

Legend: (Proposed Amendment(s))

Single Underline = Proposed new language

[Bold, Print, and Brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

SUBCHAPTER B. DONATIONS OF UNUSED DRUGS

§229.21. Definitions. The following words and terms, when used in this subchapter **[these sections]**, must **[shall]** have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Charitable medical clinic--A clinic, including a licensed pharmacy that is a community pharmaceutical access program provider, that provides medical care or drugs without charge or for a substantially reduced charge, complies with the insurance requirements of Civil Practice and Remedies Code, Chapter 84, and is exempt from federal income tax under Internal Revenue Code of 1986, §501(a) by being listed as an exempt organization in §501(c)(3) or (4) of the Internal Revenue Code, and is operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community.

(3) Community pharmaceutical access program--A program offered by a licensed pharmacy under which the pharmacy assists financially disadvantaged persons to access prescription drugs at no charge or at a substantially reduced charge.

(4) **[(3)]** Department--The Department of State Health Services. **[The Texas Department of Health.]**

(5) **[(4)]** Dispense--To prepare, package, compound, or label in the course of professional practice, a prescription drug or device for delivery to an ultimate user or the user's agent under a practitioner's lawful order.

(6) **[(5)]** Drug sample--A unit of a drug that is not intended to be sold and is intended to promote the sale of the drug.

(7) **[(6)]** Manufacture--The process of preparing, propagating, compounding, processing, packaging, repackaging, labeling, testing, or quality control of a drug or drug product, but does not include compounding that is done within the practice of pharmacy and pursuant to a prescription from a practitioner for a patient.

(8) **[(7)]** Manufacturer--A person, other than a charitable drug donor, as defined in Civil Practice and Remedies Code, Chapter 82.

(9) [(8)] Patient assistance program--A qualified program offered by a pharmaceutical manufacturer under which the manufacturer provides drugs to financially disadvantaged persons at no charge or at a substantially reduced cost. The term does not include the provision of a drug as part of a clinical trial.

(10) [(9)] Person--An individual, partnership, corporation, or association.

(11) [(10)] Qualified program--Any program sponsored by a pharmaceutical manufacturer.

(12) [(11)] Seller--A person, other than a charitable drug donor, as defined in Civil Practice and Remedies Code, Chapter 82, who is engaged in the business of distributing or otherwise placing, for any commercial purpose, in the stream of commerce for use or consumption, a product or any component part thereof.

(13) [(12)] Wholesale distribution--Distribution to a person other than a consumer or patient including, but not limited to, distribution to any person by a manufacturer, repacker, own-label distributor, jobber, private label distributor, broker, manufacturer warehouse, distributor warehouse, or other warehouse, manufacturer's exclusive distributor, drug wholesaler or distributor, distributor, independent wholesale drug trader, specialty wholesale distributor, third party logistics provider, retail pharmacy that conducts wholesale distribution, and pharmacy warehouse that conducts wholesale distribution [or wholesaler].

§229.22. Donation of Drugs to Charitable Medical Clinics.

A charitable medical clinic may receive a drug donated by a charitable drug donor for dispensing to a patient of the charitable medical clinic, provided that the following requirements are met.

(1) – (15) (No change.)

(16) A charitable medical clinic shall immediately notify the Drugs and Medical Devices Group at (512) 834-6755, **[Division using the toll-free telephone number 888-839-6676,]** of becoming aware of a significant loss or theft of drugs; and a copy of the inventory reconciliation, investigation, and outcome report shall be forwarded to the Drugs and Medical Devices Group, Mail Code 1987, P.O. Box 149347, Austin, TX 78714-9347 **[Division, 1100 West 49th Street, Austin, Texas 78756]** within five days of the telephone notification.

(17) (No change.)

§229.23. Donation of Drugs From Nursing Homes to Foreign Countries.

A nursing home may donate certain drugs or drug samples, due for destruction, to a foreign country provided the following requirements are met.

(1) – (8) (No change.)

(9) All nursing homes who donate drugs to foreign recipients shall comply with the existing statutory standards contained in the Health and Safety Code, Chapter 431, and the requirements of §229.251 [**§229.253**] of this title (relating to Minimum Standards for Licensure [**Licensing**] for "Licensing of Wholesale Distributors of Nonprescription Drugs--Including Good Manufacturing Practices."] and §229.429 of this title (relating to Minimum Standards for Licensure [**Licensing**] for "Licensing of Wholesale Distributors of Prescription Drugs--Including Good Manufacturing Practices.")

(10) (No change.)

§229.24. Dispensing of Drugs from Charitable Medical Clinics.

All charitable medical clinics (including licensed pharmacies that are a community pharmaceutical access program provider as defined at §229.21(3) of this title (relating to Definitions)) shall comply with the laws and rules pertaining to dispensing of prescription drugs as contained in the Occupations Code, Chapters 551 – 566, and 569 (relating to the Texas Pharmacy Act); and 22 Texas Administrative Code, Chapters 281 – 311 (relating to the Texas State Board of Pharmacy).

§229.25. Minimum Requirements for Licensing as a Charitable Drug Donor.

(a) – (c) (No change.)

(d) License forms. License application forms may be obtained from the department at 1100 West 49th Street, Austin, Texas 78756 or online at <http://www.dshs.state.tx.us/license.shtm>. [**Licensing forms may be obtained from the Texas Department of Health, Drugs and Medical Devices Division, 1100 West 49th Street, Austin, Texas 78756 or at the department website.**]

(e) – (g) (No change.)

(h) Issuance of license. The department may license a charitable drug donor who meets the requirements of this section, and §229.251 [**§229.253**] of this title (relating to Minimum Standards for Licensure [**Licensing**]) for "Licensing of Wholesale Distributors of Nonprescription Drugs--Including Good Manufacturing Practices," and §229.429 of this title (relating to Minimum Standards for Licensure [**Licensing**]) for "Licensing of Wholesale Distributors of Prescription Drugs--Including Good Manufacturing Practices."

(i) The initial license shall be valid for two years [**one year**] from the date of issuance which becomes the anniversary date.

(j) The renewal license shall be valid for two years [**one year**] from the anniversary date.

(k) Renewal of license.

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

(3) A licensee who fails to submit a renewal application prior to the current licensure expiration date and continues operations may be subject to the enforcement and penalty provisions in §229.252 and §229.430 of this title (relating to Enforcement and Penalties), and/or the refusal, cancellation, suspension and revocation provisions in §229.250 and §229.428 of this title (relating to Refusal, Cancellation, Suspension or Revocation of License).**[Failure to submit the renewal annually may subject the charitable drug donor to the enforcement provisions under Health and Safety Code, Chapter 431, and to the provisions of §229.254 of this title (relating to Refusal, Revocation, or Suspension of License).]**

(l) - (p) (No change.)

(q) Current good manufacturing practices in manufacturing, processing, packing, or holding of drugs by drug manufacturers.

(1) (No change.)

(2) Copies are indexed and filed in the office of the Drugs and Medical Devices Group [Division], Texas Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756 and are available for inspection during normal working hours.

(r) Requirements for charitable drug donors.

(1) (No change.)

(2) Copies are indexed and filed in the office of the Drugs and Medical Devices Group [Division], Texas Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756 and are available for inspection during normal working hours.

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

§229.26 Enforcement - Refusal, Revocation, or Suspension of License

(a) The department may, after providing an opportunity for a hearing, refuse to license a charitable drug donor, or may revoke or suspend the license for violations of the requirements in **[new]** §§229.21 - 229.25 of this title (relating to Donation of Unused Drugs), §229.251 and §229.429 [§229.253] of this title (relating to Minimum Standards for Licensure [Licensing]), and for violations of Health and Safety Code, Chapter 431, including §431.021 (prohibited acts).

(b) (No change.)

SUBCHAPTER W. LICENSING OF WHOLESALE DISTRIBUTORS OF PRESCRIPTION DRUGS--INCLUDING GOOD MANUFACTURING PRACTICES

§229.419 Purpose. This subchapter provides [**These sections provide**] for the minimum licensing requirements [**standards**] necessary to ensure the safety and efficacy of prescription drugs offered for sale by wholesale distributors.

§229.420. Applicable Laws and Regulations.

(a) The department adopts by reference the following laws and regulations:

(1) Federal Food, Drug, and Cosmetic Act, 21 United States Code[,] (U.S.C.), §301 et seq., as amended;

(2) – (32) (No change.)

[(33) 21 CFR, Part 429, Drugs Composed Wholly or Partly of Insulin, as amended;]

[(34) 21 CFR, Part 430, Antibiotic Drugs; General, as amended;]

[(35) 21 CFR, Part 431, Certification of Antibiotic Drugs, as amended;]

[(36) 21 CFR, Part 432, Packaging and Labeling of Antibiotic Drugs, as amended;]

[(37) 21 CFR, Part 433, Exemptions from Antibiotic Certification and Labeling Requirements, as amended;]

[(38) 21 CFR, Part 436, Tests and Methods of Assay of Antibiotic and Antibiotic-containing Drugs, as amended;]

[(39) 21 CFR, Part 440, Penicillin Antibiotic Drugs, as amended;]

[(40) 21 CFR, Part 441, Penem Antibiotic Drugs, as amended;]

[(41) 21 CFR, Part 442, Cepha Antibiotic Drugs, as amended;]

[(42) 21 CFR, Part 444, Oligosaccharide Antibiotic Drugs, as amended;]

[(43) 21 CFR, Part 446, Tetracycline Antibiotic Drugs, as amended;]

[(44) 21 CFR, Part 448, Peptide Antibiotic Drugs, as amended;]

[(45) 21 CFR, Part 449, Antifungal Antibiotic Drugs, as amended;]

[(46) 21 CFR, Part 450, Antitumor Antibiotic Drugs, as amended;]

[(47) 21 CFR, Part 452, Macrolide Antibiotic Drugs, as amended;]

[(48) 21 CFR, Part 453, Lincomycin Antibiotic Drugs, as amended;]

[(49) 21 CFR, Part 455, Certain Other Antibiotic Drugs, as amended;]

[(50) 21 CFR, Part 460, Antibiotic Drugs Intended for Use in Laboratory Diagnosis of Disease, as amended;]

(33) [(51)] 21 CFR, Part 500, General, as amended;

(34) [(52)] 21 CFR, Part 510, New Animal Drugs, as amended;

(35) [(53)] 21 CFR, Part 511, New Animal Drugs for Investigational Use, as amended;

(36) [(54)] 21 CFR, Part 514, New Animal Drug Applications, as amended;

(37) [(55)] 21 CFR, Part 515, Medicated Feed Mill License, as amended;

(38) [(56)] 21 CFR, Part 520, Oral Dosage Form New Animal Drugs, as amended;

(39) [(57)] 21 CFR, Part 522, Implantation or Injectable Dosage Form New Animal Drugs, as amended;

(40) [(58)] 21 CFR, Part 524, Ophthalmic and Topical Dosage Form New Animal Drugs, as amended;

(41) [(59)] 21 CFR, Part 526, Intramammary Dosage Forms, as amended;

(42) [(60)] 21 CFR, Part 529, Certain Other Dosage Form New Animal Drugs, as amended;

(43) [(61)] 21 CFR, Part 530, Extralabel Drug Use in Animals, as amended;

(44) [(62)] 21 CFR, Part 556, Tolerances for Residues of New Animal Drugs in Food, as amended;

(45) [(63)] 21 CFR, Part 558, New Animal Drugs for Use in Animal Feeds, as amended;

(46) [(64)] 21 CFR, Part 589, Substances Prohibited From Use in Animal Food or Feed, as amended;

(47) [(65)] 21 CFR, Part 600, Biological Products: General, as amended;

(48) ~~[(66)]~~ 21 CFR, Part 601, Licensing, as amended;

(49) ~~[(67)]~~ 21 CFR, Part 610, General Biological Products Standards, as amended;

[(68) 21 CFR, Part 650, Additional Standards for Diagnostic Substances Dermal Test, as amended;]

(50) ~~[(69)]~~ 21 CFR, Part 660, Additional Standards for Diagnostic Substances for Laboratory Tests, as amended;

(51) ~~[(70)]~~ 21 CFR, Part 680, Additional Standards for Miscellaneous Products, as amended; **[and]**

(52) 21 CFR, Part 1300, Definitions;

(53) 21 CFR, Part 1301, Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances;

(54) ~~[(71)]~~ 21 CFR, Part 1302, Labeling and Packaging Requirements For Controlled Substances, as amended;[.]

(55) 21 CFR, Part 1304, Records and Reports of Registrants;

(56) 21 CFR, Part 1305, Orders for Schedule I and Schedule II Controlled Substances;

(57) 21 CFR, Part 1306, Prescriptions; and,

(58) 21 CFR, Part 1307, Miscellaneous.

(b) (No change.)

(c) Nothing in this subchapter **[these sections]** shall relieve any person of the responsibility for complying **[compliance]** with other applicable Texas and federal laws and regulations.

§229.421 Definitions. The following words and terms, when used in this subchapter, must **[shall]** have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Adulterated drug--Has the meaning specified in the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, **[Chapter 431,]** §431.111.

(3) (No change.)

(4) Broker--A person engaged in the offering or contracting for wholesale distribution; sale and/or transfer of a prescription drug into, within, or out of Texas; and, who does not take physical possession of the prescription drug.

(5) [(4)] Change of ownership--A sole proprietor who transfers all or part of the facility's ownership to another person or persons; the removal, addition, or substitution of a person or persons as a partner in a facility owned by a partnership; a corporate sale, transfer, reorganization, or merger of the corporation which owns the facility if sale, transfer, reorganization, or merger causes a change in the facility's ownership to another person or persons; or if any other type of association, the removal, addition, or substitution of a person or persons as a principal of such association.

(6) Co-licensed product partner--One of two or more parties that have the right to engage in the manufacturing or marketing of a prescription drug consistent with the United States Food and Drug Administration's regulations and guidances implementing the Prescription Drug Marketing Act of 1987 (Pub. L. No. 100-293).

(7) [(5)] Commissioner--Commissioner of the Department of State Health Services.

(8) [(6)] Department--The Department of State Health Services.

(9) [(7)] Device--An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is:

(A) recognized in the official United States Pharmacopoeia National Formulary or any supplement to it;

(B) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease in man or other animals; or

(C) intended to affect the structure or any function of the body of man or other animals and that does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and is not dependent on metabolization for the achievement of any of its principal intended purposes.

(10) Drop shipment--The sale of a prescription drug to a wholesale distributor by the manufacturer of the prescription drug, or by the manufacturer's co-licensed product partner, third-party logistics provider, or exclusive distributor, in which:

(A) the wholesale distributor takes title but not physical possession of the prescription drug;

(B) the wholesale distributor invoices the pharmacy, pharmacy warehouse, or other person authorized by law to dispense or administer the drug to a patient; and

(C) the pharmacy, pharmacy warehouse, or other authorized person receives delivery of the prescription drug directly from the manufacturer or the manufacturer's third-party logistics provider or exclusive distributor.

(11) [(8)] Drug--Articles recognized in the official United States Pharmacopoeia National Formulary, or any supplement to it, articles designated or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, articles, other than food, intended to affect the structure or any function of the body of man or other animals, and articles intended for use as a component of any such article. The term does not include devices or their components, parts, or accessories. A food for which a claim is made in accordance with the Federal Act, §403(r), and for which the claim is approved by the U.S. Food and Drug Administration, is not a drug solely because the label or labeling contains such a claim.

(12) [(9)] Emergency medical reasons--Includes transfers of a prescription drug between a wholesale distributor or pharmacy to alleviate a temporary shortage of a prescription drug arising from delays in or interruption of regular distribution schedules; sales to nearby emergency medical services, i.e., ambulance companies and firefighting organizations in the same state or same marketing or service area, or nearby licensed practitioners of drugs for use in the treatment of acutely ill or injured persons; provision of minimal emergency supplies of drugs to nearby nursing homes for use in emergencies or during hours of the day when necessary drugs cannot be obtained; and transfers of prescription drugs by a retail pharmacy to alleviate a temporary shortage.

(13) [(10)] Federal Act--Federal Food, Drug, and Cosmetic Act, 21 United States Code (U.S.C.), §301, et seq., as amended.

(14) [(11)] Flea market--A location at which booths or similar spaces are rented or otherwise made available temporarily to two or more persons and at which the persons offer tangible personal property for sale.

(15) [(12)] Labeling--All labels and other written, printed, or graphic matter:

(A) upon any drug or any of its containers or wrappers; or

(B) accompanying such drug.

(16) [(13)] Manufacturer--A person who manufactures, prepares, propagates, compounds, processes, packages, or repackages prescription drugs, or a person who changes the container, wrapper, or labeling of any prescription drug package. A person licensed or approved by the United States Food and Drug Administration to engage in the manufacture of drugs or devices, consistent with the federal agency's definition of "manufacturer" under the agency's regulations and guidances implementing the Prescription Drug Marketing Act of 1987 (Pub. L. No. 100-293). The term does not include a pharmacist engaged in compounding that is done within the practice of pharmacy and pursuant to a prescription drug order or initiative from a practitioner for a patient or repackaging that is done in accordance with Occupations Code, §562.154.

(17) Manufacturer's exclusive distributor--A person who holds a wholesale distributor license under this subchapter, who contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of the manufacturer, and who takes title to, but does not have general responsibility to direct the sale or disposition of, the manufacturer's prescription drug. A manufacturer's exclusive distributor must be an authorized distributor of record to be considered part of the normal distribution channel.

(18) [(14)] Misbranded drug--Has the meaning specified in the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, [Chapter 431,] §431.112.

(19) [(15)] Nonprescription drug--Any drug that is not a prescription drug.

(20) Normal distribution channel--A chain of custody for a prescription drug, either directly or by drop shipment, from the manufacturer of the prescription drug, the manufacturer to the manufacturer's co-licensed product partner, the manufacturer to the manufacturer's third-party logistics provider, or the manufacturer to the manufacturer's exclusive distributor, to:

(A) a pharmacy to:

(i) a patient; or

(ii) another designated person authorized by law to dispense or administer the drug to a patient;

(B) an authorized distributor of record to:

(i) a pharmacy to a patient; or

(ii) another designated person authorized by law to dispense or administer the drug to a patient;

(C) an authorized distributor of record to a wholesale distributor licensed under this subchapter to another designated person authorized by law to administer the drug to a patient;

(D) an authorized distributor of record to a pharmacy warehouse to the pharmacy warehouse's intracompany pharmacy;

(E) a pharmacy warehouse to the pharmacy warehouse's intracompany pharmacy or another designated person authorized by law to dispense or administer the drug to a patient;

(F) a person authorized by law to prescribe a prescription drug that by law may be administered only under the supervision of the prescriber; or

(G) an authorized distributor of record to one other authorized distributor of record to a licensed practitioner for office use.

(21) [(16)] Person--An individual, corporation, business trust, estate, trust, partnership, association, or any other public or private legal entity.

(22) Pharmacy warehouse--A location for which a person holds a wholesale drug distribution license under this subchapter, that serves as a central warehouse for drugs or devices, and from which intracompany sales or transfers of drugs or devices are made to a group of pharmacies under common ownership and control.

[(17) Place of business--Each location at which a prescription drug for wholesale distribution is located.]

(23) [(18)] Prescription drug--Any drug (including any biological product, except for blood and blood components intended for transfusion or biological products that are also medical devices) required by Federal law (including Federal regulation) to be dispensed only by a prescription, including finished dosage forms and bulk drug substances subject to the Federal Act, §503(b).

(24) [(19)] Repackage--Repackaging or otherwise changing the container, wrapper, or labeling of a drug to further the distribution of a prescription drug. The term does not include repackaging by a pharmacist to dispense a drug to a patient or prepackaging in accordance with Occupations Code, §562.154.

(25) [(20)] Repackager--A person who engages in repackaging.

(26) Third-party logistics provider--A person who holds a wholesale distributor license under this subchapter, who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of the manufacturer, and who does not take title to the prescription drug or have general responsibility to direct the prescription drug's sale or disposition. A third-party logistics provider must be an authorized distributor of record to be considered part of the normal distribution channel.

(27) Verification--A person who is in possession of a pedigree for a prescription drug shall, before distributing the prescription drug, authenticate and certify, in accordance with Texas Food, Drug, and Cosmetic Act, Health and Safety Code, §§431.412 and 431.413 and §229.429(f)(3)(I) of this title, that each transaction listed on the pedigree has occurred.

(28) [(21)] Wholesale distribution--Distribution of prescription drugs to a person other than a consumer or patient, **[and includes distribution by a manufacturer, repackager, own label distributor, broker, jobber, warehouse, retail pharmacy that conducts wholesale distribution or wholesaler.]** The term does not include:

(A) intracompany sales of prescription drugs, which means transactions or transfers of prescription drugs between a division, subsidiary, parent, or affiliated or related company that is under common ownership and control or any transaction or transfer between co-license holders of a co-licensed product; [of a corporate entity;]

(B) the sale, purchase, [**distribution,**] trade, or transfer of prescription drugs or the offer to sell, purchase, [**distribute,**] trade, or transfer a prescription drug for emergency medical reasons; including a transfer of a prescription drug by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;

(C) the distribution of prescription drug samples by a representative of a manufacturer;

(D) the return of drugs by a hospital, health care entity, [**retail pharmacy, chain pharmacy warehouse,**] or charitable institution in accordance with 21 CFR, §203.23; [**or**]

(E) the sale of reasonable quantities [**delivery**] by a retail pharmacy of a prescription drug to [**a patient or a patient's agent under the lawful order of**] a licensed practitioner for office use; [.]

(F) the sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug under a prescription;

(G) the sale, transfer, merger, or consolidation of all or part of the business of a pharmacy from or with another pharmacy, whether accomplished as a purchase and sale of stock or business assets;

(H) the delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs, if the common carrier does not store, warehouse, or take legal ownership of the prescription drug;

(I) the sale or transfer from a retail pharmacy or pharmacy warehouse of expired, damaged, returned, or recalled prescription drugs to the original manufacturer or to a third-party returns processor in accordance with the procedures set out in Title 21, Code of Federal Regulations, §203.23(a)(1)-(5) for other returns;

(J) the purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;

(K) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in §501(c)(3) of the Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(L) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control; for purposes of this subchapter, common control means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, by contract, or otherwise; or

(M) the sale, purchase, or trade of blood and blood components intended for transfusion.

(29) Wholesale distributor--A person engaged in the wholesale distribution of prescription drugs, including, but not limited to, a manufacturer, repackager, own-label distributor, private-label distributor, jobber, broker, manufacturer warehouse, distributor warehouse, or other warehouse, manufacturer's exclusive distributor, authorized distributor of record, drug wholesaler or distributor, independent wholesale drug trader, specialty wholesale distributor, third-party logistics provider, retail pharmacy that conducts wholesale distribution, and pharmacy warehouse that conducts wholesale distribution.

§229.422. Sale of a Prescription Drug **[Drugs]**. Any reference in this subchapter [these sections] to the sale of a prescription drug must [drugs shall] be considered to include the manufacture, packaging, exposure, offer, possession, and holding of any prescription drug for sale; the sale, dispensing, and giving of any prescription drug; and supplying or applying of any prescription drug in the operation of any prescription drug place of business.

§229.423. Exemptions.

(a) General. A person who engages in the wholesale distribution of prescription drugs in this state for use in humans is exempt from this subchapter [these sections] if the person is exempt under:

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

(b) Exemptions from licensing. Persons who engage in the following types of distribution of prescription drugs **[for use in humans]** are exempt from the licensing requirements of this subchapter [these sections], to the extent that it does not violate provisions of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, or the Texas Dangerous Drug Act, Health and Safety Code, Chapter 483:

(1) intracompany sales of prescription drugs, which means transactions or transfers of prescription drugs between a division, subsidiary, parent, or affiliated or related company that is under common ownership and control, or any transaction or transfer between co-license holders of a co-licensed product;

(2) the sale, purchase, trade, or transfer of prescription drugs or the offer to sell, purchase, trade, or transfer a prescription drug for emergency medical reasons; including a transfer of a prescription drug by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;

(3) the distribution of prescription drug samples by a representative of a manufacturer;

(4) the return of drugs by a hospital, health care entity, or charitable institution in accordance with Title 21, Code of Federal Regulations, §203.23;

(5) the sale of reasonable quantities by a retail pharmacy of a prescription drug to a licensed practitioner for office use;

(6) the sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug under a prescription;

(7) the sale, transfer, merger, or consolidation of all or part of the business of a pharmacy from or with another pharmacy, whether accomplished as a purchase and sale of stock or business assets;

(8) the delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs, if the common carrier does not store, warehouse, or take legal ownership of the prescription drug; or

(9) the sale or transfer from a retail pharmacy or pharmacy warehouse of expired, damaged, returned, or recalled prescription drugs to the original manufacturer or to a third-party returns processor in accordance with procedures set out in Title 21, Code of Federal Regulations, §203.23(a)(1)-(5);

(10) the purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;

(11) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in §501(c)(3) of the Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(12) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control; for purposes of this subchapter, common control means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, by contract, or otherwise; or

(13) the sale, purchase, or trade of blood and blood components intended for transfusion.

[(1) intracompany sales]

[(2) the purchase or acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;]

[(3) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization, as described in the Internal Revenue Code of 1986, §501(c)(3), to a nonprofit affiliate of the organization to the extent otherwise permitted by law;]

[(4) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control. For the purpose of this subsection, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise;]

[(5) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons. For purposes of this section, "emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;]

[(6) the sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;]

[(7) the distribution of drug samples by manufacturers' representatives or distributors' representatives; or]

[(8) the sale, purchase, or trade of blood and blood components intended for transfusion.]

(c) Applicability of other requirements. An exemption from the licensing requirements granted in subsection (b) of this section does not constitute an exemption from other applicable requirements for prescription drugs under this subchapter [these sections] or under the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431.

(d) Exemption from certain requirements for certain wholesale distributors.

(1) A wholesale distributor that distributes only prescription drugs that are medical gases is exempt from the following requirements: [in] §229.424(d) of this title (relating to Licensure Requirements), §229.425(b)(4)-(5), (c) and (d) of this title (relating to Licensing Procedures); and §229.424(n) and §229.425(h) of this title concerning bonds.

(2) A wholesale distributor that is a manufacturer or a third-party logistics provider on behalf of a manufacturer is exempt from the following requirements: §229.424(d) of this title; §229.425(b)(4)-(5), (c) and (d) of this title; and §229.424(n) and §229.425(h) of this title concerning bonds.

(3) A state agency or a political subdivision of this state that distributes prescription drugs using federal or state funding to nonprofit health care facilities or local mental health or mental retardation authorities for distribution to a pharmacy, practitioner, or patient is

exempt from §229.424(d) of this title, §229.425(d) of this title, §229.424(n) and §229.425(h) of this title concerning bonds, and 229.429(f) of this title (relating to Minimum Standards of Licensure) concerning pedigree.

(4) The Executive Commissioner of the Health and Human Services Commission by rule may exempt specific purchases of prescription drugs by state agencies and political subdivisions of this state if the Executive Commissioner determines that the requirements of this subchapter would result in a substantial cost to the state or a political subdivision of the state.

§229.424. Licensure Requirements.

(a) General. Except as provided in §229.423 of this title (relating to Exemptions), a person may not engage in the wholesale distribution of prescription drugs in Texas, as defined in §229.421(28)-(29) of this title (relating to Definitions), unless the person has a valid license from the commissioner of the department for each place of business.

(b) – (c) (No change.)

(d) Applicant qualifications. To qualify for the issuance or renewal of a wholesale distributor license under this subchapter [these sections], the designated representative of an applicant or license holder must:

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

(6) serve as a designated representative for only one applicant at any one time, except in a circumstance, as the department determines reasonable, in which more than one licensed wholesale distributor is co-located in the same place of business at the same address and the wholesale distributors are members of an affiliated group, as defined by §1504, Internal Revenue Code of 1986;

(7) - (8) (No change.)

(e) - (l) (No change.)

(m) Renewal of license.

(1) The license application as outlined in §229.425 of this title and nonrefundable licensing fees as outlined in §229.427 of this title for each place of business shall be submitted to the department not later than the 30th day after the date the wholesale distributor receives a renewal notification form from the department. [prior to the expiration date of the current license.] A person who files a renewal application after the expiration date shall [must] pay an additional \$100 as a delinquency fee.

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

(n) Bond.

(1) A wholesale distributor applying for or renewing a license shall submit payable to this state a bond or other equivalent security acceptable to the department, including an irrevocable letter of credit or a deposit in a trust account or financial institution, in the amount of \$100,000 payable to this state.

(2) The bond or equivalent security submitted under paragraph (1) of this subsection must secure payment of any fines or penalties imposed by the department or imposed in connection with an enforcement action by the attorney general, any fees or other enforcement costs, including attorney's fees payable to the attorney general, and any other fees and costs incurred by this state related to that license holder, that are authorized under the laws of this state and that the license holder fails to pay before the 30th day after the date a fine, penalty, fee, or cost is assessed.

(3) The department or this state may make a claim against a bond or security submitted under paragraph (1) of this subsection before the first anniversary of the date a license expires or is revoked under this subchapter.

(4) The department shall deposit the bonds and equivalent securities received under this section in a separate account.

(5) A pharmacy warehouse that is not engaged in wholesale distribution is exempt from the bond requirement under paragraph (1) of this subsection.

(6) A single bond is sufficient to cover all places of business operated by a wholesale distributor in this state.

§229.425 Licensing Procedures.

(a) (No change.)

(b) Contents of license application. The application for licensure as a wholesale distributor of prescription drugs shall be signed and verified, submitted on a license application form furnished by the department, and contain the following information:

(1) the name, full business address, and telephone number of the applicant;

(2) [(1)] all trade or business names under which the business is conducted;

(3) [(2)] the address, [and] telephone number, and name of a contact person for each of the applicant's places of business; [of each place of business that is licensed;]

(4) [(3)] the type of business entity: [and the name, residence address, and valid driver's license number of:]

(A) if a person, the name of the person;

(B) if the business is a sole proprietorship, the name of the proprietor;

(C) if the business is a partnership, the name of the partnership and each of the partners; or

(D) if the business is a corporation, the name of the corporation, the place of incorporation, and the name and title of each corporate office and director;

[(A) the proprietor, if the business is a proprietorship;]

[(B) all partners, if the business is a partnership; or]

[(C) all principals, if the business is an association;]

[(4) the date and place of incorporation, if the business is a corporation;]

[(5) the names and business addresses of the individuals in an administrative capacity showing:]

[(A) the managing proprietor, if the business is a proprietorship;]

[(B) the managing partner, if the business is a partnership;]

[(C) the officers and directors, if the business is a corporation; or]

[(D) the persons in a managerial capacity, if the business is an association;]

(5) [(6)] the name, date of birth, residence address, telephone number, and any information necessary to complete a criminal history record check on a designated representative of each place of business;

[(7) the state of incorporation, if the business is a corporation;]

(6) [(8)] a list of all licenses and permits issued to the applicant by any other state under which the applicant is permitted to purchase or possess prescription drugs;

(7) [(9)] the name of the manager, if different from the designated representative, for each place of business;

(8) [(10)] a list of categories which must be marked and adhered to in the determination and paying of the fee; and

(9) [(11)] a statement verified by the applicant's signature that acknowledges the applicant has read, understood, and agrees to abide by the provisions of this subchapter **[these**

sections] and those of the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431.

(c) Designated representatives [**and managers**].

(1) For each person who is a designated representative [**and/or a manager**] of each place of business, the applicant shall provide the following to the department:

(A) - (C) (No change.)

(D) the business name and address of any business, corporation, or other organization in which the person held an office under subsection (b)(4)[(3)] of this section or in which the person conducted an occupation or held a position of employment;

(E) a statement of whether during the preceding seven years the person was the subject of a proceeding to revoke a license or a criminal proceeding and the nature and disposition of the proceeding;

(F) (No change.)

(G) a written description of any involvement by the person as an officer or director with any business, including any investments, other than the ownership of stock in a publicly traded company or mutual fund during the past seven years, that manufactured, administered, prescribed, distributed, or stored pharmaceutical products and any lawsuits in which the businesses were named as a party;

(H) a description of any misdemeanor or felony offense for which the person, as an adult, was found guilty, regardless of whether adjudication of guilt was withheld or whether the person pled guilty or nolo contendere;

(I) (No change.)

(J) a photograph of the person taken not earlier than 180 [30] days before the date the application was submitted.

(2) (No change.)

(d) (No change.)

(e) Renewal license application. The renewal application for licensure as a wholesale distributor of prescription drugs must [shall] be made on a license application form furnished by the department. Not later than the 30th day after the date the wholesale distributor receives the form, the wholesale distributor shall identify and state under oath to the department any change in or correction to the information.

(f) Replacement license. In the event a current and valid license is lost, stolen or destroyed, the licensee shall request a replacement license from the department by submitting an application and non-refundable fee as outlined in §229.427 of this title (relating to Licensing Fees). A replacement license shall only be issued if the lost, stolen or destroyed license was current and valid at the time of the request, and no changes in business name, location or ownership have occurred.

(g) texas.gov [Texas Online]. Applicants may submit initial and renewal license applications under this subchapter [these sections] electronically by the Internet through texas.gov at www.texas.gov [Texas Online at www.texasonline.state.tx.us]. The department is authorized to collect fees, in amounts determined by texas.gov [the Texas Online Authority], to recover costs associated with application and renewal application processing through texas.gov [Texas Online].

(h) Bond. Applicants will submit a bond in a manner prescribed by the department.

§229.426 Report of Changes.

(a) (No change.)

(b) Change in location of place of business. Not fewer than 30 days in advance of the change, the licensee shall notify the department in writing of the licensee's intent to change the location of a licensed place of business. The notice must [shall] include the address of the new location, and the name and residence address of the individual in charge of the business at the new location. Not more than 10 days after the completion of the change of location, the licensee shall notify the department in writing to confirm the completion of the change of location, and provide verification of the information previously provided or correct and confirm any information that has changed since providing the notice of intent. The notice and confirmation required by this subchapter [subsection] will be deemed adequate if the licensee sends the notices by certified mail, return receipt requested, to the department at P. O. Box 149347, Austin, Texas 78714-9347 [1100 West 49th Street, Austin, Texas 78756], or submits them electronically through texas.gov at www.texas.gov [the Texas Online Internet website.]

§229.427 Licensure Fees.

(a) License fee. Except as provided by §229.423 of this title (relating to Exemptions), no person may operate or conduct business as a wholesale distributor of prescription drugs without first obtaining a license from the department. All applicants for an initial wholesale distributor of prescription drugs license or a renewal license shall pay a licensing fee unless otherwise exempt as provided by subsection (c) of this section. All fees are nonrefundable. Licenses are issued for two-year terms. A license shall only be issued when all past due license fees and delinquency fees are paid.

(1) In-state and out-of-state wholesale distributors of prescription drugs who are not manufacturers shall pay a two-year license fee based on the gross annual sales of all drugs.

(A) For a wholesale distributor of only **[compressed]** medical gases **[with gross annual drug sales of \$0 - \$20,000]**, the fees are:

(i) \$675 for a two-year license;

(ii) \$675 for a two-year license that is **[amended]** due to a change of ownership; and

(iii) \$337 for a license that is amended during the current licensure period due to minor changes.

(B) For a wholesale distributor with gross annual drug sales of \$0 - \$199,999.99, the fees are:

(i) \$1080 for a two-year license;

(ii) \$1080 for a two-year license that is **[amended]** due to a change of ownership; and

(iii) \$540 for a license that is amended during the current licensure period due to minor changes.

(C) For a wholesale distributor with gross annual drug sales of \$200,000-\$19,999,999.99, the fees are:

(i) \$1755 for a two-year license;

(ii) \$1755 for a two-year license that is **[amended]** due to a change of ownership; and

(iii) \$877 for a license that is amended during the current licensure period due to minor changes.

(D) For a wholesale distributor with gross annual drug sales greater than or equal to \$20 million, the fees are:

(i) \$2295 for a two-year license;

(ii) \$2295 for a two-year license that is **[amended]** due to a change of ownership; and

(iii) \$1147 for a license that is amended during the current licensure period due to minor changes.

(2) In-state and out-of-state wholesale distributors of **[only compressed]** medical gases who are not manufacturers and who also are required to be licensed as a device distributor

under §229.439(a) of this title (relating to Licensure Fees) or as a wholesale food distributor under §229.182(a)(3) of this title (relating to Licensing/Registration Fee and Procedures) shall pay a combined two-year license fee for each place of business. License fees are based on the combined gross annual sales of these regulated products (medical gases, foods, drugs, and/or devices) as follows:

(A) For **[a wholesale distributor with]** combined gross annual sales of \$0 - \$199,999.99, the fees are:

(i) \$540 for a two-year license;

(ii) \$540 for a two-year license that is **[amended]** due to a change of ownership; and

(iii) \$270 for a license that is amended during the current licensure period due to minor changes.

(B) For **[a wholesale distributor with]** combined gross annual sales of \$200,000 - \$499,999.99, the fees are:

(i) \$810 for a two-year license;

(ii) \$810 for a two-year license that is **[amended]** due to a change of ownership; and

(iii) \$405 for a license that is amended during the current licensure period due to minor changes.

(C) For **[a wholesale distributor with]** combined gross annual sales of \$500,000 - \$999,999.99, the fees are:

(i) \$1080 for a two-year license;

(ii) \$1080 for a two-year license that is **[amended]** due to a change of ownership; and

(iii) \$540 for a license that is amended during the current licensure period due to minor changes.

(D) For **[a wholesale distributor with]** combined gross annual sales of \$1 million - \$9,999,999.99, the fees are:

(i) \$1350 for a two-year license;

(ii) \$1350 for a two-year license that is **[amended]** due to a change of ownership; and

(iii) \$675 for a license that is amended during the current licensure period due to minor changes.

(E) For **[a wholesale distributor with]** combined gross annual sales greater than or equal to \$10 million, the fees are:

(i) \$2025 for a two-year license;

(ii) \$2025 for a two-year license that is **[amended]** due to a change of ownership; and

(iii) \$1012 for a license that is amended during the current licensure period due to minor changes.

(3) In-state and out-of-state manufacturers of only medical gases shall pay a two-year license fee based on the gross annual sales of all prescription drugs as follows.

(A) For gross annual drug sales of \$0 - \$199,999.99, the fees are:

(i) \$1080 for a two-year license;

(ii) \$1080 for a two-year license that is due to a change of ownership; and

(iii) \$540 for a license that is amended during the current licensure period due to minor changes.

(B) For gross annual drug sales of \$200,000 - \$19,999,999.99, the fees are:

(i) \$1755 for a two-year license;

(ii) \$1755 for a two-year license that is due to a change of ownership; and

(iii) \$877 for a license that is amended during the current licensure period due to minor changes.

(C) For gross annual drug sales greater than or equal to \$20 million, the fees are:

(i) \$2295 for a two-year license;

(ii) \$2295 for a two-year license that is due to a change of ownership; and

(iii) \$1147 for a license that is amended during the current licensure period due to minor changes.

(4) [(3)] In-state and out-of-state [**wholesale distributors of prescription drugs who are**] manufacturers of prescription drugs shall pay a two-year license fee based on the gross annual sales of all drugs as follows.

(A) For [**a wholesale distributor with**] gross annual drug sales of \$0 - \$199,999.99 the fees are:

(i) \$1080 for a two-year license;

(ii) \$1080 for a two-year license that is [**amended**] due to a change of ownership; and

(iii) \$540 for a license that is amended during the current licensure period due to minor changes.

(B) For [**a wholesale distributor with**] gross annual drug sales of \$200,000 - \$19,999,999.99, the fees are:

(i) \$1755 for a two-year license;

(ii) \$1755 for a two-year license that is [**amended**] due to a change of ownership; and

(iii) \$877 for a license that is amended during the current licensure period due to minor changes.

(C) For [**a wholesale distributor with**] gross annual drug sales greater than or equal to \$20 million, the fees are:

(i) \$2295 for a two-year license;

(ii) \$2295 for a two-year license that is [**amended**] due to a change of ownership; and

(iii) \$1147 for a license that is amended during the current licensure period due to minor changes.

[(4) Out-of-state wholesale distributors of prescription drugs shall pay a two-year license fee based on all gross annual sales of drugs delivered into Texas.]

[(A) For each wholesale distributor with gross annual drug sales of \$0 - \$19,999,999, the fees are:]

[(i) \$1350 for a two-year license;]

[(ii) \$1350 for a two-year license that is amended due to a change of ownership; and]

[(iii) \$675 for a license that is amended during the current licensure period due to minor changes.]

[B) For each wholesale distributor with gross annual drug sales of greater than or equal to \$20 million, the fees are:]

[(i) \$2025 for a two-year license;]

[(ii) \$2025 for a two-year license that is amended due to a change of ownership; and]

[(iii) \$1012 for a license that is amended during the current licensure period due to minor changes.]

(b) Replacement license fee. The replacement license fee is \$100.

(c) [(b)] Proration of license fees. A person that has more than one place of business may request a one-time proration of the license fees when applying for a license for each new place of business. Upon approval by the department, the license for the new place of business will have a renewal date that is the same as the firm's other licensed places of business.

(d) [(c)] Exemption from license fees. A person is exempt from the license fees required by this section if the person is a charitable organization, as described in the Internal Revenue Code of 1986, §501(c)(3), or a nonprofit affiliate of the organization, to the extent otherwise permitted by law.

§229.428 Refusal, Cancellation, Suspension or Revocation of License.

(a) The commissioner may refuse an application for a wholesale distributor of prescription drugs license or may suspend or revoke such a license if the applicant or licensee:

(1) – (3) (No change.)

(4) has violated any of the provisions of the Texas, Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431 (Act) or this subchapter [these sections];

(5) has violated the Health and Safety Code, §431.021(1)(3), (jj), and (kk) concerning the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;

(6) – (8) (No change.)

(9) has furnished false or fraudulent information in any application made in connection with drug manufacturing or distribution;

(10) [(9)] has failed to pay a license fee or a renewal fee for a license; or

(11) [(10)] has obtained or attempted to obtain a license by fraud or deception.

(b) – (f) (No change.)

(g) The commissioner may suspend or revoke a license if the license holder no longer meets the qualification for obtaining a license under Health and Safety Code, §431.405.

§229.429 Minimum Standards for Licensure.

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

(f) Minimum restrictions on transactions.

(1) Returns.

(A) A wholesale distributor **must [shall]** receive prescription drug returns or exchanges from a pharmacy or **[chain]** pharmacy warehouse in accordance with the terms and conditions of the agreement between the wholesale distributor and the pharmacy or **[chain]** pharmacy warehouse. **An expired, damaged, recalled, or otherwise nonsalable prescription drug that is returned to the wholesale distributor may be distributed by the wholesale distributor only to either the original manufacturer or a third party returns processor.** The returns or exchanges, salable or otherwise, received by the wholesale distributor as provided by this subsection, including any redistribution of returns or exchanges by the wholesale distributor, are not subject to the pedigree requirement under Health and Safety Code, §431.412 **if the returns or exchanges are exempt from pedigree under: [of the Act. In connection with the returned goods process, a wholesale distributor shall establish appropriate business practices and exercise due diligence designed to prevent the entry of adulterated or counterfeit drugs into the distribution channel.]**

(i) §503, Prescription Drug Marketing Act of 1987 (21 U.S.C. §353(c)(3)(B));

(ii) the regulations adopted by the Secretary of the U.S. Department of Health and Human Services to administer and enforce that Act; or

(iii) the interpretations of that Act set out in the compliance policy guide of the United States Food and Drug Administration.

(B) Each wholesale distributor and pharmacy shall administer the process of drug returns and exchanges to ensure that the process is secure and does not permit the entry of adulterated or counterfeit drugs into the distribution channel.

(C) Notwithstanding any provision of state or federal law to the contrary, a person that has not otherwise been required to obtain a wholesale license under this subchapter and that is a pharmacy engaging in the sale or transfer of expired, damaged, returned, or recalled prescription drugs to the originating wholesale distributor or manufacturer and pursuant to federal statute, rules, and regulations, including the United States Food and Drug Administration's applicable guidances implementing the Prescription Drug Marketing Act of 1987 (Pub. L. No. 100-293), is exempt from wholesale licensure requirements under this subchapter.

(D) All other returns must comply with the requirements of Title 21, Code of Federal Regulations, §201.23(a)(1)-(5).

(2) Distributions. A manufacturer or wholesale distributor may distribute prescription drugs only to a person licensed under this subchapter, or the appropriate state licensing authorities, if an out-of-state wholesaler or retailer, or authorized by federal law to receive the drug. Before furnishing prescription drugs to a person not known to the manufacturer or wholesale distributor, the manufacturer or wholesale distributor shall [must] verify that the person is legally authorized by the department or the appropriate state licensing authority to receive the prescription drugs or authorized by federal law to receive the drugs. Wholesale distributors physically located and conducting operations in another state shall verify, prior to purchasing or receiving product, that the suppliers of drugs are licensed under this subchapter; and, shall notify the department of unlicensed wholesale distributors.

(3) Pedigree.

(A) A person, who is engaged in the wholesale distribution of a prescription drug, including a repackager but excluding the original manufacturer, shall provide a pedigree for each prescription drug for human consumption that leaves or at any time has left the normal distribution channel and is sold, traded, or transferred to any other person.

(B) A pharmacy that sells a drug to a person other than the final consumer shall provide a pedigree to the person acquiring the prescription drug. The sale of a reasonable quantity of a drug to a practitioner for office use is not subject to this subsection.

(C) A retail pharmacy or pharmacy warehouse is required to comply with this section only if the pharmacy or warehouse engages in the wholesale distribution of a prescription drug.

(D) The sale, trade, or transfer of a prescription drug between license holders with common ownership or for an emergency is not subject to this section.

(E) A person who is engaged in the wholesale distribution of a prescription drug, including a repackager, but excluding the original manufacturer of the finished form of a prescription drug, and who is in possession of a pedigree for a prescription drug shall verify before distributing the prescription drug that each transaction listed on the pedigree has occurred.

(F) A pedigree must include all necessary identifying information concerning each sale in the product's chain of distribution from the manufacturer, through acquisition and sale by a wholesale distributor or repackager, until final sale to a pharmacy or other person dispensing or administering the drug. At a minimum, the chain of distribution information must include:

(i) the name, address, telephone number, and, if available, the e-mail address of each person who owns the prescription drug and each wholesale distributor of the prescription drug;

(ii) the name and address of each location from which the product was shipped, if different from the owner's name and address;

(iii) the transaction dates; and

(iv) certification that each recipient has authenticated the pedigree.

(G) The pedigree must include, at a minimum, the

(i) name of the prescription drug;

(ii) dosage form and strength of the prescription drug;

(iii) size of the container;

(iv) number of containers;

(v) lot number of the prescription drug; and

(vi) name of the manufacturer of the finished dosage form.

(H) Each pedigree statement must be:

(i) maintained by the purchaser and the wholesale distributor for at least three years; and

(ii) available for inspection and photocopying not later than the second business day after the date a request is submitted by the department or a peace officer in this state.

(I) Verification procedures.

(i) Each transaction listed on the pedigree must be affirmatively authenticated prior to any wholesale distribution of a prescription drug.

(ii) A person in possession of a pedigree for a prescription drug shall certify, using the following methods, that each transaction listed on the pedigree has occurred:

(I) Invoice confirmation. Receipt of an invoice (or shipping document) from the seller to the purchaser, which may have the prices redacted. Documentation requirements include at a minimum a copy of the invoice or shipping document. If this method is used to authenticate a pedigree, the wholesaler shall review the document received for signs of tampering, incompleteness, or inconsistency with other invoices or shipping documents from that manufacturer or wholesaler, and shall randomly verify the authenticity of the invoice or shipping document with the seller or shipping point reflected on that document using one of the methods in the subsections below. Each wholesaler shall establish policies and procedures for the random verification of the authenticity of the invoices or shipping documents according to statistically sound standards. Each wholesaler shall establish policies and procedures for verification with those wholesalers in the distribution chain with which the wholesaler performing the authentication does not have an established prescription drug vendor relationship.

(II) Telephonic confirmation. Documentation requirements include a signed statement by the person placing the telephone call identifying the person's name and position title representing the seller who provides the information, the date the information was provided, and verification of the sales transaction between the parties, including verification of the date of the transaction and the quantity of prescription drugs involved in the transaction.

(III) Electron mail confirmation. Documentation requirements include a copy of the e-mail that identifies the person's name and position title representing the seller who provides the information, the date the information was provided, and verification of the sales transaction between the parties, including verification of the date of the transaction and quantity of prescription drugs involved in the transaction.

(IV) Electronic web-based confirmation. Verification of the transaction per a web-based system established by the seller or an independent person that is secure from intentional or unintentional tampering or manipulation to conceal an accurate and complete history of the prescription drug transaction(s). Documentation requirements include a written representation from the seller or independent person that the seller or independent person, as applicable, is responsible for the information included on the website and has adequate security on the information posted to prevent unauthorized tampering, manipulation, or modification of the information and a copy of the dated website page that confirms the sales transaction between the parties, including the date of the transaction and quantity of prescription drugs involved in the transaction.

(V) Notarized copy confirmation. Receipt of a legible and unaltered copy of a previous transaction's pedigree paper that had been signed under oath at the time of the previous transaction to support the transaction to which the pedigree paper relates. If this method is used to authenticate a pedigree, the wholesaler shall review the document received for signs of tampering, incompleteness, or inconsistency, and shall randomly verify the authenticity of pedigrees using one of the methods in the this subparagraph. Each wholesaler shall establish policies and procedures for the random verification of the authenticity of these copies of pedigree according to statistically sound standards.

(VI) Exclusive purchasing. A wholesale distributor may use a written agreement between the wholesale distributor and an authorized distributor of record that requires that all prescription drugs distributed to the wholesale distributor by the authorized distributor of record must be purchased by the authorized distributor of record from the manufacturer. If this method is used to authenticate a pedigree, the wholesale distributor shall establish policies and procedures for the random verification of the authenticity of the pedigrees that disclose the authorized distributor of record purchased the prescription drug from the manufacturer according to statistically sound standards.

(VII) Other methods. Any other method approved by the department.

(4) [(3)] Premises. Prescription drugs distributed by a manufacturer or wholesale distributor may be delivered only to the premises listed on the license, except as listed in paragraph (5) [(4)] of this subsection. A manufacturer or wholesale distributor may distribute prescription drugs to an authorized person or agent of that person at the premises of the manufacturer or wholesale distributor if:

(A) the identity and authorization of the recipient is properly established;
and

(B) delivery is made only to meet the immediate needs of a particular patient of the authorized person.

(5) [(4)] Delivery to hospital pharmacies. Prescription drugs may be distributed to a hospital pharmacy receiving area if a pharmacist or an authorized receiving person signs, at the time of delivery, a receipt showing the type and quantity of the prescription drug received. Any discrepancy between the receipt and the type and quantity of the prescription drug actually received shall be reported to the delivering manufacturer or wholesale distributor not later than the next business day after the date of delivery to the pharmacy receiving area.

(g) – (j) (No change.)

§229.430 Enforcement and Penalties.

(a) Inspection.

(1) To enforce this subchapter [these sections] or the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431 (Act), the commissioner, an authorized agent, or a health authority may, on presenting appropriate credentials to the owner, operator, or agent in charge of a place of business:

(A) – (B) (No change.)

(C) inspect at reasonable times, within reasonable limits, and in a reasonable manner, the place of business or vehicle and all equipment, finished and unfinished materials, containers, and labeling of any item and obtain samples necessary for the enforcement of this subchapter [these sections] or the Act.

(2) The inspection of a place of business, including a factory, warehouse, or consulting laboratory, in which a prescription drug is manufactured, processed, packed, or held for introduction into commerce extends to any place or thing, including a record, file, paper, process, control, or facility, in order to determine whether the drug:

(A) – (B) (No change.)

(C) is otherwise in violation of this subchapter [these sections] or the Act.

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

(b) (No change.)

(c) Access to records.

(1) A person who is required to maintain records referenced in this subchapter [these sections] or under the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431 (Act) or Chapter V of the Federal Food, Drug, and Cosmetic Act (Federal Act) or a person who is in charge or custody of those records shall, at the request of an authorized agent or health authority, permit the authorized agent or health authority at all reasonable times access to and to copy and verify the records.

(2) (No change.)

(d) Retention of records. Records required by this subchapter [these sections] shall be maintained at the place of business or other location that is reasonably accessible for a period of at least three years following disposition of the prescription drug unless a greater period of time is required by laws and regulations adopted in §229.420 of this title (relating to Applicable Laws and Regulations).

(e) Adulterated or misbranded prescription drug. If the department identifies an adulterated or misbranded prescription drug, the department may impose the applicable enforcement provisions of Subchapter C of the Act including, but not limited to: detention, emergency order, recall, condemnation, destruction, injunction, civil penalties, criminal

penalties, and/or administrative penalties. **[Administrative and civil penalties will be assessed using the Severity Levels contained in §229.251 of this title (relating to Minimum Standards for Licensure).]**

(f) Order to cease distribution.

(1) The commissioner shall issue an order requiring a person, including a manufacturer, distributor, or retailer of a prescription drug, to immediately cease distribution of the drug if the commissioner determines there is a reasonable probability that:

(A) a wholesale distributor has:

(i) violated this subchapter **[these sections]** or the Act; or

(ii) (No change.)

(B) (No change.)

(2) – (3) (No change.)