and coordination and any revision thereof, as a record for inspection by the agency in accordance with subsection (mm) of this section.

(21) Advance notification of shipment of category 1 quantities of radioactive material. As specified in subparagraphs (A) and (B) of this paragraph, each licensee shall provide advance notification to the NRC and the governor of a state, or the governor's designee, of the shipment of licensed material in a category 1 quantity, through or across the boundary of the state, before the transport, or delivery to a carrier for transport of the licensed material outside the confines of the licensee's facility or other place of use or storage.

(A) Procedures for submitting advance notification.

(i) The notification must be made to the NRC and to the office of each appropriate governor or governor's designee.

(I) The contact information, including telephone and mailing addresses, of governors and governors' designees, is available on the NRC's Web site at http://nrc-stp.ornl.gov/special/designee.pdf. A list of the contact information is also available upon request from the Director, Division of Material Safety, State, Tribal, and Rulemaking Programs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

(II) Notifications to the NRC must be to the NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The notification to the NRC may be made by email to RAMQC_SHIPMENTS@nrc.gov or by fax to (301) 816-5151.

(ii) A notification delivered by mail must be postmarked at least 7 days before transport of the shipment commences at the shipping facility.

(iii) A notification delivered by any means other than mail must reach the NRC at least 4 days before the transport of the shipment commences; and

(iv) A notification delivered by any means other than mail must reach the office of the governor or the governor's designee at least 4 days before transport of a shipment within or through the state.

(B) Information to be furnished in advance notification of shipment. Each advance notification of shipment of category 1 quantities of radioactive material must contain the following information, if available at the time of notification:

(i) the name, address, and telephone number of the shipper, carrier, and receiver of the category 1 radioactive material;

(ii) the license numbers of the shipper and receiver;

(iii) a description of the radioactive material contained in the shipment, including the radionuclides and quantity;

(iv) the point of origin of the shipment and the estimated time and date that shipment will commence;

(v) the estimated time and date that the shipment is expected to enter each state along the route;

(vi) the estimated time and date of arrival of the shipment at the destination; and

(vii) a point of contact, with a telephone number, for current shipment information.

(C) Revision notice.

(i) The licensee shall provide any information not previously available at the time of the initial notification, as soon as the information becomes available but not later than commencement of the shipment, to the governor of the state or the governor's designee and to the NRC's Director of Nuclear Security, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

(ii) A licensee shall provide notice as follows of any changes to the information provided in accordance with subparagraphs (B) and (C)(i) of this paragraph.

(I) Promptly notify the governor of the state or the governor's designee.

(II) Immediately notify the NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

(D) Cancellation notice.

(i) Each licensee who cancels a shipment for which advance notification has been sent shall send a cancellation notice to:

(I) the governor of each state or to the governor's designee previously notified; and

(II) the NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

(ii) The licensee shall send the cancellation notice before the shipment would have commenced or as soon thereafter as possible.

(iii) The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being cancelled.

(E) Records. The licensee shall make, maintain, and retain a copy of the advance notification and any revision and cancellation notices as a record for inspection by the agency in accordance with subsection (mm) of this section.

(F) Protection of information. State officials, state employees, and other individuals, whether or not licensees of the NRC or any agreement state, who receive schedule information of the kind specified in subparagraph (B) of this paragraph shall protect that information against unauthorized disclosure as specified in paragraph (10)(D) of this subsection.

(22) Requirements for physical protection of category 1 or category 2 quantities of radioactive material during shipment.

(A) Shipments by road.

(i) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material shall:

(I) ensure that movement control centers are established that maintain position information from a remote location. These control centers shall monitor shipments 24 hours a day, 7 days a week, and have the ability to communicate immediately, in an emergency, with the appropriate law enforcement agencies;

(II) ensure that redundant communications are established that allow the transport to contact the escort vehicle (when used) and movement control center at all times. Redundant communications may not be subject to the same interference factors as the primary communication;

(III) ensure that shipments are continuously and actively monitored by a telemetric position monitoring system or an alternative tracking system reporting to a movement control center. A movement control center shall provide positive confirmation of the location, status, and control over the shipment. The movement control center must be prepared to promptly implement preplanned procedures in response to deviations from the authorized route or a notification of actual, attempted, or suspicious activities related to the theft, loss, or diversion of a shipment. These procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route;

(IV) provide an individual to accompany the driver for those highway shipments with a driving time period greater than the maximum number of allowable hours of service in a 24-hour duty day as established by the Department of Transportation Federal Motor Carrier Safety Administration. The accompanying individual may be another driver; and

(V) develop written normal and contingency procedures to address:

(-a-) notifications to the communication center and law enforcement agencies;

(-b-) communication protocols, which must include a strategy for the use of authentication codes and duress codes and provisions for refueling or other stops, detours, and locations where communication is expected to be temporarily lost;

(-c-) loss of communications; and

(-d-) responses to an actual or attempted theft or diversion of a shipment.

(ii) Each licensee who makes arrangements for the shipment of category 1 quantities of radioactive material shall ensure that drivers, accompanying personnel, and movement control center personnel have access to the normal and contingency procedures.

(iii) Each licensee that transports category 2 quantities of radioactive material shall maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance.

(iv) Each licensee who delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material shall:

(I) use carriers that have established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control and/or surveillance, the package tracking system must allow

the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control;

(II) use carriers that maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

(III) use carriers that have established tracking systems that require an authorized signature prior to releasing the package for delivery or return.

(B) Shipments by rail.

(i) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material shall:

(I) ensure that rail shipments are monitored by a telemetric position monitoring system or an alternative tracking system reporting to the licensee, third-party, or railroad communications center. The communications center shall provide positive confirmation of the location of the shipment and its status. The communications center shall implement preplanned procedures in response to deviations from the authorized route or to a notification of actual, attempted, or suspicious activities related to the theft or diversion of a shipment. These procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route; and

(II) ensure that periodic reports to the communications center are made at preset intervals.

(ii) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material shall:

(I) use carriers that have established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control and/or surveillance, the package tracking system must allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control;

(II) use carriers that maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

(III) use carriers that have established tracking systems that require an authorized signature prior to releasing the package for delivery or return.

(C) Investigations.

(i) Each licensee who makes arrangements for the shipment of category 1 quantities of radioactive material shall immediately conduct an investigation upon the discovery that a category 1 shipment is lost or missing.

(ii) Each licensee who makes arrangements for the shipment of category 2 quantities of radioactive material shall immediately conduct an investigation, in coordination with the receiving licensee, of any shipment that has not arrived by the designated no-later-than arrival time.

(23) Reporting of events.

(A) The shipping licensee shall notify the appropriate LLEA and shall notify the agency at (512) 458-7460 within one hour of its determination that a shipment of category 1 quantities of radioactive material is lost or missing. The appropriate LLEA would be the law enforcement agency in the area of the shipment's last confirmed location. During the investigation required by paragraph (22)(C) of this subsection, the shipping licensee will provide agreed upon updates to the agency on the status of the investigation.

(B) The shipping licensee shall notify the agency at (512) 458-7460 within 4 hours of its determination that a shipment of category 2 quantities of radioactive material is lost or missing. If, after 24 hours of its determination that the shipment is lost or missing, the radioactive material has not been located and secured, the licensee shall immediately notify the agency.

(C) The shipping licensee shall notify the designated LLEA along the shipment route as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment or suspicious activities related to the theft or diversion of a shipment of a category 1 quantity of radioactive material. As soon as possible after notifying the LLEA, the licensee shall notify the agency at (512) 458-7460 upon discovery of any actual or attempted theft or diversion of a shipment, or any suspicious activity related to the shipment of category 1 radioactive material.

(D) The shipping licensee shall notify the agency at (512) 458-7460 as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment, or any suspicious activity related to the shipment, of a category 2 quantity of radioactive material.

(E) The shipping licensee shall notify the agency at (512) 458-7460 and the LLEA as soon as possible upon recovery of any lost or missing category 1 quantities of radioactive material.

(F) The shipping licensee shall notify the agency at (512) 458-7460 as soon as possible upon recovery of any lost or missing category 2 quantities of radioactive material.

(G) The initial telephonic notification required by subparagraphs (A) - (D) of this paragraph must be followed within a period of 30 days by a written report submitted to the agency. A written report is not required for notifications on suspicious activities required by subparagraphs (C) and (D) of this paragraph. In addition, the licensee shall provide one copy of the written report addressed to the Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The report must set forth the following information:

(i) a description of the licensed material involved, including kind, quantity, and chemical and physical form;

(ii) a description of the circumstances under which the loss or theft occurred;

(iii) a statement of disposition, or probable disposition, of the licensed material involved;

(iv) actions that have been taken, or will be taken, to recover the material; and

(v) procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed material.

(H) Subsequent to filing the written report, the licensee shall also report any additional substantive information on the loss or theft within 30 days after the licensee learns of such information.

(24) Form of records. Each record required by this subsection shall be legible throughout the retention period specified in the agency's rules. The record may be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may

also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

(25) Record retention. All records/documents referenced in this subsection shall be made and maintained by the licensee for inspection by the agency in accordance with subsection (mm) of this section. If a retention period is not otherwise specified, these records must be retained until the agency terminates the facility's license. All records related to this subsection may be destroyed upon agency termination of the facility license.

[~~(ii) Increased controls (ICs). Licensees possessing sources containing radioactive material, at any given time, in quantities greater than or equal to the quantities of concern listed in subsection (jj)(9) of this section shall:~~]

[~~(1) control access at all times to radioactive material and devices containing such radioactive material (devices) in quantities in accordance with subsection (jj)(9) of this section; and~~]

[~~(2) limit access to such radioactive material and devices to only approved individuals who require access to perform their duties.~~]

[~~(A) The licensee shall allow only trustworthy and reliable individuals, approved in writing by the licensee, to have unescorted access to radioactive material quantities of concern (RAM QC) and devices.~~]

[~~(B) The licensee shall approve for unescorted access only those individuals with job duties that require access to such radioactive material and devices. Personnel who require access to such radioactive material and devices to perform a job duty, but who are not approved by the licensee for unescorted access, must be escorted by an approved individual.~~]

[~~(C) For individuals employed by the licensee for three years or less, and for non-licensee personnel, such as physicians, physicists, house-keeping personnel, and security personnel under contract, trustworthiness and reliability shall be determined, at a minimum, by verifying employment history, education, and personal references. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the employee (i.e., seeking references not supplied by the individual). For individuals employed by the licensee for longer than three years, trustworthiness and reliability shall be determined, at a minimum, by a review of the employees' employment history with the licensee.~~]

[~~(D) Service providers shall be escorted unless determined to be trustworthy and reliable by an NRC required background investigation as an employee of a manufacturing and distribution (M&D) licensee. Written verification attesting to or certifying the person's trustworthiness and reliability shall be obtained from the M&D licensee providing the service.~~]

[~~(E) The licensee shall document the basis for concluding that there is reasonable assurance that an individual granted unescorted access is trustworthy and reliable, and does not constitute an unreasonable risk for unauthorized use of RAM QC. The licensee shall maintain a list of persons approved for unescorted access to such radioactive material and devices by the licensee.~~]

[~~(3) Each licensee shall have a documented program to monitor and immediately detect, assess, and respond to unauthorized access to RAM QC and devices in use or in storage. Enhanced monitoring shall be provided during periods of source delivery or shipment, where the delivery or shipment exceeds 100 times the values listed in subsection (jj)(9) of this section.~~]

[~~(A) The licensee shall respond immediately to any actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices. The response shall include requesting assistance from a Local Law Enforcement Agency (LLEA).~~]

[~~(B) The licensee shall have a pre-arranged plan with LLEA for assistance in response to an actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices which is consistent in scope and timing with a realistic potential vulnerability of the sources containing such radioactive material. The pre-arranged plan shall be updated when changes to the facility design or operation affect the potential vulnerability of the sources. Prearranged LLEA coordination is not required for temporary job sites.~~]

[~~(C) The licensee shall have a dependable means to transmit information between, and among, the various components used to detect and identify an unauthorized intrusion, to inform the assessor, and to summon the appropriate responder.~~]

[~~(D) After initiating appropriate response to any actual or attempted theft, sabotage, or diversion of radioactive material or of the devices, the licensee shall, as promptly as possible, notify the NRC Operations Center at (301) 816-5100.~~]

[~~(E) The licensee shall maintain documentation describing each instance of unauthorized access and any necessary corrective actions to prevent future instances of unauthorized access.~~]

[~~(4) In order to ensure the safe handling, use, and control of licensed material in transportation for domestic highway and rail shipments by a carrier other than the licensee, for quantities that equal or exceed but are less than 100 times those listed in subsection (jj)(9) of this section, per consignment, the licensee shall:~~]

[~~(A) Use carriers which:~~]

~~*f(i)* use package tracking systems;~~]

~~*f(ii)* implement methods to assure trustworthiness and reliability of drivers;~~]

~~*f(iii)* maintain constant control and/or surveillance during transit; and~~]

~~*f(iv)* have the capability for immediate communication to summon appropriate response or assistance.~~]

[~~(B) Verify and document that the carrier employs the measures in subparagraph (A) of this paragraph;~~]

[~~(C) Contact the recipient to coordinate the expected arrival time of the shipment;~~]

[~~(D) Confirm receipt of the shipment; and~~]

[~~(E) Initiate an investigation to determine the location of the licensed material if the shipment does not arrive on or about the expected arrival time. When, through the course of the investigation, it is determined the shipment has become lost, stolen, or is missing, the licensee shall immediately notify the NRC Operations Center at (301) 816-5100. If, after 24 hours of investigating, the location of the material still cannot be determined, the radioactive material shall be deemed missing and the licensee shall immediately notify the NRC Operations Center at (301) 816-5100.~~]

[~~(5) For domestic highway and rail shipments, prior to shipping licensed radioactive material that exceeds 100 times the quantities in subsection (jj)(9) of this section per consignment, the licensee shall:~~]

[(A) Notify the NRC Director, Office of Nuclear Material Safety and Safeguards U.S. Nuclear Regulatory Commission, Washington, DC 20555, in writing, at least 90 days prior to the anticipated date of shipment. The NRC will issue the Order to implement the Additional Security Measures (ASMs) for the transportation of RAM QC. The licensee shall not ship this material until the ASMs for the transportation of RAM QC are implemented or the licensee is notified otherwise, in writing, by the NRC.]

[(B) Once the licensee has implemented the ASMs for the transportation of RAM QC, the notification requirements in subparagraph (A) of this paragraph shall not apply to future shipments of licensed radioactive material that exceeds 100 times the quantities listed in subsection (jj)(9) of this section. The licensee shall implement the ASMs for the transportation of RAM QC.]

[(6) If a licensee employs an M&D licensee to take possession at the licensee's location of the licensed radioactive material and ship it under its M&D license, the requirements of paragraph (5)(A) and (B) of this subsection shall not apply.]

[(7) If the licensee is to receive radioactive material greater than or equal to the quantities in subsection (jj)(9) of this section, per consignment, the licensee shall coordinate with the originator to:]

[(A) Establish an expected time of delivery; and]

[(B) Confirm receipt of transferred radioactive material. If the material is not received at the expected time of delivery, notify the originator and assist in any investigation.]

[(8) Each licensee who possesses mobile or portable devices containing radioactive material in quantities greater than or equal to the values listed in subsection (jj)(9) of this section, shall:]

[(A) For portable devices, have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.]

[(B) For mobile devices:]

[(i) that are only moved outside of the facility (e.g., on a trailer), have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.]

[(ii) that are only moved inside a facility, have a physical control that forms a tangible barrier to secure the material from unauthorized movement or removal when the device is not under direct control and constant surveillance by the licensee.]

[(C) For devices in or on a vehicle or trailer, licensees shall also utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee.]

[(9) The licensee shall retain documentation required by these ICs for inspection by the agency for three years after they are no longer effective.]

[(A) The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years after the individual's employment ends.]

[(B) Each time the licensee revises the list of approved persons required by paragraph (2)(E) of this subsection, or the documented program required by paragraph (3) of this subsection, the licensee shall retain the previous documentation for three years after the revision.]

[(C) The licensee shall retain documentation on each radioactive material carrier for three years after the licensee discontinues use of that particular carrier.]

[(D) The licensee shall retain documentation on shipment coordination, notifications, and investigations for three years after the shipment or investigation is completed.]

[(E) After the license is terminated or amended to reduce possession limits below the quantities of concern, the licensee shall retain all documentation required by these ICs for three years.]

[(10) Detailed information generated by the licensee that describes the physical protection of RAM QC, is sensitive information and shall be protected from unauthorized disclosure.]

[(A) The licensee shall control access to its physical protection information to those persons who have an established need to know the information, and are considered to be trustworthy and reliable.]

[(B) The licensee shall develop, maintain and implement policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, its physical protection information for radioactive material covered by these requirements. The policies and procedures shall include the following:]

[(i) general performance requirement that each person who produces, receives, or acquires the licensee's sensitive information, protect the information from unauthorized disclosure;]

[(ii) protection of sensitive information during use, storage, and transit;]

[(iii) preparation, identification or marking, and transmission;]

[(iv) access controls;]

[(v) destruction of documents;]

[(vi) use of automatic data processing systems; and]

[(vii) removal from the licensee's sensitive information category.]

(jj) Appendices.

(1) Subjects to be included in training courses:

(A) (No change.)

(B) radiation detection instrumentation to be used:

(i) (No change.)

(ii) survey techniques; and

(iii) (No change.)

(C) - (F) (No change.)

(2) Isotope quantities (for use in subsection (gg) of this section).

Figure: 25 TAC §289.252(jj)(2)

[Figure: 25 TAC §289.252(jj)(2)]

(3) (No change.)

(4) Criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning.

(A) (No change.)

(B) Financial test.

(i) (No change.)

(ii) To pass the financial test, a company shall meet all of the following additional criteria:

(I) the company shall have at least one class of equity securities registered under the Securities Exchange Act of 1934;[.]

(II) - (III) (No change.)

(iii) (No change.)

(C) (No change.)

(5) (No change.)

(6) Criteria relating to use of financial tests and self-guarantees for providing reasonable assurance of funds for decommissioning by nonprofit entities, such as colleges, universities, and nonprofit hospitals.

(A) (No change.)

(B) Financial test.

(i) To pass the financial test, a college or university shall meet the criteria of subclause (I) or (II) of this clause. The college or university shall meet one of the following:

(I) for applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poor's or Aaa, Aa, or A as issued by Moody's; or[.]

(II) (No change.)

(ii) To pass the financial test, a hospital shall meet the criteria in subclause (I) or (II) of this clause. The hospital shall meet one of the following:

(I) for applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poor's or Aaa, Aa, or A as issued by Moody's; or

(II) for applicants or licensees that do not issue bonds, all the following tests shall be met:

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

(-d-) operating revenues shall be at least 100 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the hospital is responsible as a self-guaranteeing licensee [~~license~~].

(iii) In addition, to pass the financial test, a licensee shall meet all the following requirements:

(I) the licensee's independent certified public accountant shall have compared the data used by the licensee in the financial test that is required to be derived from the independently audited year-end financial statements, based on United States generally accepted accounting practices, for the latest fiscal year, with the amounts in the financial statement. In connection with that procedure, the licensee shall inform the agency within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test should be adjusted and that the licensee no longer passes the test; and

(II) - (III) (No change.)

(C) Self-guarantee. The terms of a self-guarantee that an applicant or licensee furnishes shall provide the following:

(i) - (v) (No change.)

(7) Quantities of radioactive materials requiring consideration of the need for an emergency plan for responding to a release. The following table contains quantities of radioactive materials requiring consideration of the need for an emergency plan for responding to a release.

Figure: 25 TAC §289.252(jj)(7)

[~~Figure: 25 TAC §289.252(jj)(7)~~]

(8) Requirements for demonstrating financial qualifications.

(A) (No change.)

(B) If an applicant or licensee is required to submit financial assurance in accordance with subsection (gg) of this section, that applicant or licensee shall:

(i) submit one of the following:

(I) the bonding company report or equivalent (from which information can be obtained to calculate a ratio [~~ratios~~] in clause (ii) of this subparagraph) that was used to obtain the financial assurance instrument used to meet the financial assurance requirement specified in subsection (gg) of this section. However, if the applicant or licensee posted collateral to obtain the financial instrument used to meet the requirement for financial assurance specified in subsection (gg) of this section, the applicant or licensee shall demonstrate financial qualification by one of the methods specified in subclause (II) or (III) of this clause;

(II) Securities and Exchange Commission [~~SEC~~] documentation (from which information can be obtained to calculate a ratio as described in clause (ii) of this subparagraph, if the applicant or licensee is a publicly-held company); or

(III) a self-test (for example, an annual audit report certifying a company's assets and liabilities and resulting ratio as described in clause (ii) of this subparagraph or, in the case of a new company, a business plan specifying expected expenses versus capitalization and anticipated revenues); and[.]

(ii) (No change.)

(C) - (D) (No change.)

(9) Category 1 and category 2 radioactive materials. Licensees shall use Figure: 25 TAC §289.252(jj)(9) to determine whether a quantity of radioactive material constitutes a Category 1 or Category 2 quantity of radioactive material. [~~Radionuclide quantities of concern. The following methods shall be used to determine which sources of radioactive material require ICs:~~]

Figure: 25 TAC §289.252(jj)(9)

[~~(A) include any single source equal to or greater than the quantity of concern;~~]

[~~(B) include multiple collocated sources of the same radionuclide when the combined quantity equals or exceeds the quantity of concern;~~]

[~~(C) for combinations of radionuclides, include multiple collocated sources of different radionuclides when the aggregate quantities satisfy the following unity rule: ((amount of radionuclide A)/(quantity of concern of radionuclide A)) + ((amount of radionuclide B)/(quantity of concern of radionuclide B)) + etc..... ..... <1; and~~]

[~~(D) quantities of radioactive materials used to determine quantities of concern. The following table contains quantities of radioactive materials to be used in determining a quantity of concern.~~]

[~~Figure: 25 TAC §289.252(jj)(9)(D)~~]

(kk) (No change.)

(ll) Specific licenses for installation, repair, or maintenance of devices containing sealed sources of radioactive material.

(1) (No change.)

(2) Each installation, repair, or maintenance activity shall be documented and a record maintained for inspection by the agency in accordance with subsection (mm) of this section [~~for 5 years from the date of that service~~]. The record shall include the date, description of the service, initial survey results, and name(s) of the individual(s) who performed the work.

(3) (No change.)

(mm) Records/documents retention. Each licensee shall make, maintain, and retain at each authorized use site and for the time period set forth in the table, the records/documents described in the following table and in the referenced rule provision, and shall make them available to the agency for inspection, upon reasonable notice.
Figure: 25 TAC §289.252(mm)

§289.257. Packaging and Transportation of Radioactive Material.

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

(d) Definitions. The following words and terms when used in this section shall have the following meaning, unless the context clearly indicates otherwise. To ensure compatibility with international transportation standards, all limits in this section are given in terms of dual units: The International System of Units (SI) followed or preceded by United States (U.S.) standard or customary units. The U.S. customary units are not exact equivalents, but are rounded to a convenient value, providing a functionally equivalent unit. For the purpose of this section, SI units shall be used.

(1) - (6) (No change.)

(7) Chemical description--A description of the principal chemical characteristics of low-level radioactive waste (LLRW) [~~a LLRW~~].

(8) - (18) (No change.)

(19) Freight forwarder--A person or entity which holds itself out to the general public to provide transportation of property for compensation and in the ordinary course of its business:

(A) assembles and consolidates, or provides for assembling and consolidating, shipments and performs break-bulk and distribution operations of the shipments;

(B) assumes responsibility for the transportation from the place of receipt to the place of destination; and

(C) uses for any part of the transportation a rail, motor or water carrier subject to the jurisdiction of either the Federal Motor Carrier Safety Administration or the Surface Transportation Board.

(20) [~~(19)~~] Generator--A licensee operating in accordance with an agency, NRC, or agreement state[~~, or agency~~] license who:

(A) is a waste generator as defined in this section; or

(B) is the licensee to whom waste can be attributed within the context of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (e.g., waste generated as a result of decontamination or recycle activities).

(21) [~~(20)~~] Graphite--For the purposes of this section, this means graphite with a boron equivalent content of less than 5 [~~five~~] parts per million and density greater than 1.5 grams per cubic centimeter.

(22) [~~(21)~~] High integrity container (HIC)--A container commonly designed to meet the structural stability requirements of Title 10, CFR, §61.56, and to meet DOT requirements for a Type A package.

(23) [~~(22)~~] Indian tribe--An Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. §479a.

(24) [~~(23)~~] Industrial package (IP)--A packaging that, together with its low specific activity (LSA) material or surface contaminated object (SCO) contents, meets the requirements of Title 49, CFR, §173.410 and §173.411. Industrial packages are categorized in Title 49, CFR, §173.411 as either:

(A) Industrial package Type 1 (IP-1);

(B) Industrial package Type 2 (IP-2); or

(C) Industrial package Type 3 (IP-3).

(25) [~~(24)~~] Low-level radioactive waste (LLRW)--Radioactive material that meets the following criteria:

(A) LLRW is radioactive material that is:

(i) discarded or unwanted and is not exempt by rule adopted in accordance with the Texas Radiation Control Act (Act), Health and Safety Code, §401.106;

(ii) waste, as that term is defined in Title 10, CFR, §61.2; and

(iii) subject to:

(I) concentration limits established in Title 10, CFR, §61.55, or compatible rules adopted by the agency or the Texas Commission on Environmental Quality (TCEQ), as applicable; and

(II) disposal criteria established in Title 10, CFR, or established by the agency or TCEQ, as applicable.

(B) LLRW does not include:

(i) high-level radioactive waste as defined in Title 10, CFR, §60.2;

(ii) spent nuclear fuel as defined in Title 10, CFR, §72.3;

(iii) byproduct material defined in the Act, Health and Safety Code, §401.003(3)(B);

(iv) naturally occurring radioactive material (NORM) waste that is not oil and gas NORM waste;

(v) oil and gas NORM waste; or

(vi) transuranics greater than 100 nanocuries (3.7 kilobecquerels) per gram (g).

(26) [~~(25)~~] Low specific activity (LSA) material--Radioactive material with limited specific activity which is nonfissile or is excepted in accordance with subsection (h) of this section, and which satisfies the following descriptions and limits set forth. Shielding materials surrounding the LSA material may not be considered in determining the estimated average specific activity of the package contents. LSA material shall be in one of the following three groups:

(A) LSA-I.

(i) Ores containing only naturally occurring radionuclides (e.g., uranium, thorium) and uranium or thorium con-

centrates of such ores which are not intended to be processed for the use of these radionuclides; or

(ii) Solid unirradiated natural uranium or depleted uranium or natural thorium or their solid or liquid compounds or mixtures; or

(iii) Radioactive material for which the A_2 value is unlimited; or

(iv) Other radioactive material (e.g.: mill tailings, contaminated earth, concrete, rubble, other debris, and activated material) in which the radioactivity is distributed throughout, and the estimated average specific activity does not exceed 30 times the value for exempt material activity concentration determined in accordance with subsection (ee) of this section.

(B) LSA-II.

(i) Water with tritium concentration up to 0.8 terabecquerel per liter (TBq/l) (20.0 curies per liter (Ci/l)); or

(ii) Other material in which the radioactivity is distributed throughout, and the average specific activity does not exceed 10^{-4} A_2/g for solids and gases, and 10^{-5} A_2/g for liquids.

(C) LSA-III. Solids (e.g., consolidated wastes, activated materials), excluding powders, that satisfy the requirements of Title 10, CFR, §71.77 in which:

(i) the radioactive material is distributed throughout a solid or a collection of solid objects, or is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.); and

(ii) the radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that, even with a loss of packaging, the loss of radioactive material per package by leaching, when placed in water for 7 days, would not exceed 0.1 A_2; and

(iii) the average specific activity of the solid does not exceed 2 x 10^{-3} A_2/g.

(27) [~~(26)~~] Low toxicity alpha emitters--Natural uranium, depleted uranium, natural thorium; uranium-235, uranium-238, thorium-232, thorium-228 or thorium-230 when contained in ores or physical or chemical concentrates or tailings; or alpha emitters with a half-life of less than 10 days.

(28) [~~(27)~~] Maximum normal operating pressure--The maximum gauge pressure that would develop in the containment system in a period of 1 year under the heat condition specified in Title 10, CFR, §71.71(c)(1), in the absence of venting, external cooling by an ancillary system, or operational controls during transport.

(29) [~~(28)~~] Natural thorium--Thorium with the naturally occurring distribution of thorium isotopes (essentially 100 weight percent thorium-232).

(30) [~~(29)~~] Normal form radioactive material--Radioactive material that has not been demonstrated to qualify as special form radioactive material.

(31) [~~(30)~~] NRC Forms 540, 540A, 541, 541A, 542, and 542A--Official NRC forms referenced in subsection (ff) of this section which includes the information required by DOT in Title 49, CFR, Part 172. Licensees need not use originals of these forms as long as any substitute forms contain the equivalent information. Licensees may include additional information deemed relevant to the licensee's shipment of low-level radioactive waste. Upon agreement between the shipper and consignee, NRC Forms 541 (and 541A) and NRC Forms 542 (and 542A) or equivalent documents may be completed, transmitted, and stored in electronic media. The electronic media shall have the capability for producing legible, accurate, and complete records in the format of the uniform manifest.

(32) [~~(31)~~] Package--The packaging together with its radioactive contents as presented for transport.

(A) Fissile material package, Type AF package, Type BF package, Type B(U)F package, or Type B(M)F package--A fissile material packaging together with its fissile material contents.

(B) Type A package--A Type A packaging together with its radioactive contents. A Type A package is defined and shall comply with the DOT regulations in Title 49, CFR, Part 173.

(C) Type B package--A Type B packaging together with its radioactive contents. On approval by the NRC, a Type B package design is designated by NRC as B(U) unless the package has a maximum normal operating pressure of more than 700 kilopascals (kPa) (100 pounds per square inch (lb/in^2)) gauge or a pressure relief device that would allow the release of radioactive material to the environment under the tests specified in Title 10, CFR, §71.73 (hypothetical accident conditions), in which case it will receive a designation B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval of international shipments. There is no distinction made in how packages with these designations may be used in domestic transportation. To determine their distinction for international transportation, see DOT regulations in Title 49, CFR, Part 173. A Type B package approved before September 6, 1983, was designated only as Type B. Limitations on its use are specified in Title 10, CFR, §71.19.

(33) [~~(32)~~] Packaging--The assembly of components necessary to ensure compliance with the packaging requirements of this section. It may consist of one or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, and devices for cooling or absorbing mechanical shocks. The vehicle, tie-down system, and auxiliary equipment may be designated as part of the packaging.

(34) [~~(33)~~] Physical description--The items called for on NRC Form 541 to describe a LLRW.

(35) Registered freight forwarder--A freight forwarder that has an emergency plan approved in accordance with subsection (r) of this section and has been issued a registration letter.

(36) Registered shipper--A shipper that has an emergency plan approved in accordance with subsection (r) of this section, and shipping containers approved in accordance with subsection(cc)(8) of this section and been issued a registration letter.

(37) Registered transporter--A transporter that has an emergency plan approved in accordance with subsection (r) of this section, and proof of financial responsibility submitted and approved in accordance with subsection(e)(4) of this section and has been issued a registration letter.

(38) [~~(34)~~] Residual waste--LLRW resulting from processing or decontamination activities that cannot be easily separated into distinct batches attributable to specific waste generators. This waste is attributable to the processor or decontamination facility, as applicable.

(39) [~~(35)~~] Shipper--The licensed entity (i.e., the waste generator, waste collector, or waste processor) who offers LLRW for transportation, typically consigning this type of waste to a licensed waste collector, waste processor, or land disposal facility operator. This definition applies only to shipments of LLRW shipped to a Texas LLRW disposal facility.

(40) [~~(36)~~] Site of usage--The licensee's facility, including all buildings and structures between which radioactive material is transported and all roadways that are not within the public domain on which radioactive material can be transported.

(41) [~~(37)~~] Specific activity of a radionuclide--The radioactivity of the radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

(42) [~~(38)~~] Spent nuclear fuel or spent fuel--Fuel that has been withdrawn from a nuclear reactor following irradiation, has undergone at least 1 year's decay since being used as a source of energy in a power reactor, and has not been chemically separated into its constituent elements by reprocessing. Spent fuel includes the special nuclear material, byproduct material, source material, and other radioactive materials associated with fuel assemblies.

(43) [~~(39)~~] Surface contaminated object (SCO)--A solid object that is not itself classed as radioactive material, but which has radioactive material distributed on any of its surfaces. A SCO shall be in one of the following two groups with surface activity not exceeding the following limits:

(A) SCO-I--A solid object on which:

(i) the non-fixed contamination on the accessible surface averaged over 300 square centimeters (cm^2) (or the area of the surface if less than 300 cm^2) does not exceed 4 becquerels per square centimeter (Bq/cm^2) (10^{-4}microcurie per square centimeter ($\mu Ci/cm^2$)) for beta and gamma and low toxicity alpha emitters, or 4 x 10^{-1} Bq/cm^2 (10^{-5} $\mu Ci/cm^2$) for all other alpha emitters;

(ii) the fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 4 x 10^4 Bq/cm^2 (1 $\mu Ci/cm^2$) for beta and gamma and low toxicity alpha emitters, or 4 x 10^3 Bq/cm^2 (10^{-1} $\mu Ci/cm^2$) for all other alpha emitters; and

(iii) the non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 4 x 10^4 Bq/cm^2 (1 $\mu Ci/cm^2$) for beta and gamma and low toxicity alpha emitters, or 4 x 10^3 Bq/cm^2(10^{-1} $\mu Ci/cm^2$) for all other alpha emitters.

(B) SCO-II--A solid object on which the limits for SCO-I are exceeded and on which [~~the following limits are not exceeded~~]:

(i) the non-fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 400 Bq/cm^2 (10^{-2} $\mu Ci/cm^2$) for beta and gamma and low toxicity alpha emitters or 40 Bq/cm^2 (10^{-3} $\mu Ci/cm^2$) for all other alpha emitters;

(ii) the fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 8 x 10^5 Bq/cm^2 (20 $\mu Ci/cm^2$) for beta and gamma and low toxicity alpha emitters, or 8 x 10^2 Bq/cm^2 (2 $\mu Ci/cm^2$) for all other alpha emitters; and

(iii) the non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 8 x 10^5 Bq/cm^2 (20 $\mu Ci/cm^2$) for beta and gamma and low toxicity alpha emitters, or 8 x 10^4 Bq/cm^2 (2 $\mu Ci/cm^2$) for all other alpha emitters.

(44) Transporter--A carrier who transports radioactive material.

(45) [~~(40)~~] Tribal official--The highest ranking individual that represents Tribal leadership, such as the Chief, President, or Tribal Council leadership.

(46) [~~(41)~~] Uniform Low-Level Radioactive Waste Manifest or uniform manifest--The combination of NRC Forms 540, 541, and, if necessary, 542, and their respective continuation sheets as needed, or equivalent.

(47) [~~(42)~~] Unirradiated uranium--Uranium containing not more than 2 x 10^3 Bq (0.054 μCi) of plutonium per gram of uranium-235, not more than 9 x 10^6 Bq (243 μCi) of fission products per gram of uranium-235, and not more than 5 x 10^{-3} g of uranium-236 per gram of uranium-235.

(48) [~~(43)~~] Uranium--Natural, depleted, enriched:

(A) Natural uranium--Uranium with the naturally occurring distribution of uranium isotopes (approximately 0.711 weight percent uranium-235, and the remainder by weight essentially uranium-238).

(B) Depleted uranium--Uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes.

(C) Enriched uranium--Uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

(49) [~~(44)~~] Waste collector--An entity, operating in accordance with an agency, NRC, or agreement state[~~, or agency~~] license, whose principal purpose is to collect and consolidate waste generated by others, and to transfer this waste, without processing or repackaging the collected waste, to another licensed waste collector, licensed waste processor, or licensed land disposal facility.

(50) [~~(45)~~] Waste description--The physical, chemical and radiological description of a LLRW as called for on NRC Form 541.

(51) [~~(46)~~] Waste generator--An entity, operating in accordance with an agency, NRC, or agreement state[~~, or agency~~] license, who:

(A) possesses any material or component that contains radioactivity or is radioactively contaminated for which the licensee foresees no further use; and

(B) transfers this material or component to a licensed land disposal facility or to a licensed waste collector or processor for handling or treatment prior to disposal. A licensee performing processing or decontamination services may be a waste generator if the transfer of LLRW from its facility is defined as residual waste.

(52) [~~(47)~~] Waste processor--An entity, operating in accordance with an NRC or agreement state license, whose principal purpose is to process, repackage, or otherwise treat LLRW or waste generated by others prior to eventual transfer of waste to a licensed LLRW land disposal facility.

(53) [~~(48)~~] Waste type--A waste within a disposal container having a unique physical description (i.e., a specific waste descriptor code or description; or a waste sorbed on or solidified in a specifically-defined media).

(e) Transportation of radioactive material.

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

(4) Transporter proof of financial responsibility.

(A) Transporters of low-level radioactive waste to a Texas low-level radioactive waste disposal site shall submit proof of financial responsibility required by Title 49, CFR, §387.7 and §387.9, to the agency [~~agency's Radiation Safety Licensing Branch~~]

and receive a registration letter [~~approval of this documentation~~] from the agency prior to initial shipment.

(B) The transporter registration expires on the expiration date of the proof of financial responsibility or in 10 years, if the proof of financial responsibility does not have an expiration date.

(C) To renew a transporter's registration, the transporter shall submit to the agency new proof [~~Proof~~] of financial responsibility.

(D) The transporter shall submit to the agency new proof of financial responsibility [~~shall be submitted after each policy renewal, if~~] any time the amount of liability coverage is reduced[~~,~~] or a new policy is purchased [~~upon purchase of a new policy~~].

(5) (No change.)

(f) Exemption for low-level radioactive materials.

(1) (No change.)

(2) Common and contract carriers, freight forwarders, [~~and~~] warehousemen, and [~~who are subject to the rules and regulations of the DOT or~~] the United States Postal Service [~~(Title 39, CFR, Parts 14 and 15),~~] are exempt from the [~~these~~] regulations in this subchapter to the extent that they transport or store radioactive material [~~sources of radiation~~] in the regular course of their carriage for another or storage incident thereto. [~~Private carriers who are subject to the rules and regulations of the DOT are exempted from these regulations to the extent that they transport sources of radiation. Common, contract, and private carriers who are not subject to the rules and regulations of the DOT or the United States Postal Service are subject to applicable sections of these regulations.~~]

(3) (No change.)

(g) (No change.)

(h) Exemption from classification as fissile material. Fissile materials meeting the requirements of at least one of the paragraphs (1) through (6) of this subsection are exempt from classification as fissile material and from the fissile material package standards of Title 10, CFR §71.55 and §71.59, but are subject to all other requirements of this section, except as noted.

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

(4) Uranium enriched in uranium-235 to a maximum of 1% by weight, and with total plutonium and uranium-233 content of up to 1% of the mass of uranium-235, provided that the mass of any beryllium, graphite, and hydrogenous material enriched in deuterium constitutes less than 5% [~~5 percent~~] of the uranium mass.

(5) Liquid solutions of uranyl nitrate enriched in uranium-235 to a maximum of 2% [~~2 percent~~] by mass, with a total plutonium and uranium-233 content not exceeding 0.002% [~~0.002 percent~~] of the mass of uranium, and with a minimum nitrogen to uranium atomic ratio (N/U) of 2. The material shall be contained in at least a DOT Type A package.

(6) Packages containing, individually, a total plutonium mass of not more than 1000 grams, of which not more than 20% [~~20 percent~~] by mass may consist of plutonium-239, plutonium-241, or any combination of these radionuclides.

(i) - (j) (No change.)

(k) Preliminary determinations. Before the first use of any packaging for the shipment of licensed material the licensee shall:

(1) (No change.)

(2) where the maximum normal operating pressure will exceed 35 kPa (5 lbf/in^2) gauge, test the containment system at an internal pressure at least 50% [~~50 percent~~] higher than the maximum normal operating pressure, to verify the capability of that system to maintain its structural integrity at that pressure; and

(3) (No change.)

(l) - (n) (No change.)

(o) Records. For a period of 3 [~~three~~] years after shipment, each licensee shall maintain, for inspection by the agency, a record of each shipment of radioactive material including [~~showing~~] the following where applicable:

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

(p) Reports. The transporter and shipper shall immediately report by telephone, [~~telegram, mailgram, or~~] facsimile, or other electronic media transmission, all radioactive waste transportation accidents to the agency and the local emergency planning committees in the county where the radioactive waste accident occurs. All other accidents involving radioactive material shall be reported in accordance with §289.202(xx) and (yy) of this title.

(q) Advance notification of transport of irradiated reactor fuel and certain radioactive waste.

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

(3) Advanced notification is also required under this subsection for the shipment [~~shipments~~] of licensed radioactive material, other than irradiated fuel, meeting the following three conditions:

(A) - (C) (No change.)

(4) The following are procedures for submitting advance notification:

(A) - (C) (No change.)

(D) The licensee shall make, maintain and retain a copy of the notification for inspection by the agency as a record for 3 [~~three~~] years.

(5) - (7) (No change.)

(r) Emergency plan registration requirements.

(1) Each shipper and transporter of radioactive waste shall submit [~~adopt~~] an emergency plan to the agency and receive a registration letter from the agency prior to initial shipment [~~approved by the agency for responding to transportation accidents~~].

(2) A freight forwarder must submit an emergency plan in order to become a registered freight forwarder.

(3) Each shipper, transporter or freight forwarder applying for registration shall submit a Business Information Form (RC 252-1).

(4) Shipper and freight forwarder registrations expire 10 years from the date of issuance. New documentation to renew the registration must be submitted at least 30 days prior to the expiration date.

(s) Quality assurance requirements.

(1) Purpose. This subsection describes quality assurance requirements applying to design, purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing, operation, maintenance, repair, and modification of components of packaging that are important to safety.

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

(C) The licensee, certificate holder, and applicant for a CoC are responsible for the following:

(i) (No change.)

(ii) the quality assurance provision applicable [~~which applies~~] to its use of a packaging for the shipment of licensed material under subsections (s) - (bb) and (ee) of this section [~~subject to this subpart~~].

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

(t) - (bb) (No change.)

(cc) Transfer for disposal and manifests.

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

(8) Each shipper shall submit a list for approval by the agency of shipping containers that they intend to use to ship LLRW to the Texas LLRW site. If the shipper is licensed in Texas and is the holder of a CoC, the shipper shall also submit written documentation of its program for quality assurance and control and handling, shipping and control measures that comply with the requirements of subsections (s), (t), and (v) - (bb) of this section.

(dd) Fees.

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

(3) Money expended from the agency's Radiation and Perpetual Care Account to respond to accidents involving LLRW shall be reimbursed to the agency's Radiation and Perpetual Care Account by the responsible shipper or transporter according to this section [~~rules adopted by the board~~].

(4) - (5) (No change.)

(ee) - (ff) (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 November 9, 2015.

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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 776-6972

♦ ♦ ♦

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER KK. HEALTH CARE REIMBURSEMENT RATE INFORMATION

28 TAC §§21.4501 - 21.4507

The Texas Department of Insurance proposes amendments to 28 TAC §§21.4501 - 21.4507, concerning the collection and submission of aggregate health care reimbursement rate information by health benefit plan issuers. The proposed amendments to §§21.4501 - 21.4507 are necessary because data collected under the current rules do not produce a consistent and accurate representation of average market prices for health care services.

EXPLANATION: Insurance Code Chapter 38, Subchapter H requires TDI to collect health benefit plan reimbursement rate information in a uniform format and to disseminate the combined rates derived from this data by geographical regions in the state. This statute applies to issuers of preferred provider benefit plans, health maintenance organization (HMO) plans, and specified governmental employee plans under Insurance Code Chapters 1551, 1575, 1579, and 1601.

TDI adopted rules on January 9, 2011, implementing Insurance Code Chapter 38, Subchapter H. TDI publishes the data collected under the rules in a Reimbursement Rate Guide (guide) on TDI's website. The purpose of the guide is to help consumers estimate costs in advance of planned procedures and mitigate balance billing, but TDI has found that much of the data submitted by carriers under the current rules may not accurately reflect costs that consumers are likely to face. In collaboration with the University of Texas School of Public Health, TDI has worked to improve the quality and relevance of data provided to consumers through the Reimbursement Rate Guide.

Current data is orientated around single medical billing codes, but the full cost of a procedure may include multiple claims, each including multiple lines of billing codes. The proposed methodology will present more accurate procedure costs by using key target codes. For any claim that includes a target code, the issuer will provide the full cost of the claim, inclusive of the target code and other services provided.

In addition to collecting a more comprehensive set of claims costs, the proposed amendments also include an explicit method for grouping different claims related to the same medical service into a treatment event. This will allow TDI to present cost estimates to consumers that represent the total cost of care, rather than separately presenting facility costs, physician costs, and anesthesiologist costs.

The proposed methodology will: (i) improve accuracy of price estimates for inpatient and outpatient procedures by collecting data at the claim level (rather than the line level); (ii) make data more meaningful by grouping separate cost components by treatment event; (iii) mitigate the influence of outliers by collecting median amounts; and, (iv) allow TDI to present a likely range of costs by collecting minimum/maximum and 25th/75th percentiles.

TDI hosted stakeholder meetings on April 15, 2014, and November 13, 2014, to discuss changes to the data collection methodology and potential changes to TDI's data collection rules at 28 TAC §§21.4501 - 21.4507. TDI posted an informal draft of the rule text on its website April 17, 2015, and invited further public comment. Originally set to expire May 15, 2015, TDI extended the informal comment period until September 1, 2015, to coincide with the due date for the rate reimbursement data call. TDI issued the annual rate reimbursement data call bulletin on June 5, 2015, and invited issuers to submit a limited set of test data using the methodology proposed in the informal draft of the rule, instead of the full reporting of the 2015 reimbursement rate information under LHL616 and the current rule. Issuers were encouraged to communicate problems or concerns with the methodology as well as costs associated with compliance.

In selecting procedures for purposes of the proposed data collection, TDI considered several factors. First, TDI considered

services that are widely used and provide consumers with ability to plan in advance of receiving a service. TDI surveyed existing price transparency websites for the services included. TDI prioritized services, such as imaging, for which the price may vary significantly based on the place of service. TDI also considered consumers' need for data on fair market prices for services for which they may be balance billed, such as pathology or emergency care.

Proposed Amendments. In addition to the substantive amendments, throughout the rule text TDI corrects typographical, grammatical, and punctuation errors; makes changes to conform rule text to current TDI drafting style; and nonsubstantively simplifies and clarifies certain provisions.

The following provides an overview of and explains additional reasoned justification for the proposed amendments to the rules.

§21.4501. Purpose. The proposed amendment to §21.4501(3) deletes reference to the Department of State Health Services' publication.

§21.4502. Applicability. Proposed amendment to §21.4502 deletes the word "group" and inserts "applicable" before health benefit plan to conform to proposed amendments at §21.4503(3). Proposed amendments add new paragraph (e) permitting an applicable health benefit plan issuer to include data concerning reimbursement rates for self-insured health benefit plans administered by the issuer. Proposed amendments add new paragraph (f) exempting an applicable health benefit plan issuer with fewer than 20,000 covered lives in comprehensive health coverage as reported on Part 1 of the National Association of Insurance Commissioners Supplemental Health Care Exhibit as of the end of the applicable reporting period from reporting requirements under §21.4506 as provided in Insurance Code §38.353(e). Proposed amendments add new paragraphs (g)(1) and (g)(2) indicating that under Insurance Code §38.353(e), the subchapter does not apply to a Medicare supplemental policy as defined in §1882(g)(1), Social Security Act (42 U.S.C. §1395ss) or a Medicare Advantage plan offered under a contract with the federal Centers for Medicare and Medicaid Services.

§21.4503. Definitions. Proposed amendments to §21.4503 add new definitions and update current definitions, and delete definitions no longer relevant to the proposed rule. The proposed amendment to §21.4503(1) replaces current text with proposed new text defining "allowed amount" as an amount that the applicable health benefit plan issuer allows as reimbursement for a health care service or group of services, including reimbursement amounts for which a patient is responsible due to deductibles, copayments, or coinsurance.

The proposed amendment to §21.4503(2) replaces current text with proposed new text defining "ambulatory surgical center" as a facility licensed under Health and Safety Code Chapter 243.

The proposed amendment to §21.4503(3) changes "group health benefit plan" previously defined at §21.4503(1) to "applicable health benefit plan" and updates current text to include an exclusive provider benefit plan consistent with Insurance Code §1301.0042.

The proposed amendment to §21.4503(4) replaces current text with proposed new text defining "billed amount" as the amount charged for medical care or health care services on a claim submitted by a provider.

The proposed amendment to §21.4503(5) replaces current text with proposed new text defining "facility claims" as any claim for health care services provided by a facility as defined in §3.3702 of this title.

Proposed new §21.4503(6) adds "freestanding emergency medical care facility" and defines it as a facility, structurally separate and distinct from a hospital, that receives an individual and provides emergency care, as defined in Insurance Code §1301.155.

Proposed new §21.4503(7) adds "geographic regions" and defines it as a three-digit ZIP code, representing the collection of ZIP codes that share the same first three digits. For purposes of data submitted under this subchapter, a geographic region must be located in Texas, in full or in part.

Proposed new §21.4503(8) adds "imaging claims" and defines it as claims for radiological services furnished in a provider office, outpatient hospital, or other outpatient environment.

Proposed new §21.4503(9) adds "inpatient procedure claims" and defines it as claims for health care services furnished in a hospital, as defined by Insurance Code §1301.001, to a patient who is formally admitted.

Proposed new §21.4503(10) adds "in-network claims" and defines it as claims filed with an applicable health benefit plan for medical or health care treatment, services, or supplies furnished by a provider that is contracted as an in-network or preferred provider.

Proposed new §21.4503(11) adds "medical billing codes" and defines it as standard code sets used to bill for specific medical services, including the Healthcare Common Procedure Coding System (HCPCS) and Diagnosis-Related Group (DRG) system established by the Centers for Medicare and Medicaid Services (CMS), the Current Procedural Terminology (CPT) code set maintained by the American Medical Association, and the International Classification of Diseases (ICD) code sets developed by the World Health Organization.

Proposed new §21.4503(12) adds "out-of-network claims" and defines it as claims filed with an applicable health benefit plan for medical or health care treatment, services, or supplies, from a provider who is not contracted as an in-network provider or preferred provider.

Proposed new §21.4503(13) adds "outpatient facility procedure claims" and defines it as claims for health care services provided in an ambulatory surgical center or a hospital, as defined by Insurance Code §1301.001, to a patient who is not formally admitted.

Proposed new §21.4503(14) adds "place of service code" and defines it as a health care claim code where "place of service" refers to the type of entity where services were rendered, as specified by a two-digit place-of-service code on a professional health care claim, consistent with the ASC X12N standard for electronic transactions. Place-of-service codes are maintained by CMS.

Proposed new §21.4503(15) adds "primary plan" and defines it as it is defined in 28 TAC §3.3503(18).

Proposed new §21.4503(16) adds "professional claims" and defines it as any claim for health care services provided by a physician or health care provider that is not an institutional provider, as defined in Insurance Code §1301.001.

Proposed new §21.4503(17) redesignates the current definition of "provider" previously found at §21.4503(4) and adds the word "physician" to the definition.

Proposed new §21.4503(18) redesignates the current definition of "reporting period" previously found at §21.4503(5) and replaces "six" with "12", inserts the words "each year", and replaces "June 30" with "December 31." The definition now reads as, "The 12-month interval of time for which a plan or health benefit plan issuer must submit data each year, beginning each January 1 and ending the following December 31."

Proposed new §21.4503(19) adds "TDI" defined as Texas Department of Insurance.

Proposed amendments to §21.4503 also delete the definition for "institutional provider" at current §21.4503(2) and "physician" at current §21.4503(3). "Physician" is included in definition of "provider" at proposed amendment §21.4503(16).

§21.4504. Geographic Regions. The proposed amendment replaces existing text with new text, requiring issuers to report data collected under this subchapter according to the three-digit ZIP code in which the health care service was provided. TDI also notes in proposed text that publication of health care reimbursement rate information derived from the data may be aggregated across broader geographic regions if necessary to ensure, consistent with Insurance Code §38.357, that the published information does not reveal the name of any health care provider or health benefit plan issuer.

§21.4505. Requirement to Collect Data. The proposed amendments to §21.4505(a) removes the word "group" preceding "health benefit plan" and inserts the word "applicable" to conform to proposed amendments at §21.4503(3), adds the requirement to collect the data annually, and deletes text referring to Form LHL616 to conform to proposed amendments to §21.4507.

The proposed amendment to §21.4505(b) replaces current text with new text requiring that data elements and medical services specified under proposed amendments to §21.4507(b) and (c) must be collected with respect to medical billing codes specified by TDI. The current set of medical billing codes will be available to issuers in a Microsoft Excel template on TDI's website and will be updated not more often than annually to account for any changes in standard medical practice and medical billing codes related to the services specified in proposed amendment to §21.4507(c).

The proposed amendment to §21.4505(c) deletes subsection (c) related to an exemption based on number of covered lives to conform to proposed amendment §21.4502(f).

§21.4506. Submission of Report. Proposed amendments to §21.4506(a) add that, in addition to each plan and health benefit plan issuer identified in §21.4502(a) and (b), the plan or issuer's authorized agent may submit the required data. Proposed amendments to §21.4506(a) also change the deadline for the submission of the required data in annual reporting subsequent to the initial filing as no later than May 1, rather than September 1. Proposed amendments to §21.4506(a) also delete language referencing Form LHL616 to conform with proposed §21.4507.

The proposed amendment to §21.4506(b) replaces current text with proposed new text requiring the data be filed electronically as a Microsoft Excel form and emailed to TDI, or uploaded by secure File Transfer Protocol.

The proposed amendment to §21.4506(c) replaces current text with new text alerting issuers that they may use a Microsoft Excel template available on TDI's website to meet the requirements of proposed §§21.4501 - 21.4507.

The proposed amendment to §21.4506(d) and the proposed amendment to §21.4506(e) delete subsections (d) and (f), both relating to procedures for accessing the report form and acceptance of the End User Agreement to conform to proposed amendments to §21.4507.

The proposed amendment to §21.4506 (e) deletes subsection (e) related to an exemption based on number of covered lives to conform to proposed amendments to §21.4502(f).

§21.4507. Data Required. Proposed amendments change the title of the section from "Report Form" to "Data Required" to more accurately describe the section. The proposed amendment to §21.4507 deletes §21.4507(1) - (3) to conform with proposed new §21.4507(a) - (d).

Proposed new §21.4507(a) requires applicable health benefit plans to include a cover page with each report, and proposed new §21.4507(a)(1) - (8) describe the elements to include on the cover page.

Proposed new §21.4507(b) requires applicable health benefit plans to submit in-network and out-of-network claim data for each geographic region, as defined by proposed §21.4503, for each service identified in proposed subsection (c) in data columns in the order of the proposed amendments to §21.4507(b)(1) - (17).

Proposed new §21.4507(b)(1) adds a data column to report network status of the claims data, using "IN" to indicate in-network claims and "OON" to indicate out-of-network claims. Proposed new §21.4507(b)(2) adds a data column to report the geographic region of the claims data, using the three-digit ZIP code to indicate the applicable region. Proposed new §21.4507(b)(3) adds a data column to report total number of unique claim identifiers for all claim types. Proposed new §21.4507(b)(4) adds a data column to report inpatient procedure facility claims, including total number of discharges. Proposed new §21.4507(b)(5) - (18) adds these 14 additional data columns to report: total amount billed; total amount allowed; mean amount billed; mean amount allowed; median amount billed; median amount allowed; maximum amount billed; maximum amount allowed; minimum amount billed; minimum amount allowed; lower quartile amount billed, representing the 25th percentile of all amounts billed; lower quartile amount allowed, representing the 25th percentile of all amounts allowed; upper quartile amount billed, representing the 75th percentile of all amounts billed; and upper quartile amount allowed, representing the 75th percentile of all amounts allowed.

Proposed new §21.4507(c) requires issuers to report the data elements identified in proposed new §21.4507(b) in the specified manner for each category of services listed in proposed new §21.4507(c).

Proposed new §21.4507(c)(1) relates to inpatient procedures and requires issuers to report the data separately for facility claims and professional claims. Proposed new §21.4507(c)(1)(A) - (C) describes the data to report and proposed new §21.4507(c)(1)(C)(i) - (xi) lists the services to include.

Proposed new §21.4507(c)(2) relates to outpatient procedures and requires issuers to report facility claims and professional claims separately. Proposed new §21.4507(c)(2)(A) - (C) de-

scribe the data to report for outpatient procedures and proposed new §21.4507(c)(2)(C)(i) - (xiii) lists the services to include.

Proposed new §21.4507(c)(3) relates to emergency services and requires issuers to report data on emergency room visits for professional claims for which the place of service is an emergency room or outpatient hospital. Proposed new §21.4507(c)(3)(A) - (E) describe the different kinds of emergency room visits to report.

Proposed new §21.4507(c)(4) relates to imaging services and requires issuers to report the data separately for facility claims and professional claims. Proposed new §21.4507(c)(4)(A) - (C) describe the data to report for imaging services and proposed new §21.4507(c)(4)(C)(i) - (xxvi) lists the services to include.

Proposed new §21.4507(c)(5)relates to pathology services and requires issuers to report the data only for professional claims for which the place of service is an independent lab. Proposed new §21.4507(c)(5)(A) - (B) describes the data to report and proposed new §21.4507(c)(5)(B)(i) - (x) lists the services to include.

Proposed new §21.4507(c)(6) relates to office visits and requires issuers report data only for professional claims for which the place of service is an office or rural health clinic. Proposed new §21.4507(c)(6)(A) - (C) describes the data to report for office visits, and proposed new §21.4507(c)(6)(B)(i) - (xii) lists the types of office visits to include.

Proposed new §21.4507(d) specifies that issuers must submit data required in accordance with proposed new §21.4507(d)(1) - (4). Proposed new §21.4507(d)(1) requires issuers to report data elements according to medical billing codes specified by TDI. Proposed new §21.4507(d)(2) requires issuers to separately report data for insurance and HMO and to exclude any HMO claims paid through a capitation agreement. Proposed new §21.4507(d)(3) requires issuers to separately report data for in-network and out-of-network claims. Proposed new §21.4507(d)(4) requires that issuers filter claims and proposed new §21.4507(d)(4)(A) - (E) describes the filters to apply.

FISCAL NOTE. Rachel Bowden, program specialist, Regulatory Initiatives Office, has determined that, for each year of the first five years the proposed amendments are in effect, there may be measurable fiscal impact to state and local governments as a result of administration of this proposal. The cost analysis in the Public Benefit and Cost Note part of this proposal is applicable to these local and state governments. Ms. Bowden does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Bowden has determined that for each year of the first five years the proposed amendments are in effect, there are public benefits anticipated as a result of the enforcement and administration of the rule, and there will also be potential costs for persons required to comply with the proposal. TDI drafted the proposed rules to maximize public benefits consistent with the intent of Insurance Code Chapter 38, Subchapter H, while mitigating costs.

Anticipated Public Benefit. One anticipated public benefit will be the implementation of an improved data collection methodology that will collect data for the full cost of a claim for certain in-network and out-of-network, and inpatient and outpatient, treatment events. Inpatient treatment events include cesarean section delivery; vaginal delivery; hysterectomy; hip replacement; knee replacement; back surgery - laminectomy; coronary artery bypass grafting; inguinal hernia repair, unilateral; inguinal hernia repair, bilateral; laparoscopic cholecystectomy; and appendectomy. Outpatient treatment events include: tonsillectomy; adenoidectomy; tonsillectomy and adenoidectomy; inguinal hernia repair, unilateral; inguinal hernia repair, bilateral; laparoscopic cholecystectomy; appendectomy; myringotomy; colonoscopy; upper GI endoscopy; upper and lower GI endoscopy; bunion repair; ACL repair; rotator cuff repair; cardiac catheterization, left; cardiac catheterization, right; cardiac catheterization, left and right; and percutaneous transluminal coronary angioplasty.

A second anticipated public benefit will be the collection of professional claims data for emergency services for which the place of services is an emergency room or outpatient hospital. Emergency services are: emergency room visit, self-limited or minor problem; emergency room visit, low to moderately severe problem; emergency room visit, moderately severe problem; emergency room visit, problem of high severity; and emergency room visit, problem with significant threat to life or function.

A third anticipated public benefit will be improved transparency concerning health care reimbursement rate information. Specifically, TDI will publish the data in a *Reimbursement Rate Guide* on its website that consumers can use to estimate costs in advance of planned procedures and mitigate balance billing.

Anticipated Costs.

Persons required to comply with the proposal. Under Insurance Code §38.353(a), the persons required to comply with the proposal are issuers of a health benefit plan, including an insurance company; a group hospital service corporation; a fraternal benefit society; a stipulated premium company; a reciprocal or interinsurance exchange; and an HMO.

In accordance with Insurance Code §38.353(b), several governmental employee plans must comply with the data submission requirements. These plans are: a basic coverage plan under Insurance Code Chapter 1551; a basic plan under Insurance Code Chapter 1575; a primary care coverage plan under Insurance Code Chapter 1579; and a basic coverage plan under Insurance Code Chapter 1601. Further, under Insurance Code §38.353(c), small employer health benefit plans under Insurance Code Chapter 1501 are required to comply with the data submission requirements except as provided in subsection (d) of §38.353. Under Insurance Code §38.353(d), the data submission requirements do not apply to standard health benefit plans (also known as "consumer choice" plans) provided under Insurance Code Chapter 1507; children's health benefit plans provided under Insurance Code Chapter 1502; health care benefits provided under a workers' compensation insurance policy; Medicaid managed care programs operated under Government Code Chapter 533; Medicaid programs operated under Human Resources Code Chapter 32; or the state child health plan operated under Health and Safety Code Chapters 62 or 63.

Some health benefit plan issuers may report information and data on behalf of certain governmental employee plans. Each governmental employee plan must either independently submit the data required by the proposed amendments or must authorize and require the entity administering the governmental employee plan to submit the information and data on its behalf. A governmental employee plan may determine that the health benefit plan with which it contracts should provide the requested information, and so will delegate that authority to report. Based on reporting on behalf of governmental employee plans in other data collections unrelated to this proposal, TDI anticipates that

these delegations are more probable than not. The proposal, therefore, affords some flexibility to health benefit plan issuers that administer governmental employee plans.

The estimated cost for reporting for a governmental employee plan should be comparable to the cost incurred by a health benefit plan issuer. To the extent that a health benefit plan issuer submits information on behalf of a governmental employee plan in addition to the issuer's own data, the cost to a governmental employee plan may be reduced. Health benefit plan issuers submitting the requested information and data on behalf of other entities, in addition to submitting the information and data for themselves, may incur some additional costs. These costs may be mitigated to the extent that the issuer maintains aggregate claims data for the governmental employee plans and data for the issuer's own health benefit plans.

Proposed Amendments Resulting in Potential Costs. The cost to persons required to comply with the proposed amendments results from requirements concerning the collection and preparation of health care reimbursement data as specified in proposed amendments to §§21.4505, 21.4506, and 21.4507; and the submission of the data as specified in proposed amendments to §§21.4505, 21.4506, and 21.4507.

Cost Components. The probable cost components associated with the compliance requirements in proposed amendments to §§21.4505, 21.4506, and 21.4507 include personnel costs associated with programming information systems, and personnel costs associated with reviewing the data.

TDI identified no new technology or software costs associated with the proposed amendments, as the technology or software needed to comply with the proposed amendments is the same as the technology or software needed to comply with the current rule. For an analysis of those costs, see the September 10, 2010, issue of the *Texas Register* (35 TexReg 8286).

Cost of personnel associated with programming information systems. TDI anticipates that health benefit plan issuers will undertake information system programming in order to collect information as required by proposed amendments to §§21.4505 and 21.4507. The proposed amendment to §21.4505(a) requires health benefit plan issuers to annually collect data for in-network and out-of-network claims by three-digit ZIP code for several categories of medical and health care services in accordance with proposed amendments to §21.4507. The type of data requested for specified treatment events in proposed amendments to §21.4507 include claims data for inpatient procedures, including facility claims and professional claims; outpatient procedures, including facility claims and professional claims; imaging services, including facility claims and professional claims; professional claims for pathology services; and professional claims for office visits.

Proposed amendments to §21.4507(b) require health benefit plan issuers to collect the requested data with respect to medical billing codes specified by TDI. The medical billing codes are standard code sets used to bill for specific medical services, including the HCPCS and DRG systems established by CMS, the CPT code set maintained by the American Medical Association, and the ICD code sets developed by the World Health Organization.

In addition to programming to collect the required data and information, TDI anticipates that health benefit plan issuers will perform programming necessary to automate the collection of the data to the extent possible. Total programming costs will vary depending on the number of hours required, the skill level of the programmer or programmers, the complexity of the health benefit plan issuer's information systems, and whether contract programmers will be involved. Each issuer has the information needed to estimate its individual costs for this programming. However, based on information submitted by issuers who tested the revised methodology, TDI estimates that the initial year of data collection will require between 90 and 240 hours of programming and quality assurance time, while reports submitted in subsequent years will require between 45 and 90 hours of programming and quality assurance time. The latest State Occupational Employment and Wage Estimates for Texas published by the U.S. Department of Labor (DOL, May 2014) at *http://www.bls.gov/oes/current/oes_tx.htm,* indicates that the mean hourly wage for a computer programmer in Texas is $38.85. Based on information TDI has previously obtained from insurers, hourly wage rates for outside contract programmers are estimated to range upwards of $200 per hour. The actual number, types, and cost of personnel will be determined by the health benefit plan issuer's existing information systems and staffing. Further, issuers with less sophisticated data systems may incur greater costs than those issuers with more sophisticated data infrastructure.

Cost of personnel associated with review of data. TDI estimates that a member of the health benefit plan issuer's management staff can review and approve the prepared information in two to four hours. The salary for this employee is estimated at the mean salary rate of $55.04 per hour, as set forth for management positions in the latest State Occupational Employment and Wage Estimates for Texas published by the DOL (May 2014) at *http://www.bls.gov/oes/current/oes_tx.htm.*

Stakeholder Feedback on Costs. TDI requested cost information by public comment during the posting of the informal draft of the rule text and from issuers who chose to test the new methodology in response to this year's rate reimbursement guide data call. TDI received input from three issuers who tested the revised methodology, with the amount of time to complete the data collection ranging from 60 to 168 hours of time for programming development and quality assurance. TDI used this information to estimate the time to complete the initial year of data collection under this proposal. The full scope of data to be collected under the proposal is larger than the scope of test data submitted by issuers. However, the test included 82 percent of the query designs that will be required under the full scope of the rule.

Exempt Issuers and Optional Additional Data Inclusion. Under Insurance Code §38.353(e), the commissioner by rule may exclude a type of health benefit plan from the requirements of Chapter 38, Subchapter H, if the commissioner finds that data collected in relation to the health benefit plan would not be relevant to accomplishing the purposes of Subchapter H. The current rules provide an exemption for private market preferred provider benefit plans operating under Insurance Code Chapter 1301 and private market HMOs operating under Insurance Code Chapter 843 that do not exceed 10,000 covered lives as of December 31 for the year preceding the submission of the data. Proposed amendment §21.4502(f) increases the threshold from 10,000 to 20,000 covered lives. The proposed amendment also removes the requirement previously at §21.4505(c) that health benefit plan issuers asserting this exemption collect enrollment data and submit to TDI an exemption statement. As a result, issuers who qualify for the exemption under the proposed amendments will no longer incur any costs to comply.

Self-insured health benefit plans are not subject to the data submission requirements of Insurance Code Chapter 38, Subchapter H. However, proposed new §21.4502(e) permits an applicable health benefit plan issuer to electively include data concerning reimbursement rates for self-insured health benefit plans. This proposed provision enables health benefit plan issuers who offer self-insured health benefit plans to avoid the possible expense of separating out claims data for those types of plans if that claims data is otherwise aggregated with the data that is required to be submitted.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.

Government Code §2006.002(c) requires that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses, and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Government Code §2006.001(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than $6 million in annual gross receipts.

Government Code §2006.001(1) defines "micro business" similarly to "small business" but specifies that such a business may not have more than 20 employees. Government Code §2006.002(f) requires a state agency to adopt provisions concerning micro businesses that are uniform with those provisions outlined in Government Code §2006.002(b) - (d) for small businesses.

Economic Impact Statement. As required by Government Code §2006.002(c), TDI has determined that the proposed amendment to §21.4505 and §21.4507 may have an adverse economic effect on HMOs and preferred provider benefit plan issuers that qualify as small or micro businesses under Government Code §2006.001(1) and (2) and are required to comply with these proposed rules. The adverse economic impact will result from the necessary costs for health benefit plan issuers that, in compliance with this proposal, are collecting and preparing health care reimbursement data as specified in proposed §21.4507, and submitting the data as specified in proposed §21.4505 and proposed §21.4507. These costs are discussed in the Public Benefit/Cost Note part of this proposal. As also discussed in the Public Benefit/Cost Note part of this proposal, the cost components associated with these compliance requirements include personnel costs associated with programming information systems for compliance with the requirements in proposed §21.4505 and §21.4507, and personnel costs associated with reviewing the data in compliance with the requirements in proposed §21.4506 and §21.4507.

The current rules incorporate regulatory provisions designed to reduce potential economic impact for all health benefit plans, including small and micro businesses (see rule proposal in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8286)). The proposed amendments to §21.4502(e) and 21.4502(f) expand on theses regulatory provisions.

TDI is aware that some health benefit plan issuers maintain aggregated claim data, and that it may be costlier for these issuers to segregate claim data than to include it. Proposed amendment §21.4502(e) permits an applicable health benefit plan issuer to electively include the data concerning reimbursement rates for self-insured plans it administers in its submission of data for purposes of administrative convenience. TDI anticipates that proposed §21.4502(e) may reduce the economic impact of this proposal for applicable health benefit plan issuers that issue self-insured plans, including small and micro businesses.

Section 21.4502(f) increases the number of covered lives in the exemption from 10,000 to 20,000 lives, and grants the exemption without requiring the issuer file a report with TDI. TDI anticipates that the increase in the exemption based on enrollment may reduce the economic impact of this proposal for small and micro businesses. The exemption in proposed amendment §21.4502(f) applies to private-market preferred provider benefit plans operating under Insurance Code Chapter 1301 and private-market HMOs operating under Insurance Code Chapter 843, as applicable for each line of business. This exemption from data collection and reporting requirements is available to all health benefit plan issuers that qualify, including qualifying issuers that are small or micro businesses. While the exemption is not directly contingent on the qualification of the health benefit plan issuers as a small or micro business under Government Code §2006.001, TDI anticipates that small and micro business issuers are more likely to qualify for the exemption than are larger issuers.

Regulatory Flexibility Analysis. Government Code §2006.002(c)(2) requires a state agency, before adopting a rule that may have an adverse economic effect on small businesses, to prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Government Code §2006.002(c-1) requires that the regulatory analysis consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses.

As previously discussed in this Economic Impact Statement section, TDI has considered and incorporated into this proposal regulatory provisions that will minimize adverse economic impact on all health benefit plan issuers, including small and micro businesses. Nevertheless, TDI considered three additional regulatory alternatives as required by Government Code §2006.002(c)(2). These three include: (i) total exemption of small or micro business health benefit plan issuers from data collection and reporting requirements instead of an exemption from data collection and reporting requirements on the basis of reduced enrollment in the proposal; (ii) exemption of small or micro business health benefit plan issuers solely on the basis of their meeting the criteria of a small or micro business under Government Code §2006.001; and (iii) reduced frequency requirement for the provision of collection and submission of health care reimbursement data by small or micro business health benefit plan issuers, such as every other year. For the following reasons, TDI rejected each of these alternatives as not being sufficiently consistent with the purpose of the statute or sufficiently protective of the economic welfare of the state, including small and micro businesses.

Total Exemption of Small or Micro Businesses from Data Collection and Reporting Requirements. TDI has determined that exempting small and micro business health benefit plan issuers from all data collection and reporting requirements could compromise the accuracy and reliability of the claims data. Health care rate reimbursement data from a small or micro business is-

suer with a large number of covered lives, and therefore likely a more significant quantity of claims, has a greater potential to affect the overall aggregation of data that will be published for purposes of comparison.

As previously explained in this Economic Impact Statement, TDI has instead elected in proposed amendment §21.4502(f) to exempt an applicable health benefit plan with fewer than 20,000 covered lives in comprehensive health coverage from data collection and reporting. Although the exemption from data collection and reporting under this proposal is permitted on the basis of reduced enrollment rather than the health benefit plan issuer meeting the criteria to qualify as a small or micro business under Government Code §2006.001, TDI anticipates that small and micro business issuers will likely qualify for the proposed exemption. However, under the proposal, should the qualifying small or micro business issuer provide coverage to a greater number of persons than 20,000 as provided in proposed amendment §21.4502(f), and thus have a greater likelihood of affecting the aggregated data, the small or micro business issuer will not qualify for the exemption. TDI has determined that a total or an unqualified exemption for all small or micro business issuers would not be sufficiently protective of the quality and reliability of the data. As a result, the impaired data would not be consistent with the intent of the statute to improve the ability of patients to make appropriate and cost effective health care decisions. Further, impaired data would reduce the ability of employers, including small and micro businesses, to accurately compare health care reimbursement data in selecting health benefit plans. As such, TDI has determined that this total exemption regulatory alternative is not sufficiently protective of the economic welfare of the state nor sufficiently consistent with the purpose of Insurance Code Chapter 38, Subchapter H, as enacted in SB 1731 (80th Legislature), to provide greater accuracy and transparency of health care costs for consumers.

Exemption of Small or Micro Businesses Solely on the Basis of Meeting the Criteria of a Small or Micro Business. Reducing the data collection and reporting requirements for health benefit plan issuers solely on the basis of their meeting the criteria of a small or micro business under Government Code §2006.001 could adversely affect the accuracy and reliability of the claims data. For example, it is possible that a small or micro business issuer could provide coverage to a sufficient number of persons--greater than the 20,000 person requirement in the proposed §21.4502(f) exemption--that a significant quantity of claims are generated. Absent that data, the available data (for purposes of comparison by both employers and consumers) could be less accurate and, therefore, less reliable.

So TDI has instead proposed §21.4502(f) to exempt those with less than 20,000 covered lives from data collection and reporting, regardless of whether the issuer meets the criteria to qualify as a small or micro business. Although under this proposal the exemption from data collection and reporting is permitted on the basis of reduced enrollment rather than whether the issuer meets the criteria to qualify as a small or micro business, TDI anticipates that issuers that meet the criteria as a small or micro business will likely qualify for the exemption in proposed §21.4502(f). Should the qualifying small or micro business issuer provide coverage to a number of persons in excess of 20,000 covered lives and thus have a greater likelihood of affecting the aggregated data, under the proposal the small or micro business issuer will not qualify for the exemption. As a result, the small and micro business issuers' claim data will be included in the collected data along with those issuers that do not meet the criteria as a small or micro business under Government Code §2006.001. TDI has determined that this regulatory alternative is not sufficiently protective of the economic welfare of the state or sufficiently consistent with the purpose of Insurance Code Chapter 38, Subchapter H, to provide greater accuracy and transparency of health care costs for consumers.

Reduced Frequency Requirement for Small or Micro Businesses to Collect and Submit Data. Permitting small or micro business health benefit plan issuers to submit health care reimbursement data on a reduced frequency basis could similarly impair the quality and reliability of the data. Health care costs have been consistently rising in recent years, and this trend increases the importance of collecting data on an annual basis.

Because small or micro businesses are likely to be subject to the proposed amendment §21.4502(f) exemption based on not exceeding the 20,000 covered lives requirement, the small or micro businesses that would be subject to the reduced frequency reporting requirement would likely have claims data sufficient to affect the aggregate data for the region or regions in which the small or micro business operates. TDI has determined that absent that data, the quality of data available for purposes of comparison by both employers and patients would be less reliable during the periods when the reduced frequency reporting prevented submission of data. As a result, this regulatory alternative would not be consistent with the intent of the statute to improve the ability of consumers to make appropriate and cost effective health care decisions. TDI has determined that this regulatory alternative is not sufficiently protective of the economic welfare of the state or sufficiently consistent with the purpose of Insurance Code Chapter 38, Subchapter H, to provide greater accuracy and transparency of health care costs for consumers.

For these reasons, TDI has determined, in accordance with the Government Code §2006.002(c-1), that there are no regulatory alternatives to the proposed requirements in §§21.4501 - 21.4507 that will sufficiently protect the health, safety, environmental, and economic welfare of the state in a manner consistent with the objective and intent of Insurance Code Chapter 38, Subchapter H, as enacted by SB 1731 (80th Legislature).

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal. This proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and so does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI invites comments on the proposed rules. If you wish to comment on this proposal, your comments must be postmarked no later than 5:00 p.m., Central Time, on December 21, 2015. Please send comments by mail to Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or by email to *chiefclerk@tdi.texas.gov.* Please simultaneously submit an additional copy of the comments by mail to Rachel Bowden, Regulatory Initiatives, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or by email to *lhlcomments@tdi.texas.gov.*

A request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The amendments are proposed under Insurance Code §§38.351, 38.352, 1301.001, 843.002, 38.353, 38.354, 38.355, 38.357, 38.358, and 36.001.

Section 38.351 provides that the purpose of Subchapter H is to authorize TDI to collect data concerning health benefit plan reimbursement rates in a uniform format; and disseminate, on an aggregate basis for geographical regions in the state, information concerning health care reimbursement rates derived from the data.

Section 38.352 provides that in Subchapter H, health benefit plan means a preferred provider benefit plan as defined by §1301.001 or an evidence of coverage for a health care plan that provides basic health care services as defined by §843.002. Section 1301.001 provides at paragraph (9) that preferred provider benefit plan means a benefit plan in which an insurer provides, through its health insurance policy, for the payment of a level of coverage that is different from the basic level of coverage provided by the health insurance policy if the insured person uses a preferred provider. Section 1301.001 provides at paragraph (2) that health insurance policy means a group or individual insurance policy, certificate, or contract providing benefits for medical or surgical expenses incurred as a result of an accident or sickness. Section 843.002(9) provides that evidence of coverage means any certificate, agreement, or contract, including a blended contract, that is issued to an enrollee, states the coverage to which the enrollee is entitled.

Section 38.353(e) permits the commissioner to exclude a type of health benefit plan from the requirements of Subchapter H if the commissioner finds that data collected in relation to the health benefit plan would not be relevant to accomplishing the purposes of the subchapter.

Section 38.354 grants the commissioner authority to adopt rules as provided by Insurance Code Chapter 36, Subchapter A, to implement Subchapter H.

Section 38.355(a) requires each health benefit plan issuer to submit aggregate reimbursement rates by region paid by the health benefit plan issuer for health care services identified by TDI, in the form and manner and at the time required by TDI.

Section 38.355(b) requires that TDI by rule establish a standardized format for the submission of the data submitted under the section to permit comparison of health care reimbursement rates. The subsection also requires TDI, to the extent feasible, to develop the data submission requirements in a manner that allows collection of reimbursement rates as a dollar amount and not by comparison to other standard reimbursement rates.

Section 38.355(c) requires TDI to specify the period for which reimbursement rates must be filed.

Section 38.357 also provides that the published information may not reveal the name of any health care provider or health benefit plan issuer and authorizes TDI to make the aggregate health care reimbursement rate information available through TDI's Internet website.

Section 36.001 authorizes the commissioner to adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code Chapter 38, Subchapter H; and Chapters 843, 1301, 1501, 1507, 1551, 1575, 1579, and 1601.

§21.4501. Purpose.

The purpose of this subchapter is to:

(1) prescribe the data collection and submission requirements [~~and form~~] for the submission of data related to health care reimbursement rates by health benefit plan issuers;

(2) specify the definitions necessary to implement [~~the~~] Insurance Code Chapter 38, Subchapter H; and

(3) facilitate TDI's publication [~~the department's provision~~] of aggregate health care reimbursement rate information derived from the data collected under this subchapter [~~to the Department of State Health Services for publication~~].

§21.4502. Applicability.

(a) This subchapter applies to the issuer of an applicable [~~a group~~] health benefit plan as defined in §21.4503 of this subchapter and [~~(relating to Definitions), including,~~] as provided by [~~the~~] Insurance Code §38.353(a):

(1) an insurance company;

(2) a group hospital service corporation;

(3) a fraternal benefit society;

(4) a stipulated premium company;

(5) a reciprocal or interinsurance exchange; and

(6) a health maintenance organization (HMO).

(b) As provided in [~~In accordance with the~~] Insurance Code §38.353(b), and notwithstanding any provision in [~~the~~] Insurance Code Chapters 1551, 1575, 1579, or 1601 or any other law, this subchapter applies to:

(1) a basic coverage plan under [~~the~~] Insurance Code Chapter 1551;

(2) a basic plan under [~~the~~] Insurance Code Chapter 1575;

(3) a primary care coverage plan under [~~the~~] Insurance Code Chapter 1579; and

(4) basic coverage under [~~the~~] Insurance Code Chapter 1601.

(c) Under [~~Pursuant to the~~] Insurance Code §38.353(d), this subchapter does not apply to:

(1) standard health benefit plans provided under [~~the~~] Insurance Code Chapter 1507;

(2) children's health benefit plans provided under [~~the~~] Insurance Code Chapter 1502;

(3) health care benefits provided under a workers' compensation insurance policy;

(4) Medicaid managed care programs operated under [~~the~~] Government Code Chapter 533;

(5) Medicaid programs operated under [~~the~~] Human Resources Code Chapter 32; or

(6) the state child health plan operated under [~~the~~] Health and Safety Code Chapters 62 or 63.

(d) Notwithstanding subsection (c)(1) of this section, an applicable [~~a group~~] health benefit plan issuer is not prohibited from electively including data concerning reimbursement rates for standard health benefit plans provided under [~~the~~] Insurance Code Chapter 1507 in its submission of the report required in §21.4506 of this subchapter

[(relating to Submission of Report)] for purposes of administrative convenience. Data from all other plans identified in subsection (c) of this section must [shall] be excluded from the report.

(e) An applicable health benefit plan issuer is not prohibited from electively including data concerning reimbursement rates for self-insured health benefit plans administered by the issuer.

(f) An applicable health benefit plan issuer with fewer than 20,000 covered lives in comprehensive health coverage as reported on Part 1 of the National Association of Insurance Commissioners Supplemental Health Care Exhibit as of the end of the applicable reporting period is not required to submit a report under §21.4506.

(g) Under §38.353(e), this subchapter does not apply to:

(1) a Medicare supplemental policy as defined by §1882(g)(1), Social Security Act (42 U.S.C. §1395ss); or

(2) a Medicare Advantage plan offered under a contract with the federal Centers for Medicare and Medicaid Services.

§21.4503. Definitions.

The following words and terms when used in this subchapter [shall] have the following meanings unless the context clearly indicates otherwise.

(1) Allowed Amount--The amount that the applicable health benefit plan issuer allows as reimbursement for a health care service or group of services, including reimbursement amounts for which a patient is responsible due to deductibles, copayments, or coinsurance.

(2) Ambulatory Surgical Center--A facility licensed under Health and Safety Code Chapter 243.

(3) [(1)] Applicable Health Benefit Plan [Group health benefit plan]--As specified in [the] Insurance Code §38.352, a preferred provider benefit plan as defined by [the] Insurance Code §1301.001, including an exclusive provider benefit plan consistent with Insurance Code §1301.0042, or an evidence of coverage for a health care plan that provides basic health care services as defined by [the] Insurance Code §843.002. The term does not include an HMO [a health maintenance organization] plan providing routine dental or vision services as a single health care service plan or a preferred provider benefit plan providing routine vision services as a single health care service plan.

(4) Billed Amount--The amount charged for medical care or health care services on a claim submitted by a provider.

(5) Facility Claims--Any claim for health care services provided by a facility as defined in §3.3702 of this title.

(6) Freestanding emergency medical care facility--A facility, structurally separate and distinct from a hospital, that receives an individual and provides emergency care, as defined by Insurance Code §1301.155.

(7) Geographic Region--A three-digit ZIP code, representing the collection of ZIP codes that share the same first three digits. For purposes of data submitted under this subchapter, a geographic region must be located in Texas, in full or in part.

(8) Imaging Claims--Claims for radiological services furnished in a provider office, outpatient hospital, or other outpatient environment.

(9) Inpatient Procedure Claims--Claims for health care services furnished in a hospital, as defined by Insurance Code §1301.001, to a patient who is formally admitted.

(10) In-Network Claims--Claims filed with an applicable health benefit plan for medical or health care treatment, services, or supplies furnished by a provider that is contracted as an in-network or preferred provider.

(11) Medical Billing Codes--Standard code sets used to bill for specific medical services, including the Healthcare Common Procedure Coding System (HCPCS) and Diagnosis-Related Group (DRG) system established by the Centers for Medicare and Medicaid Services (CMS), the Current Procedural Terminology (CPT) code set maintained by the American Medical Association, and the International Classification of Diseases (ICD) code sets developed by the World Health Organization.

(12) Out-of-Network Claims--Claims filed with an applicable health benefit plan for medical or health care treatment, services, or supplies furnished by a provider that is not an in-network provider or preferred provider under the plan. Claims paid on an out-of-network basis are considered out-of-network regardless of whether the provider is reimbursed based on an agreed on rate.

(13) Outpatient Facility Procedure Claims--Claims for health care services furnished in an ambulatory surgical center or a hospital as defined by Insurance Code §1301.001 to a patient who is not formally admitted.

(14) Place-of-Service Code--A health care claim code where "place of service" refers to the type of entity where services were rendered, as specified by a two-digit place-of-service code on a professional health care claim, consistent with the ASC X12N standard for electronic transactions. Place-of-service codes are maintained by CMS.

(15) Primary Plan--As defined in §3.3503(17) of this title.

(16) Professional Claims--Any claim for health care services provided by a physician or health care provider that is not an institutional provider, as defined in Insurance Code §1301.001.

[(2) Institutional provider--An institution providing health care services, including but not limited to hospitals, other licensed inpatient centers, ambulatory surgical centers, skilled nursing centers, and residential treatment centers.]

[(3) Physician--Any individual licensed to practice medicine in this state and, with regard to a health maintenance organization, as defined in the Insurance Code §843.002(22).]

(17) [(4)] Provider--Any physician, practitioner, institutional provider, or other person or organization that furnishes health care services and that is licensed or otherwise authorized to practice in this state[, other than a physician].

(18) [(5)] Reporting period--The 12-month [six-month] interval of time for which a plan or health benefit plan issuer must submit data each year, beginning each January 1 and ending the following December 31 [June 30].

(19) TDI--Texas Department of Insurance.

§21.4504. Geographic Regions.

Issuers must report data collected under this subchapter according to the three-digit ZIP code in which the health care service was provided. Publication of health care reimbursement rate information derived from the data collected under this subchapter may be aggregated by TDI across broader geographic regions if necessary to ensure, consistent with Insurance Code §38.357, that the published information does not reveal the name of any health care provider or health benefit plan issuer. [For purposes of data submission pursuant to this subchapter, geographic regions for the reporting of claims are designated as follows:]

[~~(1) Region 1--Panhandle, including Amarillo and Lubbock, comprised of the following ZIP Coded areas: 79001, 79002, 79003, 79005, 79007, 79008, 79009, 79010, 79011, 79012, 79013, 79014, 79015, 79016, 79018, 79019, 79021, 79022, 79024, 79025, 79027, 79029, 79031, 79032, 79033, 79034, 79035, 79036, 79039, 79040, 79041, 79042, 79043, 79044, 79045, 79046, 79051, 79052, 79053, 79054, 79056, 79057, 79058, 79059, 79061, 79062, 79063, 79064, 79065, 79066, 79068, 79070, 79072, 79073, 79077, 79078, 79079, 79080, 79081, 79082, 79083, 79084, 79085, 79086, 79087, 79088, 79091, 79092, 79093, 79094, 79095, 79096, 79097, 79098, 79101, 79102, 79103, 79104, 79105, 79106, 79107, 79108, 79109, 79110, 79111, 79114, 79116, 79117, 79118, 79119, 79120, 79121, 79124, 79159, 79166, 79168, 79172, 79174, 79178, 79185, 79187, 79189, 79201, 79220, 79221, 79226, 79229, 79230, 79231, 79233, 79234, 79235, 79236, 79237, 79239, 79240, 79241, 79243, 79244, 79245, 79250, 79251, 79255, 79256, 79257, 79258, 79259, 79261, 79311, 79312, 79313, 79314, 79316, 79320, 79322, 79323, 79324, 79325, 79326, 79329, 79330, 79336, 79338, 79339, 79343, 79344, 79345, 79346, 79347, 79350, 79351, 79353, 79355, 79356, 79357, 79358, 79363, 79364, 79366, 79367, 79369, 79370, 79371, 79372, 79373, 79376, 79378, 79379, 79380, 79381, 79382, 79383, 79401, 79402, 79403, 79404, 79405, 79406, 79407, 79408, 79409, 79410, 79411, 79412, 79413, 79414, 79415, 79416, 79423, 79424, 79430, 79452, 79453, 79457, 79464, 79490, 79491, 79493, and 79499;]~~

[~~(2) Region 2--Northwest Texas, including Wichita Falls and Abilene, comprised of the following ZIP Coded areas: 76228, 76230, 76239, 76251, 76255, 76261, 76265, 76270, 76301, 76302, 76305, 76306, 76307, 76308, 76309, 76310, 76311, 76351, 76352, 76354, 76357, 76360, 76363, 76364, 76365, 76366, 76367, 76369, 76370, 76371, 76372, 76373, 76374, 76377, 76379, 76380, 76384, 76385, 76388, 76389, 76424, 76427, 76429, 76430, 76432, 76435, 76437, 76442, 76443, 76444, 76445, 76448, 76450, 76452, 76454, 76455, 76458, 76459, 76460, 76464, 76466, 76468, 76469, 76470, 76471, 76474, 76481, 76483, 76486, 76491, 76801, 76802, 76803, 76804, 76821, 76823, 76827, 76828, 76834, 76845, 76857, 76861, 76865, 76873, 76875, 76878, 76882, 76884, 76888, 76890, 79223, 79225, 79227, 79247, 79248, 79252, 79501, 79502, 79503, 79504, 79505, 79506, 79508, 79510, 79512, 79516, 79517, 79518, 79519, 79520, 79521, 79525, 79526, 79527, 79528, 79529, 79530, 79532, 79533, 79534, 79535, 79536, 79537, 79538, 79539, 79540, 79541, 79543, 79544, 79545, 79546, 79547, 79548, 79549, 79550, 79553, 79556, 79560, 79561, 79562, 79563, 79565, 79566, 79567, 79601, 79602, 79603, 79604, 79605, 79606, 79607, 79608, 79697, 79698, and 79699;]~~

[~~(3) Region 3--Metroplex, including Fort Worth and Dallas, comprised of the following ZIP Coded areas: 75001, 75002, 75006, 75007, 75009, 75010, 75011, 75013, 75014, 75015, 75016, 75017, 75019, 75020, 75021, 75022, 75023, 75024, 75025, 75026, 75027, 75028, 75029, 75030, 75032, 75034, 75035, 75037, 75038, 75039, 75040, 75041, 75042, 75043, 75044, 75045, 75046, 75047, 75048, 75049, 75050, 75051, 75052, 75053, 75054, 75056, 75057, 75058, 75060, 75061, 75062, 75063, 75065, 75067, 75068, 75069, 75070, 75071, 75074, 75075, 75076, 75077, 75078, 75080, 75081, 75082, 75083, 75085, 75086, 75087, 75088, 75089, 75090, 75091, 75092, 75093, 75094, 75097, 75098, 75099, 75101, 75102, 75104, 75105, 75106, 75109, 75110, 75114, 75115, 75116, 75118, 75119, 75120, 75121, 75123, 75125, 75126, 75132, 75134, 75135, 75137, 75138, 75141, 75142, 75143, 75144, 75146, 75147, 75149, 75150, 75151, 75152, 75153, 75154, 75155, 75157, 75158, 75159, 75160, 75161, 75164, 75165, 75166, 75167, 75168, 75172, 75173, 75180, 75181, 75182, 75185, 75187, 75189, 75201, 75202, 75203, 75204, 75205, 75206, 75207, 75208, 75209, 75210, 75211, 75212, 75214, 75215, 75216, 75217, 75218, 75219, 75220, 75221, 75222, 75223, 75224, 75225, 75226, 75227, 75228, 75229, 75230, 75231, 75232, 75233, 75234, 75235, 75236, 75237, 75238, 75240, 75241, 75242, 75243, 75244, 75245, 75246, 75247, 75248, 75249, 75250, 75251, 75252, 75253, 75254, 75258, 75260, 75261, 75262, 75263, 75264, 75265, 75266, 75267, 75270, 75275, 75277, 75283, 75284, 75285, 75286, 75287, 75301, 75303, 75310, 75312, 75313, 75315, 75320, 75323, 75326, 75334, 75336, 75339, 75340, 75342, 75343, 75344, 75353, 75354, 75355, 75356, 75357, 75358, 75359, 75360, 75363, 75364, 75367, 75368, 75370, 75371, 75372, 75373, 75374, 75376, 75378, 75379, 75380, 75381, 75382, 75386, 75387, 75388, 75389, 75390, 75391, 75392, 75393, 75394, 75395, 75396, 75397, 75398, 75401, 75402, 75403, 75404, 75407, 75409, 75413, 75414, 75418, 75422, 75423, 75424, 75428, 75429, 75438, 75439, 75442, 75443, 75446, 75447, 75449, 75452, 75453, 75454, 75458, 75459, 75474, 75475, 75476, 75479, 75485, 75488, 75489, 75490, 75491, 75492, 75495, 75496, 76001, 76002, 76003, 76004, 76005, 76006, 76007, 76008, 76009, 76010, 76011, 76012, 76013, 76014, 76015, 76016, 76017, 76018, 76019, 76020, 76021, 76022, 76023, 76028, 76031, 76033, 76034, 76035, 76036, 76039, 76040, 76041, 76043, 76044, 76048, 76049, 76050, 76051, 76052, 76053, 76054, 76058, 76059, 76060, 76061, 76063, 76064, 76065, 76066, 76067, 76068, 76070, 76071, 76073, 76077, 76078, 76082, 76084, 76085, 76086, 76087, 76088, 76092, 76093, 76094, 76095, 76096, 76097, 76098, 76099, 76101, 76102, 76103, 76104, 76105, 76106, 76107, 76108, 76109, 76110, 76111, 76112, 76113, 76114, 76115, 76116, 76117, 76118, 76119, 76120, 76121, 76122, 76123, 76124, 76126, 76127, 76129, 76130, 76131, 76132, 76133, 76134, 76135, 76136, 76137, 76140, 76147, 76148, 76150, 76155, 76161, 76162, 76163, 76164, 76166, 76177, 76179, 76180, 76181, 76182, 76185, 76191, 76192, 76193, 76195, 76196, 76197, 76198, 76199, 76201, 76202, 76203, 76204, 76205, 76206, 76207, 76208, 76209, 76210, 76225, 76226, 76227, 76233, 76234, 76238, 76240, 76241, 76244, 76245, 76246, 76247, 76248, 76249, 76250, 76252, 76253, 76258, 76259, 76262, 76263, 76264, 76266, 76267, 76268, 76271, 76272, 76273, 76299, 76401, 76402, 76426, 76431, 76433, 76439, 76446, 76449, 76453, 76461, 76462, 76463, 76465, 76467, 76472, 76475, 76476, 76484, 76485, 76487, 76490, 76623, 76626, 76639, 76641, 76651, 76670, 76679, and 76681;]~~

[~~(4) Region 4--Northeast Texas, including Tyler, comprised of the following ZIP Coded areas: 75103, 75117, 75124, 75127, 75140, 75148, 75156, 75163, 75169, 75410, 75411, 75412, 75415, 75416, 75417, 75420, 75421, 75425, 75426, 75431, 75432, 75433, 75434, 75435, 75436, 75437, 75440, 75441, 75444, 75448, 75450, 75451, 75455, 75456, 75457, 75460, 75461, 75462, 75468, 75469, 75470, 75471, 75472, 75473, 75477, 75478, 75480, 75481, 75482, 75483, 75486, 75487, 75493, 75494, 75497, 75501, 75503, 75504, 75505, 75507, 75550, 75551, 75554, 75555, 75556, 75558, 75559, 75560, 75561, 75562, 75563, 75564, 75565, 75566, 75567, 75568, 75569, 75570, 75571, 75572, 75573, 75574, 75599, 75601, 75602, 75603, 75604, 75605, 75606, 75607, 75608, 75615, 75630, 75631, 75633, 75636, 75637, 75638, 75639, 75640, 75641, 75642, 75643, 75644, 75645, 75647, 75650, 75651, 75652, 75653, 75654, 75656, 75657, 75658, 75659, 75660, 75661, 75662, 75663, 75666, 75667, 75668, 75669, 75670, 75671, 75672, 75680, 75681, 75682, 75683, 75684, 75685, 75686, 75687, 75688, 75689, 75691, 75692, 75693, 75694, 75701, 75702, 75703, 75704, 75705, 75706, 75707, 75708, 75709, 75710, 75711, 75712, 75713, 75750, 75751, 75752, 75754, 75755, 75756, 75757, 75758, 75759, 75762, 75763, 75764, 75765, 75766, 75770, 75771, 75772, 75773, 75778, 75779, 75780, 75782, 75783, 75784, 75785, 75789, 75790, 75791, 75792, 75797, 75798, 75799, 75801, 75802, 75803, 75832, 75839, 75853, 75861, 75880, 75882, 75884, 75886, 75925, and 75976;]~~

[~~(5) Region 5--Southeast Texas, including Beaumont, comprised of the following ZIP Coded areas:~~ 75760, 75788, 75834, 75835, 75844, 75845, 75847, 75849, 75851, 75856, 75858, 75862, 75865, 75901, 75902, 75903, 75904, 75915, 75926, 75928, 75929, 75930, 75931, 75932, 75933, 75934, 75935, 75936, 75937, 75938, 75939, 75941, 75942, 75943, 75944, 75946, 75948, 75949, 75951, 75954, 75956, 75958, 75959, 75960, 75961, 75962, 75963, 75964, 75965, 75966, 75968, 75969, 75972, 75973, 75974, 75975, 75977, 75978, 75979, 75980, 75990, 77326, 77331, 77332, 77335, 77350, 77351, 77359, 77360, 77364, 77371, 77374, 77376, 77399, 77519, 77585, 77611, 77612, 77613, 77614, 77615, 77616, 77619, 77622, 77624, 77625, 77626, 77627, 77629, 77630, 77631, 77632, 77639, 77640, 77641, 77642, 77643, 77651, 77655, 77656, 77657, 77659, 77660, 77662, 77663, 77664, 77670, 77701, 77702, 77703, 77704, 77705, 77706, 77707, 77708, 77709, 77710, 77713, 77720, 77725, and 77726;]

[~~(6) Region 6--Gulf Coast, including Houston and Huntsville, comprised of the following ZIP Coded areas:~~ 77001, 77002, 77003, 77004, 77005, 77006, 77007, 77008, 77009, 77010, 77011, 77012, 77013, 77014, 77015, 77016, 77017, 77018, 77019, 77020, 77021, 77022, 77023, 77024, 77025, 77026, 77027, 77028, 77029, 77030, 77031, 77032, 77033, 77034, 77035, 77036, 77037, 77038, 77039, 77040, 77041, 77042, 77043, 77044, 77045, 77046, 77047, 77048, 77049, 77050, 77051, 77052, 77053, 77054, 77055, 77056, 77057, 77058, 77059, 77060, 77061, 77062, 77063, 77064, 77065, 77066, 77067, 77068, 77069, 77070, 77071, 77072, 77073, 77074, 77075, 77076, 77077, 77078, 77079, 77080, 77081, 77082, 77083, 77084, 77085, 77086, 77087, 77088, 77089, 77090, 77091, 77092, 77093, 77094, 77095, 77096, 77097, 77098, 77099, 77201, 77202, 77203, 77204, 77205, 77206, 77207, 77208, 77209, 77210, 77212, 77213, 77215, 77216, 77217, 77218, 77219, 77220, 77221, 77222, 77223, 77224, 77225, 77226, 77227, 77228, 77229, 77230, 77231, 77233, 77234, 77235, 77236, 77237, 77238, 77240, 77241, 77242, 77243, 77244, 77245, 77246, 77247, 77248, 77249, 77250, 77251, 77252, 77253, 77254, 77255, 77256, 77257, 77258, 77259, 77260, 77261, 77262, 77263, 77265, 77266, 77267, 77268, 77269, 77270, 77271, 77272, 77273, 77274, 77275, 77276, 77277, 77278, 77279, 77280, 77282, 77284, 77285, 77286, 77287, 77288, 77289, 77290, 77291, 77292, 77293, 77294, 77296, 77297, 77298, 77299, 77301, 77302, 77303, 77304, 77305, 77306, 77315, 77316, 77318, 77320, 77325, 77327, 77328, 77333, 77334, 77336, 77337, 77338, 77339, 77340, 77341, 77342, 77343, 77344, 77345, 77346, 77347, 77348, 77349, 77353, 77354, 77355, 77356, 77357, 77358, 77362, 77365, 77367, 77368, 77369, 77372, 77373, 77375, 77377, 77378, 77379, 77380, 77381, 77382, 77383, 77384, 77385, 77386, 77387, 77388, 77389, 77391, 77393, 77396, 77401, 77402, 77404, 77406, 77410, 77411, 77412, 77413, 77414, 77415, 77417, 77418, 77419, 77420, 77422, 77423, 77428, 77429, 77430, 77431, 77432, 77433, 77434, 77435, 77436, 77437, 77440, 77441, 77442, 77443, 77444, 77445, 77446, 77447, 77448, 77449, 77450, 77451, 77452, 77453, 77454, 77455, 77456, 77457, 77458, 77459, 77460, 77461, 77463, 77464, 77465, 77466, 77467, 77468, 77469, 77470, 77471, 77473, 77474, 77475, 77476, 77477, 77478, 77479, 77480, 77481, 77482, 77483, 77484, 77485, 77486, 77487, 77488, 77489, 77491, 77492, 77493, 77494, 77496, 77497, 77501, 77502, 77503, 77504, 77505, 77506, 77507, 77508, 77510, 77511, 77512, 77514, 77515, 77516, 77517, 77518, 77520, 77521, 77522, 77530, 77531, 77532, 77533, 77534, 77535, 77536, 77538, 77539, 77541, 77542, 77545, 77546, 77547, 77549, 77550, 77551, 77552, 77553, 77554, 77555, 77560, 77561, 77562, 77563, 77564, 77565, 77566, 77568, 77571, 77572, 77573, 77574, 77575, 77577, 77578, 77580, 77581, 77582, 77583, 77584, 77586, 77587, 77588, 77590, 77591, 77592, 77597, 77598, 77617, 77623, 77650, 77661, 77665, 78931, 78933, 78934, 78935, 78943, 78944, 78950, 78951, and 78962;]

[~~(7) Region 7--Central Texas, including Austin and Waco, comprised of the following ZIP Coded areas:~~ 73301, 73344, 75831, 75833, 75838, 75840, 75846, 75848, 75850, 75852, 75855, 75859, 75860, 76055, 76436, 76457, 76501, 76502, 76503, 76504, 76505, 76508, 76511, 76513, 76518, 76519, 76520, 76522, 76523, 76524, 76525, 76526, 76527, 76528, 76530, 76531, 76533, 76534, 76537, 76538, 76539, 76540, 76541, 76542, 76543, 76544, 76545, 76546, 76547, 76548, 76549, 76550, 76554, 76556, 76557, 76558, 76559, 76561, 76564, 76565, 76566, 76567, 76569, 76570, 76571, 76573, 76574, 76577, 76578, 76579, 76596, 76597, 76598, 76599, 76621, 76622, 76624, 76627, 76628, 76629, 76630, 76631, 76632, 76633, 76634, 76635, 76636, 76637, 76638, 76640, 76642, 76643, 76644, 76645, 76648, 76649, 76650, 76652, 76653, 76654, 76655, 76656, 76657, 76660, 76661, 76664, 76665, 76666, 76667, 76671, 76673, 76676, 76678, 76680, 76682, 76684, 76685, 76686, 76687, 76689, 76690, 76691, 76692, 76693, 76701, 76702, 76703, 76704, 76705, 76706, 76707, 76708, 76710, 76711, 76712, 76714, 76715, 76716, 76795, 76797, 76798, 76799, 76824, 76831, 76832, 76844, 76853, 76864, 76870, 76871, 76877, 76880, 76885, 77363, 77426, 77801, 77802, 77803, 77805, 77806, 77807, 77808, 77830, 77831, 77833, 77834, 77835, 77836, 77837, 77838, 77840, 77841, 77842, 77843, 77844, 77845, 77850, 77852, 77853, 77855, 77856, 77857, 77859, 77861, 77862, 77863, 77864, 77865, 77866, 77867, 77868, 77869, 77870, 77871, 77872, 77873, 77875, 77876, 77878, 77879, 77880, 77881, 77882, 78602, 78605, 78606, 78607, 78608, 78609, 78610, 78611, 78612, 78613, 78615, 78616, 78617, 78619, 78620, 78621, 78622, 78626, 78627, 78628, 78630, 78633, 78634, 78635, 78636, 78639, 78640, 78641, 78642, 78643, 78644, 78645, 78646, 78648, 78650, 78651, 78652, 78653, 78654, 78655, 78656, 78657, 78659, 78660, 78661, 78662, 78663, 78664, 78665, 78666, 78667, 78669, 78672, 78673, 78674, 78676, 78680, 78681, 78682, 78683, 78691, 78701, 78702, 78703, 78704, 78705, 78708, 78709, 78710, 78711, 78712, 78713, 78714, 78715, 78716, 78717, 78718, 78719, 78720, 78721, 78722, 78723, 78724, 78725, 78726, 78727, 78728, 78729, 78730, 78731, 78732, 78733, 78734, 78735, 78736, 78737, 78738, 78739, 78741, 78742, 78744, 78745, 78746, 78747, 78748, 78749, 78750, 78751, 78752, 78753, 78754, 78755, 78756, 78757, 78758, 78759, 78760, 78761, 78762, 78763, 78764, 78765, 78766, 78767, 78768, 78769, 78772, 78773, 78774, 78778, 78779, 78780, 78781, 78783, 78785, 78786, 78788, 78789, 78798, 78799, 78932, 78938, 78940, 78941, 78942, 78945, 78946, 78947, 78948, 78949, 78952, 78953, 78954, 78956, 78957, 78960, 78961, and 78963;]

[~~(8) Region 8--South Central Texas, including San Antonio, comprised of the following ZIP Coded areas:~~ 76883, 77901, 77902, 77903, 77904, 77905, 77951, 77954, 77957, 77960, 77961, 77962, 77963, 77964, 77967, 77968, 77969, 77970, 77971, 77973, 77974, 77975, 77976, 77977, 77978, 77979, 77982, 77983, 77984, 77986, 77987, 77988, 77989, 77991, 77993, 77994, 77995, 78001, 78002, 78003, 78004, 78005, 78006, 78008, 78009, 78010, 78011, 78012, 78013, 78014, 78015, 78016, 78017, 78019, 78021, 78023, 78024, 78025, 78026, 78027, 78028, 78029, 78039, 78050, 78052, 78054, 78055, 78056, 78057, 78058, 78059, 78061, 78062, 78063, 78064, 78065, 78066, 78069, 78070, 78073, 78074, 78101, 78107, 78108, 78109, 78111, 78112, 78113, 78114, 78115, 78116, 78117, 78118, 78119, 78121, 78122, 78123, 78124, 78130, 78131, 78132, 78133, 78135, 78140, 78141, 78143, 78144, 78147, 78148, 78150, 78151, 78152, 78154, 78155, 78156, 78159, 78160, 78161, 78163, 78164, 78201, 78202, 78203, 78204, 78205, 78206, 78207, 78208, 78209, 78210, 78211, 78212, 78213, 78214, 78215, 78216, 78217, 78218, 78219, 78220, 78221, 78222, 78223, 78224, 78225, 78226, 78227, 78228, 78229, 78230, 78231, 78232, 78233, 78234, 78235, 78236, 78237, 78238, 78239, 78240, 78241, 78242, 78243, 78244, 78245, 78246, 78247, 78248, 78249, 78250, 78251, 78252, 78253, 78254, 78255, 78256, 78257, 78258, 78259, 78260, 78261, 78262,

~~78263, 78264, 78265, 78266, 78268, 78269, 78270, 78275, 78278, 78279, 78280, 78283, 78284, 78285, 78286, 78287, 78288, 78289, 78291, 78292, 78293, 78294, 78295, 78296, 78297, 78298, 78299, 78604, 78614, 78618, 78623, 78624, 78629, 78631, 78632, 78638, 78658, 78670, 78671, 78675, 78677, 78801, 78802, 78827, 78828, 78829, 78830, 78832, 78833, 78834, 78836, 78837, 78838, 78839, 78840, 78841, 78842, 78843, 78847, 78850, 78852, 78853, 78860, 78861, 78870, 78871, 78872, 78873, 78877, 78879, 78880, 78881, 78883, 78884, 78885, 78886, and 78959;]~~

~~[(9) Region 9--West Texas, including Midland, Odessa, and San Angelo comprised of the following ZIP Coded areas: 76820, 76825, 76836, 76837, 76841, 76842, 76848, 76849, 76852, 76854, 76855, 76856, 76858, 76859, 76862, 76866, 76869, 76872, 76874, 76886, 76887, 76901, 76902, 76903, 76904, 76905, 76906, 76908, 76909, 76930, 76932, 76933, 76934, 76935, 76936, 76937, 76939, 76940, 76941, 76943, 76945, 76949, 76950, 76951, 76953, 76955, 76957, 76958, 78851, 79331, 79342, 79359, 79360, 79377, 79511, 79701, 79702, 79703, 79704, 79705, 79706, 79707, 79708, 79710, 79711, 79712, 79713, 79714, 79718, 79719, 79720, 79721, 79730, 79731, 79733, 79735, 79738, 79739, 79740, 79741, 79742, 79743, 79744, 79745, 79748, 79749, 79752, 79754, 79755, 79756, 79758, 79759, 79760, 79761, 79762, 79763, 79764, 79765, 79766, 79768, 79769, 79770, 79772, 79776, 79777, 79778, 79780, 79781, 79782, 79783, 79785, 79786, 79788, 79789, and 79848;]~~

~~[(10) Region 10--Far West Texas, including El Paso, comprised of the following ZIP Coded areas: 79734, 79821, 79830, 79831, 79832, 79834, 79835, 79836, 79837, 79838, 79839, 79842, 79843, 79845, 79846, 79847, 79849, 79851, 79852, 79853, 79854, 79855, 79901, 79902, 79903, 79904, 79905, 79906, 79907, 79908, 79910, 79911, 79912, 79913, 79914, 79915, 79916, 79917, 79918, 79920, 79922, 79923, 79924, 79925, 79926, 79927, 79928, 79929, 79930, 79931, 79932, 79934, 79935, 79936, 79937, 79938, 79940, 79941, 79942, 79943, 79944, 79945, 79946, 79947, 79948, 79949, 79950, 79951, 79952, 79953, 79954, 79955, 79958, 79960, 79961, 79968, 79976, 79978, 79980, 79990, 79995, 79996, 79997, 79998, 79999, 88510, 88511, 88512, 88513, 88514, 88515, 88516, 88517, 88518, 88519, 88520, 88521, 88523, 88524, 88525, 88526, 88527, 88528, 88529, 88530, 88531, 88532, 88533, 88534, 88535, 88536, 88538, 88539, 88540, 88541, 88542, 88543, 88544, 88545, 88546, 88547, 88548, 88549, 88550, 88553, 88554, 88555, 88556, 88557, 88558, 88559, 88560, 88561, 88562, 88563, 88565, 88566, 88567, 88568, 88569, 88570, 88571, 88572, 88573, 88574, 88575, 88576, 88577, 88578, 88579, 88580, 88581, 88582, 88583, 88584, 88585, 88586, 88587, 88588, 88589, 88590, and 88595; and]~~

~~[(11) Region 11--Rio Grande Valley, including Brownsville, Corpus Christi, and Laredo, comprised of the following ZIP Coded areas: 77950, 77990, 78007, 78022, 78040, 78041, 78042, 78043, 78044, 78045, 78046, 78049, 78060, 78067, 78071, 78072, 78075, 78076, 78102, 78104, 78125, 78142, 78145, 78146, 78162, 78330, 78332, 78333, 78335, 78336, 78338, 78339, 78340, 78341, 78342, 78343, 78344, 78347, 78349, 78350, 78351, 78352, 78353, 78355, 78357, 78358, 78359, 78360, 78361, 78362, 78363, 78364, 78368, 78369, 78370, 78371, 78372, 78373, 78374, 78375, 78376, 78377, 78379, 78380, 78381, 78382, 78383, 78384, 78385, 78387, 78389, 78390, 78391, 78393, 78401, 78402, 78403, 78404, 78405, 78406, 78407, 78408, 78409, 78410, 78411, 78412, 78413, 78414, 78415, 78416, 78417, 78418, 78419, 78426, 78427, 78460, 78461, 78463, 78465, 78466, 78467, 78468, 78469, 78470, 78471, 78472, 78473, 78474, 78475, 78476, 78477, 78478, 78480, 78501, 78502, 78503, 78504, 78505, 78516, 78520, 78521, 78522, 78523, 78526, 78535, 78536, 78537, 78538, 78539, 78540, 78541, 78543, 78545, 78547, 78548, 78549, 78550, 78551, 78552, 78553, 78557, 78558, 78559, 78560, 78561, 78562, 78563, 78564, 78565, 78566, 78567, 78568, 78569, 78570, 78572, 78573, 78574, 78575, 78576, 78577, 78578, 78579, 78580, 78582, 78583, 78584, 78585, 78586, 78588, 78589, 78590, 78591, 78592, 78593, 78594, 78595, 78596, 78597, 78598, and 78599.]~~

§21.4505. Requirement to Collect Data.

(a) Each applicable [~~group~~] health benefit plan issuer and plan specified in §21.4502(a) and (b) of this subchapter must annually [~~(relating to Applicability) is required to~~] collect the data specified under [~~in Form No. LHL616 (Health Care Claims Reimbursement Rate Report) that is adopted by reference in~~] §21.4507 of this subchapter [~~(relating to Report Form)~~] and [~~is required to~~] prepare and file data as provided [~~in accordance with the requirements~~] in §21.4506 of this subchapter [~~(relating to Submission of Report)~~].

(b) Data elements and medical services specified under §21.4507(b) and (c) of this subchapter must be collected with respect to medical billing codes specified by TDI. The current set of medical billing codes will be available to issuers in a Microsoft Excel template on TDI's website at www.tdi.texas.gov/health/reimbursement.html. If there are changes in standard medical practice or medical billing codes that necessitate changing the identified billing codes for the services specified in §21.4507(c) of this subchapter, the billing codes on TDI's website will be updated and affected carriers notified, but in no event will these updates occur more often than annually or less than six months before the May 1st reporting deadline. [~~The six-month reporting period for the data requested in Form No. LHL616 (Health Care Claims Reimbursement Rate Report), including the claims and reimbursement rate data, is January 1 to June 30 of the applicable reporting year. The enrollment data required in Form No. LHL616 (Health Care Claims Reimbursement Rate Report) for private market plans and governmental employee plans is for the total number of lives covered under the plans as of both December 31 of the year prior to the applicable reporting period and June 30 of the applicable reporting year.~~]

~~[(c) Notwithstanding subsection (a) of this section, a health benefit plan issuer that is exempt from filing a full reimbursement report pursuant to §21.4506(e) of this subchapter is not required to collect the full data indicated in Form No. LHL616 (Health Care Claims Reimbursement Rate Report) and is required to instead collect enrollment data as necessary to comply with the applicable instructions specified in Form No. LHL616 (Health Care Claims Reimbursement Rate Report) to support an exemption.]~~

§21.4506. Submission of Report.

(a) Not later than May [~~September~~] 1 of each year, each plan and health benefit plan issuer identified in §21.4502(a) and (b) of this subchapter, or the plan or issuer's authorized agent, must [~~(relating to Applicability) is required to~~] submit to TDI [~~the department~~] the data required under [~~in Form No. LHL616 (Health Care Claims Reimbursement Rate Report) that is adopted by reference in~~] §21.4507 of this subchapter [~~(relating to Report Form)~~].

~~[(b) Notwithstanding the requirements of subsection (a) of this section, the first reporting date for the submission of data required by this subchapter is 60 days from effective date of rule for data regarding claims payments from January 1, 2010, to June 30, 2010.]~~

(b) [~~(c)~~] The data filed under [~~pursuant to~~] this section is required to be filed electronically as a Microsoft Excel form and emailed to TDI at ReimbursementRates@tdi.texas.gov, or uploaded by secure File Transfer Protocol (FTP). [~~in Excel format by:~~]

~~[(1) accessing a link designated on the department's website, http://www.tdi.state.tx.us/forms/form10accident.html, to obtain Form No. LHL616 (Health Care Claims Reimbursement Rate Report);]~~

[(2) completing the report in accordance with the form's instructions; and]

[(3) emailing the completed report to the department at ReimbursementRates@tdi.state.tx.us.]

(c) Issuers may meet the requirements of this subchapter by submitting data using the Microsoft Excel template available on TDI's website at www.tdi.texas.gov/health/reimbursement.html.

[(d) To access the report form, the user must indicate acceptance of the End User Agreement concerning use of Current Procedural Terminology. Acceptance is indicated by clicking the button labeled "Accept." The content of the End User Agreement is provided in Figure: 28 TAC §21.4506(f) of this subchapter.]

[(e) Notwithstanding subsections (a) - (d) of this section, a group health benefit plan issuer as specified in §21.4502(a) of this subchapter may submit to the department an exemption statement and the data required in Section B of Form No. LHL616 (Health Care Claims Reimbursement Rate Report) to support an exemption in place of the full report described in subsections (a) - (d) of this section. The group health benefit plan issuer asserting an exemption shall certify that the group health benefit plan issuer is exempt from the reporting requirement applicable to its health benefit plans for one of the following reasons:]

[(1) the total number of all covered lives in private market preferred provider benefit plans operating under the Insurance Code Chapter 1301 and offered by the health benefit plan issuer in Texas does not exceed 10,000 persons as of December 31 of the year preceding the report; or]

[(2) the total number of all covered lives in the private market health maintenance organization plans operating under the Insurance Code Chapter 843 and offered by the health benefit plan issuer does not exceed 10,000 persons as of December 31 of the year preceding the report.]

[(f) The content of the End User Agreement is as follows:] [Figure: 28 TAC §21.4506(f)]

§21.4507. Data Required [~~Report Form~~].

(a) Applicable health benefit plans must include the following information as a cover page to each report:

(1) reporting period;

(2) company or plan name;

(3) NAIC number, issued to the company by the National Association of Insurance Commissioners;

(4) TDI company number;

(5) contact information for the person designated to discuss the report with TDI staff, including name, telephone number, and email address;

(6) an indication of whether the report is for insurance business or HMO business, consistent with paragraph (d) of this section, or "NA" for reports limited to self-insured business;

(7) an indication of whether the report includes data on self-insured business, including data for certain governmental plans required to report under Insurance Code Chapter 38, Subchapter H; and

(8) a certification that the information provided is a full and true statement of the data required under this subchapter.

(b) Applicable health benefit plans must submit the following data, for in-network and out-of-network claims, for each geographic region, as defined by §21.4503, for each service identified in subsection (c) of this section, with data columns reported in the following order:

(1) network status of the claims data, using "IN" to indicate in-network claims and "OON" to indicate out-of-network claims;

(2) geographic region of the claims data, using the three-digit ZIP code to indicate the applicable region;

(3) total number of unique claim identifiers for all claim types;

(4) for inpatient procedure facility claims, the total number of discharges;

(5) total amount billed;

(6) total amount allowed;

(7) mean amount billed;

(8) mean amount allowed;

(9) median amount billed;

(10) median amount allowed;

(11) maximum amount billed;

(12) maximum amount allowed;

(13) minimum amount billed;

(14) minimum amount allowed;

(15) lower quartile amount billed, representing the 25th percentile of all amounts billed;

(16) lower quartile amount allowed, representing the 25th percentile of all amounts allowed;

(17) upper quartile amount billed, representing the 75th percentile of all amounts billed; and

(18) upper quartile amount allowed, representing the 75 percentile of all amounts allowed.

(c) Data elements identified in subsection (b) must be reported in the specified manner for each category of services in this subsection.

(1) Inpatient procedures. Data on inpatient procedure claims must be reported separately for facility claims and professional claims.

(A) Facility claims data must be grouped by discharge and only include claims that occurred in an inpatient hospital.

(B) Professional claims data must be reported separately for surgical claims, radiology claims, pathology claims, and anesthesia claims, as applicable, and only include claims for which the place of service code indicates inpatient hospital.

(C) Inpatient procedure claims data must be reported for the full cost of any claim, or the full cost of any discharge for facility claims, for the following services, using the medical billing codes specified by TDI consistent with §21.4705(b) of this subchapter:

(i) cesarean section delivery;

(ii) vaginal delivery;

(iii) hysterectomy;

(iv) hip replacement;

(v) knee replacement;

(vi) back surgery - laminectomy;

(vii) coronary artery bypass grafting;

(viii) inguinal hernia repair, unilateral;

(ix) inguinal hernia repair, bilateral;

(x) laparoscopic cholecystectomy; and

(xi) appendectomy.

(2) Outpatient Procedures. Data on outpatient facility procedure claims must be reported separately for facility claims and professional claims.

(A) Facility claims data must be reported separately for outpatient procedures that occurred in an outpatient hospital and those that occurred in an ambulatory surgical center or free-standing clinic.

(B) Professional claims data must only include claims for which the place-of-service code indicates outpatient hospital, ambulatory surgical center, or free-standing clinic and be reported separately for surgical claims, radiology claims, and anesthesia claims.

(C) Data on outpatient procedure facility claims must be reported for the full cost of any claim for the following services, using the medical billing codes specified by TDI, consistent with §21.4705(b) of this subchapter:

(i) tonsillectomy;

(ii) adenoidectomy;

(iii) tonsillectomy and adenoidectomy;

(iv) inguinal hernia repair, unilateral;

(v) inguinal hernia repair, bilateral;

(vi) laparoscopic cholecystectomy;

(vii) appendectomy;

(viii) myringotomy;

(ix) colonoscopy;

(x) upper GI endoscopy;

(xi) upper and lower GI endoscopy;

(xii) bunion repair;

(xiii) ACL repair;

(xiv) rotator cuff repair;

(xv) cardiac catheterization, left;

(xvi) cardiac catheterization, right;

(xvii) cardiac catheterization, left and right; and

(xviii) percutaneous transluminal coronary angioplasty.

(3) Emergency Services. Data on emergency room visits must be reported only for professional claims for which the place of service is an emergency room or outpatient hospital. An emergency room includes both a hospital emergency room and a freestanding emergency medical care facility. Data must be reported at the claim line level for the following types of emergency room visits, using the medical billing codes specified by TDI, consistent with §21.4705(b) of this subchapter:

(A) emergency department visit, self limited or minor problem;

(B) emergency department visit, low to moderately severe problem;

(C) emergency department visit, moderately severe problem;

(D) emergency department visit, problem of high severity; and

(E) emergency department visit, problem with significant threat to life or function.

(4) Imaging Services. Data on imaging services must be reported separately for facility claims and professional claims.

(A) Facility claims must include only claims that occurred in an outpatient hospital, and for which units of service equal one.

(B) Professional claims must be reported only for claims for which units of service equal one. Data must be reported separately for claims billed with CPT code modifiers for the professional component (26), technical component (TC), and a missing or null modifier. Data must be reported separately by place of service code:

(i) outpatient hospital;

(ii) office; and

(iii) all other place-of-service codes, excluding office, inpatient hospital, outpatient hospital, and emergency room.

(C) Data must be reported at the claim-line level for the following imaging services, using the medical billing codes specified by TDI, consistent with §21.4705(b) of this subchapter:

(i) CT abdomen and pelvis;

(ii) CT scan abdomen;

(iii) CT scan pelvis;

(iv) CT scan head/brain;

(v) CT scan mouth, jaw, and neck;

(vi) CT scan soft tissue neck;

(vii) CT scan chest;

(viii) CT scan lumbar lower spine;

(ix) CT scan lower extremity;

(x) MRI brain;

(xi) MRI head, orbit/face/neck;

(xii) MRI angiography head;

(xiii) MRI neck spine;

(xiv) MRI spine;

(xv) MRI lumbar spine;

(xvi) MRI lower limb;

(xvii) MRI upper limb, other than joint;

(xviii) MRI lower limb with joint;

(xix) MRI upper limb joint;

(xx) MRI abdomen;

(xxi) MRI one breast;

(xxii) MRI both breasts;

(xxiii) MRI pelvis;

(xxiv) mammogram, analog;

(xxv) mammogram with CAD; and

(xxvi) mammogram, digital.

(5) Pathology Services. Data on pathology services must be reported only for professional claims for which the place of service is an independent lab.

(A) Data must be reported at the claim-line level and averaged to reflect the cost per unit of service.

(B) Data must be reported for the following pathology services, using the medical billing codes consistent with §21.4705(b) of this subchapter:

(i) organ or disease panels;

(ii) evocative suppression testing;

(iii) urinalysis;

(iv) chemistry;

(v) hematology-coagulation;

(vi) immunology;

(vii) microbiology;

(viii) anatomic pathology;

(ix) screening cytopathology; and

(x) complete blood count.

(6) Office Visits. Data on office visits must be reported only for professional claims for which the place of service is an office or rural health clinic lab.

(A) For data elements listed in subparagraph (B) of this paragraph, data must be reported at the claim-line level and averaged to reflect the cost per unit of service.

(B) Data must be reported for the following types of office visits, using the medical billing codes consistent with §21.4705(b) of this subchapter:

(i) office or other outpatient visit with a new patient;

(ii) office or other outpatient visit with an established patient;

(iii) office consultation;

(iv) preventive medicine evaluation and management, new patient, by age group;

(v) preventive medicine evaluation and management, established patient, by age group;

(vi) annual gynecological exam, new patient;

(vii) annual gynecological exam, established patient;

(viii) screening pelvic and breast exam;

(ix) screening pap smear; and

(x) cytopathology for pap smear.

(C) Data must be reported for well-woman exams so that all costs associated with a claim are reported with respect to the medical billing consistent with §21.4705(b) of this subchapter.

(d) Data submission requirements. In reporting data required under this section, issuers must:

(1) report data elements according to medical billing codes specified by §21.4705(b) of this subchapter;

(2) separately report data for insurance and HMO and exclude any HMO claims paid through a capitation agreement;

(3) separately report data for in-network and out-of-network claims; and

(4) filter claims data to include only:

(A) claims incurred during the 12-month reporting period. For the 2015 reporting period, limit data for inpatient procedure claims and outpatient procedure claims to claims incurred prior to October 1, 2015, or the date on which the issuer transitioned billing systems to use ICD-10 procedure codes.

(B) claims for which adjudication is final; exclude pending or denied claims;

(C) claims for insureds in commercial fully insured plans or self-funded employer group plans;

(D) claims for which the issuer is the primary plan responsible for payment; exclude claims for which issuer is the secondary plan; and

(E) claims with an allowed amount greater than zero.

~~[Form No. LHL616 (Health Care Claims Reimbursement Rate Report) is adopted by reference. The form:]~~

~~[(1) contains instructions for completion of the report and requires submission of information and data concerning group health benefit plan issuer identification and enrollment information;]~~

~~[(2) requires the submission of both contracted and out-of-network claim information for general professional services; pathology services; anesthesiology services; radiology services; neonatology services; outpatient professional and institutional provider services; and inpatient institutional provider services; and]~~

~~[(3) is available at http://www.tdi.state.tx.us/forms/form10accident.html.]~~

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

Filed with the Office of the Secretary of State on November 5, 2015.

TRD-201504780
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 20, 2015
For further information, please call: (512) 676-6584

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 293. WATER DISTRICTS

SUBCHAPTER C. SPECIAL REQUIREMENTS FOR GROUNDWATER CONSERVATION DISTRICTS

30 TAC §§293.17, 293.20, 293.22, 293.23

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§293.17, 293.20, 293.22, and 293.23.

Background and Summary of the Factual Basis for the Proposed Rules

In 2015, the 84th Texas Legislature passed House Bill (HB or bill) 2767, relating to the powers, duties, and administration of groundwater conservation districts (GCDs) and amending provisions that authorize fees. HB 2767 makes non-substantive, conforming, or clarification language changes throughout Texas Water Code (TWC), Chapter 36. Some of the changes made by HB 2767 will not affect the agency's rules. However, the commission has chosen to include all of the changes made by the bill in the Background and Summary of the Factual Basis for the Proposed Rule section of this preamble to provide context to the changes that HB 2767 does require.

Specifically, HB 2767 adds a definition to TWC, §36.001, for "operating permit" to mean any type of GCD permit for operation of or production from a water well including a permit to drill or complete a water well if a district does not require a separate permit for those actions. The bill adds a provision in TWC, §36.058, for GCD directors to be subject to Local Government Code, Chapter 176, relating to disclosure of conflicts. HB 2767 strikes language in TWC, §36.061, related to audit reporting standards and adds language in TWC, §36.153, consistent with TWC, Chapter 49, audit requirements and reporting standards. The bill amends TWC, §36.157(a), to add that a county or counties where the district is to be located may pay all costs and expenses incurred in the creation and organization of the district. HB 2767 also amends TWC, §36.251, by providing that only a GCD, an applicant, and parties to a contested case may participate in an appeal that was the subject of the contested case. The commission does not have rules governing the items listed in this paragraph; therefore, there are no changes for the commission to make to its rules to accommodate these amendments made by the bill.

Additionally, HB 2767 repeals TWC, §36.1082, Petition for Inquiry, and moves the repealed language to amended TWC, §36.3011, Commission Inquiry and Action Regarding District Duties. This move also included amendments to the newly placed language. The commission has rules governing these items; therefore, the commission will amend the rule language in 30 TAC Chapter 293, Water Districts, to ensure the TWC citations included in the chapter are current and conform language to the TWC as amended.

HB 2767 closely follows bill language that was developed by the Texas Water Conservation Association over the interim. HB 2767 was authored by Representative Jim Keffer and was sponsored by Senator Charles Perry and became effective June 10, 2015.

Section by Section Discussion

§293.17, Purpose

The commission proposes to amend §293.17(3) by adding the word "and" to introduce the §293.17(4) provision. The commission proposes to amend §293.17(4) by inserting language to note that HB 2767 moved the petitions for inquiry to TWC, Chapter 36, Subchapter I. Additionally, the commission proposes to delete §293.17(5) because the rule language is not needed for commission inquiry or action regarding GCD duties. These changes are required by the amendments HB 2767 made to TWC, §36.3011.

§293.20, Records and Reporting

The commission proposes to amend §293.20(d) by changing the TWC citation from §36.1082 to §36.3011. HB 2767 repealed TWC, §36.1082, Petition for Inquiry, and moved the repealed language to amended TWC, §36.3011, Commission Inquiry and Action Regarding District Duties. This change will bring the citations within the agency's rules into agreement with the TWC.

§293.22, Noncompliance Review and Commission Action

The commission proposes to amend §293.22(a)(5) and (e) by changing the TWC citation from §36.1082 to §36.3011. HB 2767 repealed TWC, §36.1082, Petition for Inquiry, and moved the repealed language to amended TWC, §36.3011, Commission Inquiry and Action Regarding District Duties. These changes will bring the citations within the agency's rules into agreement with the TWC.

§293.23, Petition Requesting Commission Inquiry

The commission proposes to amend §293.23(a) by changing the definition of "affected person" to match the definition of "affected person" as defined in TWC, §36.3011, added by the bill. Additionally, the commission proposes to remove the citation to TWC, §36.1082 that was repealed. These changes will bring the agency's rules into agreement with the TWC.

The commission proposes to amend §293.23(b) by editing paragraphs (4) - (7) to include conforming changes made to TWC, §36.3011(b).

The commission propose to amend §293.23(g)(4) by changing the TWC citation from §36.1082 to §36.3011. HB 2767 repealed TWC, §36.1082, Petition for Inquiry, and moved the repealed language to amended TWC, §36.3011, Commission Inquiry and Action Regarding District Duties. This change will bring the citations within the agency's rules into agreement with the TWC.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of the administration or enforcement of the proposed rules.

The proposed rules implement provisions of HB 2767. HB 2767 amended Chapter 36 of the TWC with non-substantive, conforming, or language clarification changes. The bill repealed TWC, §36.1082, Petition for Inquiry, and moved the repealed language without substantial change to TWC, §36.3011, Commission Inquiry and Action Regarding District Duties. The commission has existing rules that govern the amended TWC, §36.3011, and the implementation of HB 2767 does not require any new rules or agency policies for amended TWC, §36.3011. The proposed rules only update the definition of "affected person" and correct citations within Chapter 293 to bring the definition and citations into agreement with the changes made by HB 2767.

The proposed rules update the definition of "affected person" but the proposed definition is not substantially different from the current definition and does not significantly change the current

definition. The changes in the proposed rules are administrative in nature and are not expected to result in fiscal implications for the agency or for any other unit of state or local government.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated from the changes seen in the proposed rules would be compliance with state law. The agency currently investigates inquiries from the public concerning GCD management activities and would continue to do so under the proposed rules.

No fiscal implications are anticipated for businesses or individuals as a result of the administration or enforcement of the proposed rules. TCEQ currently investigates public inquiries concerning GCD management activities. The proposed rules will allow TCEQ to continue oversight authority that is already in place. The proposed rules only update the definition of "affected person" and correct citations within Chapter 293 to bring the definition and citations into agreement with the changes made by HB 2767. These changes are not expected to result in any fiscal implications for businesses or individuals.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. The proposed rulemaking would have the same effect on a small business as it does on a large business and would allow TCEQ to continue oversight authority that is already in place to investigate inquiries from the public concerning GCD management activities. The proposed rules make non-substantive changes to the definition of "affected person" and correct citations within Chapter 293 to bring the definition and citations into agreement with HB 2767. No fiscal implications are anticipated for small or micro-businesses due the administration or enforcement of the proposed rules.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rulemaking is necessary in order to comply with state law and does not adversely affect a small or micro-businesses in a material way for the first five years that the proposed rulemaking is in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking does not meet the statutory definition of a "major environmental rule" because the specific intent of the rule is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to implement legislative changes enacted by HB 2767. HB 2767 repeals TWC, §36.1082, Petition for Inquiry, and moves the repealed language to amended TWC, §36.3011, Commission Inquiry and Action Regarding District Duties.

Further, the rulemaking does not meet the statutory definition of a "major environmental rule" because the proposed amendments will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The cost of complying with the proposed rulemaking is not expected to be significant with respect to the economy as a whole or a sector of the economy; therefore, the proposed rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

Furthermore, the proposed rulemaking does not meet the statutory definition of a "major environmental rule" because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking does not meet the four applicability requirements, because the proposed amendments: 1) do not exceed a standard set by federal law; 2) do not exceed an express requirement of state law; 3) do not exceed a requirement of federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program as no such federal delegation agreement exists with regard to the proposed rules; and 4) are not an adoption of a rule solely under the general powers of the commission as the proposed rules are required by HB 2767.

The commission invites public comment of the Draft Regulatory Impact Analysis Determination. Written comments may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed an assessment of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission proposed this rulemaking for the specific purpose of implementing legislation enacted by the 84th Texas Legislature in 2015. The commission's analysis revealed that the rulemaking would achieve consistency with TWC, §36.3011, as amended by HB 2767. The proposed rulemaking would amend the rule sections to ensure the TWC citations included in Chapter 293 are current and conform to the language as amended by HB 2767.

A "taking" under Texas Government Code, Chapter 2007, means a governmental action that affects private real property in a manner that requires compensation to the owner under the United

States or Texas Constitution, or a governmental action that affects real private property in a manner that restricts or limits the owner's right to the property and reduces the market value of affected real property by at least 25%. Because no taking of private real property would occur by ensuring the TWC citations included within Chapter 293 are current and conform to the language as amended, the commission has determined that promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rules because the proposed rulemaking neither relates to, nor has any impact on, the use or enjoyment of private real property, and there would be no reduction in real property value as a result of the rulemaking. Therefore, the proposed rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposed rulemaking is identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is administrative in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 15, 2015, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Sherry Davis, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www1.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2015-025-293-OW. The comment period closes on January 4, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Mike Chadwick, Water Availability Division, Groundwater Planning and Assessment Team, at (512) 239-4517 or Kathy Ramirez, Water Availability Division, (512) 239-6757.

Statutory Authority

These amendments are proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC §5.105, which establishes the commission's authority to set policy by rule; and TWC, §36.3011, which allows an affected person to file a petition for inquiry.

The proposed amendments implement House Bill 2767.

§293.17. Purpose.

The purpose of this subchapter is to provide the processes and requirements related to Texas Water Code (TWC), Chapter 36, Groundwater Conservation Districts. The use of the term "district" in this subchapter means groundwater conservation district (GCD) unless the context clearly indicates otherwise. This subchapter provides:

(1) procedures for commission certification of landowner petitions for the creation of GCDs filed under TWC, §36.013;

(2) procedures for the commission, on its own motion, to create GCDs under TWC, §36.0151, in priority groundwater management areas (PGMAs) designated after September 1, 2001;

(3) procedures for the commission, on its own motion, to create GCDs in PGMAs designated before September 1, 2001; and

(4) procedures for commission review of GCD management plan noncompliance and petitions for inquiry under TWC, Chapter 36, Subchapter I.[~~; and~~]

[~~(5) procedures for GCD joint-planning peer review within a groundwater management area.~~]

§293.20. Records and Reporting.

(a) Each groundwater conservation district created according to Texas Water Code (TWC), Chapter 36 shall comply with the statute. Districts created by special acts of the Texas Legislature must comply with all statutory requirements contained in the special act and with the provisions of TWC, Chapter 36 that do not conflict with the special act.

(b) Districts are required to submit to the executive director the following documents:

(1) a certified copy of the legislative act creating the district within 60 days after the district is created;

(2) a certified copy of the order of the district's board of directors canvassing the confirmation election and declaring the confirmation election results according to TWC, §36.017(e);

(3) a certified copy of the order of the district's board of directors changing the boundaries of the district, a metes and bounds description of the boundary change, and a detailed map showing the boundary change within 60 days after the date of any boundary change; and

(4) a written notification to the executive director of the name, mailing address, and date of expiration of term of office of any elected or appointed director within 30 days after the date of the election or appointment according to TWC, §36.054(e).

(c) A district is required under TWC, §36.1071 to adopt a management plan and adopt rules that are necessary to implement the management plan. In accordance with TWC, §36.1072, the management

plan must be adopted by the district and submitted to the executive administrator of the Texas Water Development Board within three years of either the effective date of creation of the district or the date the district was confirmed by election if an election was required. The management plan is subject to approval by the executive administrator of the Texas Water Development Board or the Texas Water Development Board upon appeal. After approval, each district must readopt and resubmit the management plan to the executive administrator of the Texas Water Development Board at least once every five years.

(1) Within 60 days of approval of its management plan, a district must send a copy of its approved management plan to the regional water planning group or groups for the planning region or regions in which the district is located. The district shall maintain records of the correspondence.

(2) Within 60 days of approval of its management plan, a district must forward a copy of its approved management plan to the other districts wholly or partially located in the same groundwater management area or areas. The district shall maintain records of the correspondence.

(d) Each district shall provide copies of district documentation or records upon request of the executive director to determine compliance with statutory provisions related to noncompliance review under TWC, Chapter 36, Subchapter I and §293.22 of this title (relating to Noncompliance Review and Commission Action), and TWC, §36.3011 [~~§36.1082~~], and §293.23 of this title (relating to Petition Requesting Commission Inquiry).

(e) Each district shall provide copies of district documentation or records upon request of the executive director to determine compliance with statutory provisions.

§293.22. Noncompliance Review and Commission Action.

(a) Purpose. The purpose of this section is to set out procedures for commission review of groundwater conservation district (GCD) noncompliance with requirements of Texas Water Code (TWC), Chapter 36. This section provides a process for a GCD to achieve compliance, enforcement procedures if compliance is not achieved, and commission enforcement actions. Management plan noncompliance review and commission action are required under TWC as the result of a GCD's failure to:

(1) adopt a management plan in accordance with TWC, §36.1071 and §36.1072 and submit the plan for review and approval to the executive administrator of the Texas Water Development Board within three years of either the effective date of creation of the district or the date the district was confirmed by election if an election was required;

(2) receive within 60 days of submittal, written approval from the executive administrator of the Texas Water Development Board for a management plan, an amended management plan, or a readopted management plan as provided by TWC, §36.1072 and §36.1073;

(3) readopt and resubmit the management plan for review and approval to the executive administrator of the Texas Water Development Board at least once every five years after the date of the most recent management plan approval;

(4) be actively engaged and operational in achieving the objectives of its groundwater management plan based on the State Auditor's Office review of the district's performance as provided by TWC, §36.302; or

(5) adopt, implement, or enforce district management plans and rules to protect groundwater as evidenced in a report prepared by a commission-appointed review panel as provided by TWC, §36.3011 [~~§36.1082~~] and §293.23 of this title (relating to Petition Requesting Commission Inquiry).

(b) Noncompliance review. The executive director shall investigate the facts and circumstances of any violations of this chapter or order of the commission under this chapter or provisions of TWC, §§36.301, 36.3011, and 36.302.

(1) The executive director shall notify the district and may attempt to resolve any noncompliance set out in subsection (a) of this section with the district.

(2) After review of the facts and identification of noncompliance issues, the executive director shall submit a compliance agreement to the district. The compliance agreement must clearly identify the noncompliance issue(s) and provide district actions and a schedule for the district to achieve compliance.

(3) The district shall be provided a specified time frame not to exceed 60 days after the date of receipt of the compliance agreement, to consider and agree to the terms of the compliance agreement and schedule. If the district wants to amend the compliance agreement schedule, it must contact the executive director within 30 days of receipt of the compliance agreement so that the compliance agreement can be considered and signed by the district and its board of directors within the 60-day time frame.

(4) If the district agrees with and signs the compliance agreement, the executive director shall monitor the district's implementation of the agreement terms. If the district accomplishes compliance within the agreed schedule, the executive director shall notify the district that it has achieved compliance and is no longer under review by the commission.

(c) Executive director recommendations filed with commission. If unable to resolve the violation under subsection (b) of this section, or if the facts of the noncompliance issue warrant, the executive director shall follow the procedures for commission enforcement actions set out in Chapter 70, Subchapter C of this title (relating to Enforcement Referrals to SOAH). The executive director shall prepare and file a written report with the commission and the district and include any actions the executive director believes the commission should take under TWC, §36.303 and subsection (e) of this section.

(d) Notice and hearing. The commission shall provide notice in accordance with §70.104 of this title (relating to Notice of Executive Director's Preliminary Report). If the executive director's report recommends dissolution of a district or of a board of directors or referral of the matter to the Office of the Attorney General requesting the placement of a district into receivership, the commission shall hold an enforcement hearing.

(1) The commission shall publish notice once each week for two consecutive weeks before the day of the hearing to receive evidence on the dissolution of a district or of a board of directors or referral of the matter to the Office of the Attorney General requesting the placement of a district into receivership in a newspaper of general circulation in the area in which the district is located with the first publication being 30 days before the day of hearing.

(2) The commission shall give notice of the hearing by first-class mail addressed to the directors of the district according to the last record on file with the executive director.

(e) Commission enforcement actions. In accordance with TWC, [~~§§36.1082,~~] §§36.301, 36.3011, and 36.302, the commission, after notice and hearing, shall take all actions it considers appropriate, including:

(1) issuing an order requiring the district to take certain actions or to refrain from taking certain actions;

(2) dissolving the board in accordance with TWC, §36.305 and §36.307 and calling an election for the purpose of electing a new board;

(3) requesting the attorney general to bring suit for the appointment of a receiver to collect the assets and carry on the business of the GCD in accordance with TWC, §36.3035;

(4) dissolving the district in accordance with TWC, §§36.304, 36.305, and 36.308; or

(5) recommending to the legislature in the commission's report concerning priority groundwater management areas required by TWC, §35.018, actions the commission deems necessary to accomplish comprehensive management in the district.

(f) District dissolution. TWC, §§36.304 - 36.310 authorize the commission to dissolve any district as defined in TWC, §36.001(1), that has no outstanding bonded indebtedness.

(1) A district that is composed of territory entirely within one county may be dissolved even if it has outstanding indebtedness that matures after the year in which the district is dissolved. If a district is in more than one county, and has outstanding bond indebtedness, it may not be dissolved.

(2) Upon the dissolution of a district by the commission, all assets of the district shall be sold at public auction and the proceeds given to the county if it is a single county district. If it is a multi-county district, the proceeds shall be divided with the counties in proportion to the surface land area in each county served by the district.

(3) The commission shall file a certified copy of an order for the dissolution of a GCD in the deed records of the county or counties in which the district is located. If the district was created by a special Act of the legislature, the commission shall file a certified copy of the order of dissolution with the Secretary of State.

(g) Dissolution of board. If the commission enters an order to dissolve the board of a GCD, the commission shall notify the county commissioners court of each county which contains territory in the district. The commission shall appoint five temporary directors under TWC, §36.016, that shall serve until an election for a new board can be held under TWC, §36.017. However, district confirmation shall not be required for continued existence of the district and shall not be an issue in the election.

(h) Receivership. If the commission enters an order to request the attorney general to bring suit for the appointment of a receiver to collect the assets and carry on the business of a district, the executive director shall forward the order and the request to the attorney general and provide any relevant commission correspondence. The executive director shall assist the attorney general as requested and shall continue to track the status of attorney general actions.

(i) Appeals. Appeals from any commission order issued under this section shall be filed and heard in the district court of any of the counties in which the district is located.

§293.23. Petition Requesting Commission Inquiry.

(a) Purpose and applicability. This section provides procedures for commission review of a petition filed by an affected person requesting an inquiry into a groundwater conservation district's (GCD) activities regarding management planning or rules; commission appointment of the review panel; review panel actions; and executive director actions under Texas Water Code (TWC), [~~§36.1082 and~~] §36.3011. An affected person means, with respect to a management area: [~~An affected person is a landowner, water well owner, or other user of groundwater in the groundwater management area (GMA), a GCD in or adjacent to the GMA, a regional water planning group with a water management strategy in the GMA, a person who holds or is applying for a permit from a GCD in the GMA, or a person who has groundwater rights in the GMA. Such petitions must be filed following the procedures prescribed by this section.~~]

(1) an owner of land in the management area;

(2) a GCD or subsidence district in or adjacent to the management area;

(3) a regional water planning group with a water management strategy in the management area;

(4) a person who holds or is applying for a permit from a district in the management area; or

(5) a person with a legally defined interest in groundwater in the management area.

(b) Petition requesting commission inquiry. An affected person may file a petition with the commission to request an inquiry for any of the reasons in paragraphs (1) - (9) of this subsection:

(1) a district fails to submit its management plan to the executive administrator of the Texas Water Development Board;

(2) a district fails to participate in the joint planning process under TWC, §36.108;

(3) a district fails to adopt rules;

(4) a district fails to adopt the applicable desired future conditions adopted by the management area at a joint meeting [~~by resolution~~];

(5) a district fails to update its management plan before the second anniversary of the adoption of desired future conditions by [~~for~~] the management area;

(6) a district fails to update its rules to implement the applicable desired future conditions before the first anniversary of the date the district updated its management plan with the adopted [~~applicable~~] desired future conditions;

(7) the rules adopted by a district are not designed to achieve the adopted [~~applicable~~] desired future conditions [~~adopted for the management area during the joint planning process~~];

(8) the groundwater in the management area is not adequately protected by the rules adopted by a district; or

(9) the groundwater in the management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules.

(c) The petition must include supporting documentation for each of the individual reasons the affected person identifies in subsection (b) of this section demonstrating that a commission inquiry is necessary.

(d) The petition must include a certified statement from the affected person that describes why the petitioner believes that a commission inquiry is necessary.

(e) The petitioner shall provide a copy of the filed petition to all GCDs within and adjacent to the GMA within five days of the date the petition was filed. Within 21 days of filing the petition, the petitioner shall file with the chief clerk of the commission an affidavit or other evidence, such as a return receipt for certified mail service, that a copy

of the petition was mailed to each GCD within and adjacent to the petitioner's GMA.

(f) Any GCD that is within and adjacent to the GMA that is the subject matter of the petition may file a response to the validity of the specific claims raised in the petition. The responding entity shall file its response with the chief clerk of the commission within 35 days of the date that the petition is filed, and shall also on the same day serve the petitioner, the executive director, the public interest counsel, and any other GCD in and adjacent to the GMA. The chief clerk shall accept a response that is filed after the deadline but shall not process the late documents. The chief clerk shall place the late documents in the file for the petition.

(g) Commission review of petition. The commission shall review the petition and any timely filed responses, no sooner than 35 days, but not later than 90 days after the date the petition was filed. The commission may dismiss the petition if it finds that the evidence required by subsections (c) and (d) of this section is not sufficient to show that the items contained in subsection (b)(1) - (9) of this section exist. If the commission does not dismiss the petition, it shall appoint a review panel to prepare a written report.

(1) The review panel shall consist of five members.

(A) The commission shall appoint one of the members to serve as the chairman of the review panel. The chairman shall schedule and preside over the proceedings and meetings of the panel.

(B) A director or general manager of a district that is not an affected person as defined by subsection (a) of this section and is not the subject of the petition may be appointed to the review panel.

(C) The commission may not appoint more than two members of the review panel from any one district.

(2) The commission shall appoint a disinterested person to serve as a nonvoting recording secretary for the review panel. The recording secretary may be an employee of the commission. The recording secretary shall record and document the proceedings of the review panel.

(3) The commission may direct the review panel to conduct public hearings at a location in the groundwater management area to take evidence on the petition.

(4) In accordance with TWC, §36.3011 [~~§36.1082~~], the review panel shall review the petition and any evidence relevant to the petition and consider and adopt a report to the commission.

(h) Review panel report. The review panel's report must be submitted to the executive director no later than 120 days after the review panel was appointed by the commission. The review panel's report shall include:

(1) if a public hearing is conducted, a summary of evidence taken on the petition;

(2) a list of findings and recommended actions appropriate for the commission to take under TWC, §36.303 and §293.22(e) of this title (relating to Noncompliance Review and Commission Action) and the reasons it finds those commission actions appropriate; and

(3) any other information the panel considers appropriate for commission consideration.

(i) Commission action on review panel report. The executive director or the commission shall take action to implement any or all of the review panel's recommendations if a cause contained in subsection (b)(1) - (9) of this section applies. The executive director shall, no later than 45 days after the date the review panel report was received, recommend to the commission or initiate any action considered necessary under TWC, §36.303 and §293.22(b) - (h) 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.

Filed with the Office of the Secretary of State on November 6, 2015.

TRD-201504785
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 20, 2015
For further information, please call: (512) 239-2141

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER D. OCCUPATION TAX ON SULPHUR PRODUCERS

34 TAC §3.41

The Comptroller of Public Accounts proposes amendments to §3.41, concerning definition and due dates. The amendments are proposed to implement the provisions of Senate Bill 757, 84th Legislature, 2015 which repealed Tax Code, Chapter 203, effective September 1, 2015.

New subsection (a) indicates the applicability of the rule prior to September 1, 2015.

New subsection (b) clarifies the filing period for the last required report. Subsequent subsections are relettered accordingly.

Relettered subsection (d) is amended to reflect that the due dates for the reports and tax payments only apply to sulphur produced prior to September 1, 2015.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by conforming the rule to current state statutes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe,

adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendments implement the repeal of Tax Code, Chapter 203 (Sulphur Production Tax).

§3.41. Definition and Due Dates.

(a) This section applies to sulphur produced prior to September 1, 2015.

(b) The last report required under Tax Code, Chapter 203 covers sulphur produced in July and August of 2015 and is due November 2, 2015.

(c) [~~(a)~~] A sulphur producer, as pertains to the occupation tax on sulphur production, shall mean the person, firm, association, or corporation who is responsible for the physical operation of the facility where the sulphur is produced.

(d) [~~(b)~~] For sulphur produced prior to September 1, 2015, the [~~The~~] due date for the reports and tax payments of all sulphur producers, [~~currently~~] required by former [~~the~~] Tax Code, §203.052, to be filed on the first day of each January, April, July, and October, is extended to the last day of each January, April, July, and October, respectively.

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

Filed with the Office of the Secretary of State on November 9, 2015.

TRD-201504834
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: December 20, 2015
For further information, please call: (512) 475-0387

SUBCHAPTER S. MOTOR FUEL TAX

34 TAC §3.430

The Comptroller of Public Accounts proposes amendments to §3.430, concerning records required, information required. The section is amended to correct formatting and implement the provisions of House Bill 1905, 84th Legislature, 2015 which repealed the tax on liquefied gas effective September 1, 2015.

Subsection (a)(11)(B), (C)(ii), and (D) are amended to remove references to liquefied gas. Paragraph (17) regarding a licensed liquefied gas dealer is deleted, all subsequent paragraphs are renumbered, and existing cross-references to those renumbered paragraphs are revised in paragraph (11)(E) and paragraph (13). Renumbered paragraph (18)(D) is amended to delete the reference to a liquefied gas prepaid decal.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by conforming the rule to current state statutes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendments implement the repeal of Tax Code, Chapter 162, Subchapter D (Motor Fuel Taxes).

§3.430. Records Required, Information Required.

(a) Records Required.

(1) A supplier and permissive supplier, as those terms are defined in Tax Code, §162.001, shall keep the shipping documents that relate to each receipt for distribution of gasoline or diesel fuel and shall keep records that show:

(A) the number of gallons of all gasoline or diesel fuel inventories on hand at the first of each month;

(B) the number of gallons of all gasoline or diesel fuel refined, compounded, or blended;

(C) the number of gallons of all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) the number of gallons of all gasoline or diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use;

(E) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident; and

(F) an itemized statement showing by load the number of gallons of all gasoline or diesel fuel:

(i) received during the preceding calendar month for export and the location of the loading;

(ii) exported from this state by destination state or country; and

(iii) imported during the preceding calendar month by state or country of origin.

(2) A supplier or permissive supplier when acting as a distributor, importer, exporter, blender, aviation fuel dealer, or motor fuel transporter is subject to the record keeping requirements of that license.

(3) A distributor of gasoline or diesel fuel, as that term is defined in Tax Code, §162.001, shall keep the shipping documents that relate to each receipt for distribution of gasoline or diesel fuel and shall keep records that show:

(A) the number of gallons of all gasoline or diesel fuel inventories on hand at the first of each month;

(B) the number of gallons of all gasoline or diesel fuel refined, compounded, or blended;

(C) the number of gallons of all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) the number of gallons of all gasoline or diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use;

(E) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident;

(F) an itemized statement showing by load the number of gallons of all gasoline or diesel fuel:

(i) received during the preceding calendar month for export and the location of the loading;

(ii) exported from this state by destination state or country; and

(iii) imported during the preceding calendar month by state or country of origin; and

(G) proof of payment of tax to the destination state in a form acceptable to the comptroller for gasoline or diesel fuel exported from this state under Tax Code, §162.204(a)(4)(A).

(4) A distributor, when acting as an importer, exporter, blender, aviation fuel dealer, or motor fuel transporter, is subject to the record keeping requirements of that license.

(5) An importer, as that term is defined in Tax Code, §162.001, shall keep the shipping documents that relate to each receipt for distribution of gasoline or diesel fuel and shall keep records that show:

(A) the number of gallons of all gasoline or diesel fuel inventories on hand at the first of each month;

(B) the number of gallons of all gasoline or diesel fuel refined, compounded, or blended;

(C) the number of gallons of all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) the number of gallons of all gasoline or diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use;

(E) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident; and

(F) an itemized statement showing by load the number of gallons of all gasoline or diesel fuel:

(i) received during the preceding calendar month for export and the location of the loading;

(ii) exported from this state by destination state or country; and

(iii) imported during the preceding calendar month by state or country of origin.

(6) An importer, when acting as an exporter or blender, is subject to the record keeping requirements of that license.

(7) An exporter, as that term is defined in Tax Code, §162.001, shall keep the shipping documents that relate to each receipt for distribution and shall keep records that show:

(A) the number of gallons of all gasoline or diesel fuel inventories on hand at the first of each month;

(B) the number of gallons of all gasoline or diesel fuel refined, compounded, or blended;

(C) the number of gallons of all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) the number of gallons of all gasoline or diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale or use;

(E) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident;

(F) an itemized statement showing by load the number of gallons of all gasoline or diesel fuel:

(i) received during the preceding calendar month for export and the location of the loading; and

(ii) exported from this state by destination state or country; and

(G) proof of payment of tax to the destination state or proof that the transaction was exempt in the destination state, in a form acceptable to the comptroller if an exemption under Tax Code, §162.104(a)(4)(B) and §162.204(a)(4)(B) is claimed.

(8) A blender, as that term is defined in Tax Code, §162.001, shall keep the shipping documents that relate to each receipt for distribution and shall keep records that show the number of gallons of:

(A) all gasoline or diesel fuel inventories on hand at the first of each month;

(B) all gasoline or diesel fuel refined, compounded, or blended;

(C) all blending agents blended with gasoline or diesel fuel;

(D) all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(E) the number of gallons of all gasoline or diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale or use; and

(F) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident.

(9) A terminal operator, as that term is defined in Tax Code, §162.001, shall keep records that show:

(A) the number of gallons of all gasoline or diesel fuel inventories on hand at the first of each month, including the name and license number of each owner and the amount of gasoline or diesel fuel held for each owner;

(B) the number of gallons of all gasoline or diesel fuel received, showing the name of the seller and the date of each purchase or receipt;

(C) the number of gallons of all gasoline or diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use;

(D) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident; and

(E) the number of gallons on an itemized statement showing by load the number of gallons of all gasoline or diesel fuel:

(i) received during the preceding calendar month for export and the location of the loading;

(ii) exported from this state by destination state or country; and

(iii) imported during the preceding calendar month by state or country of origin.

(10) A dealer, as that term is defined in Tax Code, §162.001, shall keep the shipping documents that relate to each receipt for distribution and shall keep records that show the number of gallons of:

(A) gasoline or diesel fuel inventories on hand at the first of each month;

(B) all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(C) all gasoline or diesel fuel sold or used, showing the date of the sale or use; and

(D) all gasoline or diesel fuel lost by fire, theft, or accident.

(11) An interstate trucker, as that term is defined in Tax Code, §162.001, shall keep records on an individual-vehicle basis of:

(A) the total miles traveled, evidenced by odometer or hubodometer readings, everywhere by all vehicles traveling to or from this state, and the total miles traveled, evidenced by odometer or hubodometer readings, in this state, including for each individual vehicle:

(i) date of each trip (starting and ending);

(ii) trip origin and destination;

(iii) beginning and ending odometer or hubodometer reading of each trip;

(iv) odometer or hubodometer reading entering Texas, and odometer or hubodometer reading leaving Texas; and

(v) power unit number or vehicle identification number or license plate number;

(B) the total quantity purchased and delivered at retail of gasoline, diesel fuel, [~~liquefied gas,~~] compressed natural gas, or liquefied natural gas everywhere by all vehicles traveling to or from this state, and the total quantity of gasoline, diesel fuel, [~~liquefied gas,~~] compressed natural gas, or liquefied natural gas purchased and delivered into the fuel supply tanks of motor vehicles in this state, including for each individual vehicle:

(i) date of purchase;

(ii) name and address of seller;

(iii) number of gallons or liters purchased;

(iv) type of fuel purchased;

(v) price per gallon or liter; and

(vi) unit number of the vehicle into which the fuel was placed;

(C) in the case of an interstate trucker that uses a distribution log to record removals from the person's own bulk storage into a motor vehicle, the person's stamped or preprinted name and address, and for each individual delivery:

(i) date of delivery;

(ii) number of gallons or liters of gasoline or[~~,~~] diesel fuel[~~, or liquefied gas~~] delivered;

(iii) diesel gallon equivalent or gasoline gallon equivalent of compressed natural gas or liquefied natural gas delivered;

(iv) license plate or vehicle identification number or power unit number;

(v) odometer or hubodometer reading; and

(vi) signature of the user;

(D) in the case of an interstate trucker that maintains bulk fuel storage, the number of gallons of gasoline or[~~,~~] diesel fuel[~~, or liquefied gas~~] beginning and ending inventories, all invoices of bulk purchases, and records to substantiate all fuel withdrawals from storage; and

(E) in the case of an interstate trucker who delivers compressed natural gas or liquefied natural gas into the fuel supply tank of a motor vehicle, must hold a compressed natural gas and liquefied natural gas dealer license and is subject to the record keeping requirements pursuant to paragraph (17) [~~(18)~~] of this subsection.

(12) An aviation fuel dealer, as that term is defined in Tax Code, §162.001, shall keep the shipping document that relates to each receipt for distribution and shall keep records that show:

(A) the number of gallons of all gasoline or diesel fuel inventories on hand at the first of each month;

(B) the number of gallons of all gasoline or diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(C) the number of gallons of all gasoline or diesel fuel lost by fire, theft, or accident; and

(D) the number of gallons of all gasoline or diesel fuel sold or used in aircraft or aircraft servicing equipment, including for each individual aircraft or aircraft equipment:

(i) the name of the purchaser or user of gasoline or diesel fuel;

(ii) the date of the sale or use of gasoline or diesel fuel; and

(iii) the registration or "N" number of the airplane or a description or number of the aircraft or a description or number of the aircraft servicing equipment in which gasoline or diesel fuel is used.

(13) An aviation fuel dealer who delivers compressed natural gas or liquefied natural gas must hold a compressed natural gas and liquefied natural gas dealer license and is subject to the record keeping requirements pursuant to paragraph (17) [~~(18)~~] of this subsection.

(14) A dyed diesel fuel bonded user, as that term is defined in Tax Code, §162.001, shall keep a record showing the number of gallons of:

(A) dyed and undyed diesel fuel inventories on hand at the first of each month;

(B) dyed and undyed diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(C) dyed and undyed diesel fuel delivered into the fuel supply tanks of motor vehicles;

(D) dyed and undyed diesel fuel used in off-highway equipment or for other nonhighway purposes and described in Tax Code, §162.229(c); and

(E) dyed and undyed diesel fuel lost by fire, theft, or accident.

(15) To satisfy the record keeping requirements described in paragraph (14) of this subsection, a dyed diesel fuel bonded user who owns or operates an oil or gas well drilling rig that satisfies the requirements of subparagraph (B) of this paragraph may keep purchase and delivery records and supply tank inventory records that document the amount of dyed diesel fuel used by the drilling rig.

(A) The owner, operator, or contractor of the oil or gas well drilling rig may use this method if:

(i) one or more stationary engines are component parts of the drilling rig;

(ii) each stationary engine is connected directly to a bulk fuel storage tank by way of a fuel supply line; and

(iii) the bulk fuel storage tank is locked or otherwise secured so that dyed diesel can only be withdrawn from the bulk fuel storage tank:

(I) through the fuel supply lines to the stationary engines;

(II) to move the bulk fuel storage tank to another location, or;

(III) for emergencies such as a fire or leaking tank.

(B) The drilling rig includes engines required to power equipment that is a component part of the oil or gas drilling rig. These component parts are the rotary table, drawworks, shakers, mud pumps, dog house, and derrick lighting, whether referred to with these common industry names or an alternative name for these parts. A drilling rig or component part does not include auxiliary off-highway equipment used at the well site, including, but not limited to, a backhoe, a tractor, a forklift, a front-end loader, a bulldozer, a bobcat, a portable lighting unit, an all-terrain vehicle, or a generator used to power an off-site office, bunkhouse, or a guard shack.

(16) A motor fuel transporter, as that term is defined in Tax Code, §162.001, shall keep a complete and separate record of each intrastate and interstate transportation of gasoline or diesel fuel, showing:

(A) the date of transportation;

(B) the name of the consignor and consignee;

(C) the means of transportation;

(D) the quantity and kind of gasoline or diesel fuel transported;

(E) the points of origin and destination;

(F) the import verification number if that number is required by §3.441 of this title (relating to Documentation of Imports and Exports, Import Verification Numbers, Export Sales, and Diversion Numbers); and

(G) full data concerning the diversion of shipments, including the number of gallons diverted from interstate to intrastate and intrastate to interstate commerce, and the diversion number if that number is required by §3.441 of this title.

[~~(17) A licensed liquefied gas dealer, as that term is described in Tax Code, §162.304, shall keep records of all liquefied gas sold or delivered for taxable purposes.~~]

(17) [~~(18)~~] A person who holds a compressed natural gas and liquefied natural gas dealer's license, as that term is defined in Tax Code, §162.357, shall keep records that show:

(A) all compressed natural gas and liquefied natural gas inventories on hand at the first of each month;

(B) the amount of natural gas compressed and liquefied by the dealer;

(C) all compressed natural gas and liquefied natural gas purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) the number of taxable diesel gallon equivalents or gasoline gallon equivalents delivered into the fuel supply tank of motor vehicles, showing the date of the delivery;

(E) the number of diesel gallon equivalents or gasoline gallon equivalents delivered into the fuel supply tank of motor vehicles or other equipment exempt from tax under Tax Code, §162.356, including:

(i) the name of the owner or operator of the motor vehicle;

(ii) the type or description of the equipment; and

(iii) date of delivery;

(F) all compressed natural gas or liquefied natural gas lost by fire, theft, or accident; and

(G) in the case of a dealer located on an Indian reservation recognized by the federal government of the United States, the number of diesel gallon equivalents or gasoline gallon equivalents delivered tax-free into the fuel supply tank of motor vehicles operated by an exempt tribal entity or tribal member. The dealer must maintain a copy of the invoice showing:

(i) the name of the purchaser;

(ii) the date of the sale;

(iii) the number of gallons sold;

(iv) the type of fuel sold; and

(v) a written statement that no state tax was collected or that it was a tax-free sale.

(18) [~~(19)~~] A metropolitan rapid transit authority created under Transportation Code, Chapter 451, or a regional transportation authority created under Transportation Code, Chapter 452, that operates a refueling facility accessible only by vehicles used to provide transportation services and that elects to prepay the tax on compressed natural gas and liquefied natural gas used by those transit vehicles shall keep records that show:

(A) all compressed natural gas and liquefied natural gas inventories on hand at the first of each month;

(B) the amount of natural gas compressed and liquefied by the authority;

(C) all compressed natural gas and liquefied natural gas purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) the number of diesel gallon equivalents or gasoline gallon equivalents delivered into the fuel supply tank of vehicles [~~which display a current liquefied gas prepaid tax decal, showing the date of the delivery~~];

(E) the number of diesel gallon equivalents or gasoline gallon equivalents delivered into the fuel supply tank of other equipment exempt from tax under Tax Code, §162.356, including:

(i) the type or description of the equipment; and

(ii) date of delivery; and

(F) all compressed natural gas or liquefied natural gas lost by fire, theft, or accident.

(19) [~~(20)~~] A metropolitan rapid transit authority created under Transportation Code, Chapter 451, or a regional transportation authority created under Transportation Code, Chapter 452, that delivers compressed natural gas or liquefied natural gas into the fuel supply tank of a non-transit vehicle or a motor vehicle not operated by the metropolitan rapid transit authority or regional transportation authority must hold a compressed natural gas and liquefied natural gas dealer license and is subject to the record keeping requirements of that license.

(20) [~~(21)~~] A person who does not hold a license under Tax Code, Chapter 162, who files a claim for refund of gasoline, diesel fuel, compressed natural gas, or liquefied natural gas taxes shall keep the shipping document that relates to each receipt of gasoline, diesel fuel, compressed natural gas, or liquefied natural gas, the original invoice issued by the seller, and the appropriate records described in this section to support gallons of gasoline, diesel fuel, compressed natural gas, or liquefied natural gas removed from the person's own bulk storage, and for each individual delivery:

(A) the date of delivery;

(B) the number of gallons of gasoline or diesel fuel delivered or the diesel gallon equivalents or gasoline gallon equivalents delivered;

(C) the signature of user; and

(D) the type or description of off-highway equipment into which the gasoline or diesel fuel was delivered or the type of motor vehicle identified by state highway license plate number, vehicle identification number, or unit number assigned to the motor vehicle and odometer or hubmeter reading.

(b) The comptroller may require selective schedules from a supplier, permissive supplier, distributor, importer, exporter, blender, terminal operator, motor fuel transporter, dealer, aviation fuel dealer, dyed diesel fuel bonded user, and interstate trucker for any purchase, sale, or delivery of gasoline or diesel fuel if the schedules are consistent with the requirements of Tax Code, Chapter 162.

(c) The records required by this section must be kept for at least four years and must be open to inspection at all times by the comptroller and the attorney general.

(d) A person who claims a deduction or exclusion authorized by law must keep records that substantiate the claim. When records regarding the amount and applicability of any deductions or exclusions from the motor fuels tax are insufficient, the comptroller may estimate deductions or exclusions based on any records available or may disallow all deductions and exclusions. No exclusions for loss by fire, accident, or theft will be allowed unless accompanied by fire department, environmental regulatory agency, or police department reports that verify the fire, accident, or theft.

(e) Failure to keep adequate records. If any person who is required by this section to keep accurate records of receipts, purchases, sales, distributions, or uses of gasoline or diesel fuel, fails to keep those records, the comptroller may estimate the tax liability based on any information available.

(f) The comptroller may suspend any permit or license the comptroller has issued to a person if the person fails to keep the records required by this section.

(g) Records may be written, kept on microfilm, stored on data processing equipment, or may be in any form that the comptroller can readily examine.

(h) Information required.

(1) The comptroller may require any person who must hold a license or registration under Tax Code, Chapter 162, to furnish information that the comptroller needs to:

(A) identify any person who applies for a motor fuels license, uses a signed statement to purchase tax-free dyed diesel fuel, or transports motor fuel in Texas by truck, railcar, or vessel, or any person who is required to file a return;

(B) determine the amount of bond, if any, required to commence or continue business;

(C) determine possible successor liability; and

(D) determine the amount of tax the person is required to remit, if any.

(2) The information required may include, but is not limited to, the following:

(A) name of the actual owner of the business;

(B) name of each partner in a partnership;

(C) names of officers and directors of corporations and other organizations;

(D) all trade names under which the owner operates;

(E) mailing address and actual locations of all business outlets;

(F) license numbers, title numbers, and other identification of business vehicles;

(G) identification numbers assigned by other governmental agencies, including social security numbers, federal employers identification numbers, and driver's license numbers;

(H) names of gasoline and diesel fuel suppliers or distributors with whom the person will transact business; and

(I) names and last known addresses of former owners of the business.

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

Filed with the Office of the Secretary of State on November 9, 2015.

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Lita Gonzalez
General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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34 TAC §3.436

The Comptroller of Public Accounts proposes amendments to §3.436, concerning liquefied gas dealer licenses. The amendments are proposed to implement the provisions of House Bill 1905, 84th Legislature, 2015 which repealed the tax on liquefied gas effective September 1, 2015.

Subsection (a) is amended to indicate the rule applies to periods on or after January 1, 2004 and prior to September 1, 2015 and provides the date of the repeal of the tax on liquefied gas.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by conforming the rule to current state statutes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendments implement the repeal of Tax Code Chapter 162, Subchapter D (Motor Fuel Taxes).

§3.436. Liquefied Gas Dealer Licenses [~~(Tax Code, §§162.302, 162.304, 162.306, and 162.310)~~].

(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004, and prior to September 1, 2015. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L. Effective September 1, 2015, the tax on liquefied gas is repealed. The words and terms used in this section have the same meaning as those defined in Tax Code Chapter 162.

(b) Dealer's license required.

(1) A person making a taxable delivery of liquefied gas described in subsection (c) of this section must secure a liquefied gas dealer license.

(2) A licensed liquefied gas interstate trucker or a liquefied gas interstate trucker registered under a multistate tax agreement (International Fuel Tax Agreement) that maintains bulk storage of liquefied gas must secure a separate liquefied gas dealer's license.

(c) Taxable delivery of liquefied gas. A taxable delivery of liquefied gas includes:

(1) liquefied gas delivered into the fuel supply tank of a motor vehicle described in the definition of "interstate trucker" in Tax Code, §162.001, and that displays a current multistate tax agreement (International Fuel Tax Agreement) decal or operated by a licensed as an liquefied gas interstate trucker;

(2) liquefied gas delivered into the fuel supply tank of a motor vehicle licensed in a state other than Texas; or

(3) liquefied gas delivered into the fuel supply tank of a motor vehicle licensed in the state of Texas and that displays a current motor vehicle dealer's liquefied gas tax decal.

(d) Non-taxable delivery of liquefied gas. Liquefied gas delivered into the fuel supply tank of a motor vehicle licensed in Texas and that displays a current liquefied gas tax decal is not a taxable delivery.

(e) Report. Taxable deliveries of liquefied gas must be reported on the Texas Liquefied Gas Dealer Report. Taxable gallons are also reported on the interstate trucker or multistate tax agreement (International Fuel Tax Agreement) reports as taxable purchases.

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

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Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: December 20, 2015
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34 TAC §3.447

The Comptroller of Public Accounts proposes amendments to §3.447, concerning reports, due dates, bonding requirements, and qualifications for annual filers. The section is amended to implement the provisions of House Bill 1905, 84th Legislature, 2015, which repealed the tax on liquefied gas and to memorialize current reporting procedures for compressed natural gas and liquefied natural gas dealers.

Subsection (a)(3) is deleted to remove the references to liquefied gas dealers and liquefied gas interstate truckers to reflect the repeal of the tax on liquefied gas. All subsequent paragraphs are renumbered.

Subsection (b)(3) is amended to replace references to liquefied gas with compressed natural gas and liquefied natural gas to reflect the repeal of the tax on liquefied gas and insert "Texas" in front of interstate trucker to clarify this subsection only addresses Texas interstate truckers that travel exclusively between Texas and Mexico.

The title to subsection (d) is changed to better reflect the content of the subsection.

Subsection (e) is amended to replace references to liquefied gas with compressed natural gas and liquefied natural gas to reflect the repeal of the tax on liquefied gas and to identify the specific gases to which the subsection applies. This amendment memorializes current reporting procedures.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by conforming the rule to current state statutes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The section implements Tax Code, Chapter 162 (Motor Fuel Taxes).

§3.447. Reports, Due Dates, Bonding Requirements, and Qualifications for Annual Filers.

(a) Reports required.

(1) A dyed diesel fuel bonded user with an average quarterly tax liability of $600 or less has the option to file reports each quarter or each year. After a dyed diesel fuel bonded user has selected a method of reporting, the method cannot be changed without permission from the comptroller unless the dyed diesel fuel bonded user's tax liability for a year exceeds $2,400, or the comptroller deems change otherwise necessary. If the dyed diesel fuel bonded user's diesel fuel tax liability during a year exceeds $2,400, the dyed diesel fuel bonded user must file a report for all previous quarters of that year. Future reports must be filed on a quarterly basis.

(2) Dyed diesel fuel bonded users with an average quarterly tax liability of more than $600 must file quarterly reports.

[~~(3) Liquefied gas dealers and liquefied gas interstate truckers must file annual reports.~~]

(3) [~~(4)~~] Compressed natural gas and liquefied natural gas dealers with an average quarterly tax liability of $600 or less have the option to file reports each quarter or each year. After a compressed natural gas and liquefied natural gas dealer has selected a method of reporting, the dealer cannot change the method without permission from the comptroller, unless the compressed natural gas and liquefied natural gas dealer's tax liability for a year exceeds $2,400. The comptroller may require a compressed natural gas and liquefied natural gas dealer to change its method of reporting when the comptroller deems change otherwise necessary. If the compressed natural gas and liquefied natural gas dealer's tax liability during a year exceeds $2,400, the compressed natural gas and liquefied natural gas dealer must file a report for all previous quarters of that year. Future reports must be filed on a quarterly basis.

(4) [~~(5)~~] The report and payment of tax on sales of compressed natural gas and liquefied natural gas made from September 1, 2013, through December 31, 2013, are to be included with the 2013 annual return.

(b) Due dates.

(1) The due date for all annual reports is January 25th.

(2) The due date for all quarterly reports is the 25th day of the month following the calendar quarter end date.

(3) If the report is filed by the due date, a request for refund of taxes paid on compressed natural gas and liquefied natural gas used out-of-state by a Texas [~~a liquefied gas~~] interstate trucker must be made on the annual report.

(c) Bonding requirements. Dyed diesel fuel bonded users that report annually will be required to post security in the amount of two times the annual tax liability on taxable uses of diesel fuel. The minimum bond is $10,000. The bond may be waived if it is determined that the bond is not necessary to protect the state.

(d) Changes in filing status [~~Qualifications~~].

(1) A license holder that is going out of business or whose license is cancelled must file a report on or before the 25th day of the month following the calendar quarter in which business ceased.

(2) Dyed diesel fuel bonded users will be notified each March of any filing status change based on the dyed diesel fuel bonded user's previous-year reports.

(e) Compressed natural gas/liquefied natural [~~Liquefied~~] gas reports. Licensed compressed natural gas/liquefied natural [~~liquefied~~] gas dealers who are also compressed natural gas/liquefied natural [~~liquefied~~] gas interstate truckers registered under a multistate tax agreement must file their compressed natural gas/liquefied natural [~~liquefied~~] gas dealer report with the same frequency that they report their interstate trucker operations under the multistate tax agreement.

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

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Lita Gonzalez
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Comptroller of Public Accounts
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34 TAC §3.448

The Comptroller of Public Accounts proposes amendments to §3.448, concerning transportation services for Texas public school districts. The section is amended to implement the provisions of House Bill 1905, 84th Legislature, 2015 which repealed the tax on liquefied gas effective September 1, 2015.

Subsection (a) is amended to remove references to liquefied gas, paragraph (3) is deleted to reflect the repeal of the tax on liquefied gas, and paragraphs (1) and (2) are amended to make conforming changes.

Subsection (b) is amended to remove references to liquefied gas and to liquefied gas dealers.

Subsection (c)(1), (2), (3), and (4) are amended to remove references to liquefied gas.

Subsection (e) is amended to incorporate the reporting requirements for a commercial transportation company currently listed in paragraph (1). Paragraph (1) is deleted. Paragraph (2) that references liquefied gas and liquefied gas tax decals for vehicles used to provide transportation services under a cancelled/completed contract is deleted.

Subsection (g)(2) is amended to remove references to liquefied gas. Subsection (g) is amended to delete paragraph (3) and related attached graphic to reflect the repeal of the tax on liquefied gas.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no

significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by conforming the rule to current state statutes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendments implement the repeal of Tax Code, Chapter 162, Subchapter D (Motor Fuel Taxes).

§3.448. Transportation Services for Texas Public School Districts.

(a) Affidavit. To purchase gasoline or diesel fuel less the state tax [~~and not prepay the liquefied gas tax for vehicles equipped to use liquefied gas~~], a commercial transportation company that provides transportation services to a public school district in Texas must submit to the comptroller an affidavit stating:

(1) that the company has contracted with a specific public school district to provide transportation services (other than charter trips) for the school district; and

(2) that motor fuel purchased tax-free will be used exclusively by the company to provide the transportation services for the school district.[~~; and~~]

[~~(3) the vehicle identification number and vehicle license plate number for each vehicle equipped to use liquefied gas to furnish transportation services exclusively to public school districts in Texas.~~]

(b) Exception letter. After review and approval of the affidavit required by subsection (a) of this section, the comptroller shall issue to the company a letter of exception specifying that the company may purchase tax-free gasoline and/or diesel fuel used to provide transportation services to a public school district in Texas. The letter of exception may be reproduced for licensed suppliers and licensed distributors. An exception letter shall be issued to the company for specific vehicles operated using [~~liquefied gas,~~] compressed natural gas[~~,~~] or liquefied natural gas. The letter may be furnished to inspectors when a [~~liquefied gas,~~] compressed natural gas[~~,~~] or liquefied natural gas powered bus is undergoing a safety inspection and to [~~liquefied gas dealers or~~] compressed natural gas and liquefied natural gas dealers when the company purchases [~~liquefied gas,~~] compressed natural gas[~~,~~] or liquefied natural gas tax free to be placed into the fuel supply tank of the bus. Compressed natural gas and liquefied natural gas dealers may not accept an exception letter for compressed natural gas or liquefied natural gas delivered into a motor vehicle at an unmanned compressed natural gas or liquefied natural gas retail location. An unmanned compressed natural gas or liquefied natural gas retail location is a location where compressed natural gas or liquefied natural gas is sold to the public and which is completely unstaffed, meaning that there are no personnel routinely working at the site. An unmanned compressed natural gas and liquefied natural gas retail location does not include self-service filling stations at which customers pump their own fuel and have the option of paying an attendant or paying at the pump. A company who pays tax on compressed natural gas and liquefied natural gas delivered into the fuel supply tank of a vehicle issued an exception letter may request refund under §3.432 of this title (relating to Refunds on Gasoline, Diesel Fuel, Compressed Natural Gas, and Liquefied Natural Gas Taxes).

(c) Records required. A commercial transportation company providing transportation services to a Texas public school district shall keep separate records for tax-free and tax-paid fuels. Both sets of records must show:

(1) the number of gallons of gasoline, diesel fuel, [~~liquefied gas,~~] compressed natural gas, or liquefied natural gas on hand on the first day of each month;

(2) the number of gallons of gasoline, diesel fuel, [~~liquefied gas,~~] compressed natural gas, or liquefied natural gas purchased or received, showing the name of the seller and the date of each purchase;

(3) the date and number of gallons of gasoline, diesel fuel, [~~liquefied gas,~~] compressed natural gas, or liquefied natural gas delivered into the fuel supply tanks of vehicles used to furnish transportation services to public school districts;

(4) the date and number of gallons of gasoline, diesel fuel, [~~liquefied gas,~~] compressed natural gas, or liquefied natural gas delivered into the fuel supply tanks of vehicles used to furnish transportation services other than to public school districts;

(5) the date and number of miles traveled to provide transportation services for the public school district, including starting point, destination, purpose of trip, beginning and ending odometer readings, vehicle identification number, and the vehicle license plate number; and

(6) the date and number of miles traveled to provide transportation services for customers other than public school district(s), including the beginning and ending odometer readings, vehicle identification number, and vehicle license plate number of the vehicle so used.

(d) Taxable use.

(1) A commercial transportation company forfeits its right to purchase gasoline or diesel fuel tax-free if:

(A) the gasoline or diesel fuel is sold, other than to a Texas public school district for which the commercial transportation company provides transportation services; or

(B) the gasoline or diesel fuel is used in a vehicle for any purpose other than providing transportation services for a Texas public school district.

(2) A commercial transportation company that forfeits its right to purchase gasoline or diesel fuel tax-free under paragraph (1) of this subsection must return to the comptroller the original and all copies of the letter of exception issued to the company under subsection (b) of this section.

(e) Cancellation or completion of contract. A commercial transportation company shall report the total number of gallons of tax-free gasoline and/or diesel fuel on hand in storage tanks and in the fuel supply tanks of motor vehicles, and remit the tax due on the ending tax-free inventory [~~following~~] to the comptroller within five days of the cancellation or completion of a contract with a Texas public school district.[~~:~~]

[~~(1) the total number of gallons of tax-free gasoline and/or diesel fuel on hand in storage tanks and in the fuel supply tanks of motor vehicles, and remit the tax due on the ending tax-free inventory; and/or~~]

[~~(2) in the case of a liquefied gas vehicle, obtain a liquefied gas tax decal for previously excepted vehicles used to provide transportation services under the canceled/completed contract.~~]

(f) Charter trips. A commercial transportation company that charters round-trip transportation to special events for a Texas public school district may claim a refund for the gasoline, diesel fuel, compressed natural gas, or liquefied natural gas used in the charter vehicle.

(1) The refund shall be computed by starting the trip with a full fuel supply tank or tanks, maintaining records of the fuel delivered into the fuel supply tank or tanks of the vehicle during the trip, and filling the fuel supply tank or tanks upon arrival back at the origination point. The number of gallons delivered into the fuel supply tank or tanks after the start of the trip will be the number of gallons upon which the charter company may claim a tax refund.

(2) The records required by subsection (c)(5) of this section shall also be maintained for each charter trip.

(3) The commercial transportation company shall keep a copy of the billing to the school district for the trip.

(g) Refunds.

(1) A commercial transportation company providing transportation services to a Texas public school district may file a claim for refund of state taxes paid on gasoline, diesel fuel, compressed natural gas, or liquefied natural gas used exclusively for such transportation purposes.

(2) A metropolitan rapid transit authority operating under Transportation Code, Chapter 451, that is party to a contract governed by Education Code, §34.008, and that is providing transportation services to a Texas public school district may file a claim for refund of state taxes paid on gasoline, diesel fuel, [~~liquefied gas,~~] compressed natural gas, or liquefied natural gas used for such transportation services.

(A) A claim for refund must contain the following information by month for each vehicle used to provide public student transportation:

(i) total miles traveled, evidenced by odometer or hubometer readings and total miles traveled on public school transportation routes;

(ii) hours of service;

(iii) total fuel consumed;

(iv) total number of student passengers per route;

(v) total number of non-student passengers per route; and

(vi) records required by Tax Code, §§162.127, 162.229, and 162.367.

(B) A claim for refund cannot be made for a single route in any month of a school year in which the number of non-student passengers for that single route is greater than 5.0% of the total passengers for that single route.

(C) The gallons of gasoline, diesel fuel, compressed natural gas, or liquefied natural gas eligible for refund in a qualifying month for each vehicle is determined by multiplying the vehicle's average miles-per-gallon for that month by the miles traveled for public school transportation during that month.
Figure: 34 TAC §3.448(g)(2)(C) (No change.)

[~~(3) The amount of refund for liquefied gas is determined by dividing the amount paid for an annual liquefied gas tax decal by 12 and then for each qualifying month multiply by the percentage of miles traveled providing public school transportation services.~~]
[~~Figure: 34 TAC §3.448(g)(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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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 809. CHILD CARE SERVICES

SUBCHAPTER G. TEXAS RISING STAR PROGRAM

40 TAC §809.130

The Texas Workforce Commission (Commission) proposes amendments to the following section of Chapter 809, relating to Child Care Services:

Subchapter G. Texas Rising Star Program, §809.130

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the amendment to §809.130(e) is to require a regular review of the Texas Rising Star (TRS) Guidelines as required by Texas Government Code §2308.3155(b).

The 84th Texas Legislature, Regular Session (2015), enacted Senate Bill 208, which amends Texas Government Code §2308.3155(b) to require that the Commission adopt the Agency's Chapter 809 Child Care Services rules relating to TRS to include:

a timeline and process for regularly reviewing and updating the quality standards used to determine the rating system that includes the commission's consideration of input from interested parties regarding those standards.

Texas Government Code §2001.039 requires state agencies to review and consider for readoption each of its rules not later than the fourth anniversary of the date on which the rules take effect and every four years after that date. State agencies are required to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. The next scheduled review of Chapter

809, including Subchapter G, Texas Rising Star Program rules, is in December 2015.

The proposed amendments to §809.130(e) require a regular review of the TRS guidelines every four years, in alignment with the four-year rule review process under Texas Government Code §2001.039. The proposed amendments are scheduled for adoption in January 2016. Therefore, the next review of the TRS guidelines following the adoption of these amendments will occur in conjunction with the scheduled four-year rule review of Chapter 809 in December 2019.

Additionally, pursuant to Texas Government Code §2308.3155(b), the proposed review of the TRS guidelines require input from interested parties (stakeholders), and at least one public hearing be held prior to submitting TRS guidelines stakeholders' recommendations to the Commission.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER G. TEXAS RISING STAR PROGRAM

The Commission proposes the following amendments to Subchapter G:

§809.130. Short Title and Purpose

Amended §809.130(e) adds new paragraph (1) requiring that the Commission review and update the TRS guidelines at a minimum of every four years in conjunction with the rule review of Chapter 809, conducted pursuant to Texas Government Code §2001.039

Section 809.130(e)(1)(A) requires that the review and update consider input from stakeholders.

Section 809.130(e)(1)(B) requires at least one public hearing prior to submitting the stakeholder input to the Commission.

Section 809.130(e)(1) is renumbered as new §809.130(e)(2) without changes.

New §809.130(e)(2) is renumbered as new §809.130(e)(3) and amended to state that the Commission may review and amend the TRS guidelines as necessary, provided that the amendments are adopted subject to the requirements of the Act.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There may be minimal economic costs to persons required to comply with the rules.

There may be minimal costs to stakeholders that give input on TRS guidelines as required by §809.130(e)(1)(A), if the stakeholders incur travel, overtime compensation, or other costs for that purpose, or to participate in a public hearing held under §809.130(e)(1)(B). Stakeholder participation may involve state agencies, Boards, and child care providers, and could potentially include representatives from other organizations.

Costs, if any, incurred by stakeholders that are state agencies or Boards are not anticipated to create a net increase in total costs of those organizations; other stakeholders may experience minimal additional costs. The state legislature appropriates funds to the state for program administration. Similarly, Boards receive pass-through funds to administer programs locally. State agencies and Boards can use these monies to fund costs of providing input on TRS guidelines. These monies are sum certain in amount, and it is assumed that the state and Boards would operate within those funding parameters. Therefore, it is estimated that costs, if any, that the state and Boards incur from providing input on TRS guidelines would not result in an increase to the total costs of those organizations. Other stakeholders may experience a minimal amount of additional costs.

We estimate that costs would be minimal in amount based on assumptions that stakeholder participation will ordinarily be for a limited duration every four years, will require limited or no travel, and will require limited, if any, other costs.

There is no anticipated adverse economic impact on small businesses or microbusinesses as a result of enforcing or administering the rules.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses, as these proposed rules place no requirements on small businesses, including child care providers.

Doyle Fuchs, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Reagan Miller, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to ensure public and stakeholder input to the review and updating of the TRS guidelines.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on August 18, 2015. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to *TWCPolicyComments@twc.state.tx.us.* Comments must be received or

postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed rules affect Texas Labor Code, Title 4, Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.130. Short Title and Purpose.

(a) The rules contained in this subchapter may be cited as the TRS Program rules.

(b) The purpose of the TRS Program rules is to interpret and implement Texas Government Code §2308.3155(b) requiring the Commission to establish rules to administer the TRS program, including guidelines for rating a child care provider for TRS certification.

(c) The TRS Program rules identify the organizational structure and categories of, and the scoring factors that shall be included in, the TRS guidelines.

(d) The TRS guidelines for rating a child care provider shall:

(1) describe measures for the TRS program that contain, at a minimum, measures for child care providers regarding:

(A) director and staff qualifications and training;

(B) caregiver-child interactions;

(C) curriculum;

(D) nutrition and indoor and outdoor activities; and

(E) parent involvement and education;

(2) specify measures that:

(A) must be met in order for a provider to be certified at each star level; and

(B) are observed and have points awarded through on-site assessments; and

(3) specify the scoring methodology and scoring thresholds for each star level.

(e) The TRS guidelines:

(1) shall be reviewed and updated by the Commission at a minimum of every four years in conjunction with the rule review of Chapter 809, conducted pursuant to Texas Government Code §2001.039, and the TRS guidelines review shall:

(A) consider input from stakeholders; and

(B) include at least one public hearing held prior to submitting the stakeholder input to the Commission;

(2) [~~(1)~~] shall be adopted by the Commission subject to the requirements of the Texas Open Meetings Act; and

(3) [~~(2)~~] also may be reviewed and amended as determined necessary by the Commission in accordance with[~~, provided that the amendments are adopted subject to~~] the requirements of the Texas Open Meetings Act.

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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