

State of Texas

Forensic Science Commission

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TEXAS FORENSIC SCIENCE COMMISSION

POLICIES AND PROCEDURES

ADOPTED AUGUST 1, 2014

1.0 Texas Forensic Science Commission (FSC)

The mission of the FSC is to strengthen the use of forensic science in Texas by conducting thorough and fair investigations, encouraging forensic development, and recommending legislative improvements.¹

1.1 Responsibilities

(a) The FSC is charged by statute to:

- (1) develop and implement a reporting system through which crime laboratories may report professional negligence or misconduct;
- (2) require crime laboratories that conduct forensic analyses to report professional negligence or misconduct to the commission;
- (3) investigate, in a timely manner, any allegation of professional negligence or misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by a crime laboratory; and
- (4) initiate for educational purposes investigations of forensic analyses without receiving a complaint where the commission determines by majority vote of a quorum of the members that an investigation of the forensic analysis would advance the integrity and reliability of forensic science in Texas.²

(b) An investigation under Subsection (a)(3):

- (1) must include the preparation of a written report that identifies and also describes the methods and procedures used to identify:
 - (A) the alleged negligence or misconduct;
 - (B) whether negligence or misconduct occurred;
 - (C) any corrective action required of the laboratory, facility, or entity;
 - (D) observations of the commission regarding the integrity and reliability of forensic analysis conducted;
 - (E) best practices identified by the commission during the course of the investigation; and
 - (F) other relevant recommendations, as determined by the commission.
- (2) It may include one or more:
 - (A) retrospective reexaminations of other forensic analyses conducted by the laboratory, facility, or entity that may involve the same kind of negligence or misconduct; and
 - (B) follow-up evaluations of the laboratory, facility, or entity to review:

¹ The FSC was created by Acts 2005, 79th Leg., Ch. [1224](#), sec. 1, eff. September 1, 2005. The bill was codified in article 38.01 of the Texas Code of Criminal Procedure, and amended during the 83rd Legislative Session by Tex. S.B. 1238, 83rd Leg., R.S. (2013). These written policies and procedures are intended to consolidate a description of the Commission's authority and provide a guide for the consistent exercise of the discretion and authority of the Forensic Science Commission.

² Tex. Code Crim. Proc. art. 38.01, sec. 4(a-1).

- (i) the implementation of any corrective action required under Subdivision (1)(C); or
- (ii) the conclusion of any retrospective reexamination under Paragraph (A).³

(c) If the commission conducts an investigation of a crime laboratory that is not accredited by the Department of Public Safety under Section 411.0205, Government Code, or the investigation is conducted pursuant to an allegation involving a forensic method or methodology that is not an accredited field of forensic science, or the investigation is initiated by the Commission for educational purposes, any resulting investigative report must be limited to:

- (A) observations of the commission regarding the integrity and reliability of the forensic analysis conducted;
- (B) best practices identified by the commission during the course of the investigation; or
- (C) other relevant recommendations, as determined by the commission.⁴

(d) The commission may not make a determination of professional negligence or misconduct unless the allegation or laboratory disclosure concerns an accredited forensic discipline *and* an accredited crime laboratory.

1.2 Definitions

“Accredited field of forensic science” means a specific forensic method or methodology validated or approved by the public safety director of the Department of Public Safety under Section 411.0205(b-1)(2), Government Code, as part of the accreditation process for crime laboratories established by rule under Section 411.0205(b) of that code.⁵

“Commission” means the Texas Forensic Science Commission.⁶

“Criminal action” means an investigation, complaint, arrest, bail, bond, trial, appeal, punishment, or other matter related to conduct proscribed by a criminal offense.⁷

“Forensic analysis” means a medical, chemical, toxicological, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action. The term expressly excludes the portion of any autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.⁸

³ See Tex. Code Crim. Proc. art. 38.01, sec. 4(b).

⁴ See Tex. Code Crim. Proc. art. 38.01, sec. 4(b-1).

⁵ Tex. Code Crim. Proc. art. 38.01, sec. 2(1).

⁶ Tex. Code Crim. Proc. art. 38.01, sec. 2(2).

⁷ See Tex. Code Crim. Proc. 38.01, sec. 2(3).

⁸ Tex. Code Crim. Proc. art. 38.01, sec. 2(4).

"Physical evidence" means any tangible object, thing, or substance relating to a criminal action.⁹

"Professional Misconduct" means the actor, through a material act or omission, deliberately failed to follow the standard of practice generally accepted at the time of the forensic analysis that an ordinary forensic professional or entity would have exercised, and the deliberate act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was deliberate if the actor was aware of and consciously disregarded an accepted standard of practice required for a forensic analysis.

"Professional Negligence" means the actor, through a material act or omission, negligently failed to follow the standard of practice generally accepted at the time of the forensic analysis that an ordinary forensic professional or entity would have exercised, and the negligent act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was negligent if the actor should have been but was not aware of an accepted standard of practice required for a forensic analysis.

Note: The term "would substantially affect the integrity of the results of a forensic analysis" does not necessarily require that a criminal case be impacted or a report be issued to a customer in error. The term includes acts or omissions that would call the integrity of the forensic analysis, the individual forensic examiner, or the laboratory as a whole into question regardless of outcome on the underlying criminal case.

2.0 Membership

(a) The FSC is composed of nine members, appointed by the governor as follows:

- (1) two members must have expertise in the field of forensic science;
- (2) one must be a prosecuting attorney that the governor selects from a list of 10 names submitted by the Texas District and County Attorneys Association;
- (3) one must be a defense attorney that the governor selects from a list of 10 names submitted by the Texas Criminal Defense Lawyers Association;
- (4) one must be a faculty member or staff member of The University of Texas who specializes in clinical laboratory medicine selected from a list of 10 names submitted to the governor by the chancellor of The University of Texas System;
- (5) one must be a faculty member or staff member of Texas A&M University who specializes in clinical laboratory medicine selected from a list of 10 names submitted to the governor by the chancellor of The Texas A&M University System;

⁹ See Tex. Code Crim. Proc. art. 38.35(a)(5).

(6) one must be a faculty member or staff member of Texas Southern University selected from a list of 10 names submitted to the governor by the chancellor of Texas Southern University;

(7) one must be a director or division head of the University of North Texas Health Science Center at Fort Worth Missing Persons DNA Database; and

(8) one must be a faculty or staff member of the Sam Houston State University College of Criminal Justice and have expertise in the field of forensic science selected from a list of 10 names submitted to the governor by the chancellor of Texas State University System.¹⁰

(b) Each member of the FSC serves a staggered two-year term subject to reappointment. Members are appointed to terms beginning on September 1st. The term of the members appointed under Sections (1)-(6) above expire on September 1 of each odd-numbered year. The term of the members appointed under Sections (7)-(8) above expire on September 1 of each even-numbered year.¹¹

(c) The Governor designates a presiding officer (“Chair”). The Chair may nominate other officers including a vice-chair and committee chairs, subject to the approval of other commission members.¹²

(d) The names and terms of the members shall be listed on the FSC website at www.fsc.state.tx.us.

(e) A person who is appointed to and qualifies for office as a member of the FSC shall receive an orientation from the Chair and staff that provides the person with information regarding:

- (1) the legislation that created the FSC and related laws;
- (2) the policies and procedures of the FSC, as described in this document and any associated documents generated by the FSC or staff;
- (3) the current budget for the FSC;
- (4) the requirements of:
 - (A) The Open Meeting Act , Government Code Chapter 551;
 - (B) The Public Information Act, Government Code Chapter 552; and
 - (C) other laws relating to public officials, including conflict of interest laws; and
- (5) the minutes of the meetings of the FSC; and
- (6) any pending complaints, disclosures or ongoing investigations.

2.1 Meetings

¹⁰ See Tex. Code Crim. Proc. art. 38.01, sec. 3(a).

¹¹ See Tex. Code Crim. Proc. art. 38.01, sec. 3(b).

¹² See Tex. Code Crim. Proc. art. 38.01, sec. 3(c).

(a) The FSC shall hold at least quarterly meetings and additional meetings at the call of the Chair. The Chair of the FSC shall conduct FSC meetings and may designate the dates, times and places of meetings following consultation with commission members. The Vice Chair shall conduct FSC meetings in the Chair's absence.

(b) Notice of the Meeting and the Meeting Agenda shall be made available to the FSC members, advisory members, and other interested parties in advance of each FSC meeting and shall be posted with the Office of Secretary of the State and on the FSC meeting webpage.

(c) A quorum of the FSC is five members. A quorum is required for formal action by the FSC. Formal action may be approved by a majority vote of the members present and voting.

(d) The Chair shall establish the agenda for each meeting after consultation with the full FSC.

(e) To increase public access, the Commission will endeavor to live-stream all of its quarterly meetings on its website at www.fsc.state.tx.us. Decisions to live-stream any particular meeting do not guarantee all meetings will be live-streamed. The ability to live-stream depends on budgetary constraints and logistical factors at any given meeting.

2.2 Committees

(a) The FSC shall have three standing committees: Complaint and Disclosure Screening, Forensic Development, and Legislative. The FSC Chair shall nominate three members of the FSC for each standing committee, subject to the approval of the full FSC. Each committee shall elect a member to serve as chair of the committee. The FSC Chair also may form additional committees, panels or workgroups as needed.

(b) A quorum of a committee is two members, and a quorum is required for a committee to meet and take action. The actions of any committee are not final and serve only as recommendations to the full FSC.

(c) Because complaints reviewed by the Complaint and Disclosure Screening Committee are of inherent interest to the public, the Committee shall hold all of its meetings as open public meetings. The notice rules set forth under the Open Meetings Act shall be used for these meetings.

(d) The FSC may, by majority vote of a quorum of its members, elect a member of the Texas Association of Crime Laboratory Directors (TACLD) to serve as a non-voting member of the Forensic Development Committee. The TACLD member shall remain a member of the Committee until he or she requests removal or until a majority of the FSC votes to remove him or her.

3.0 Processing of Complaints and Laboratory Self-Disclosures

(a) The FSC shall approve forms for complaints and laboratory self-disclosures and make them available on the FSC website. As further described below, complaints and

disclosures are initially reviewed by the Complaint and Disclosure Screening Committee, approved for investigation by the full FSC, investigated through an Investigation Panel, which may include outsourced investigative resources, and completed in the form of a report adopted by the full FSC.

(b) Complaints and disclosures shall be considered initially through the Complaint and Disclosure Screening Committee. The chair of the Committee shall present the complaints and disclosures before the FSC with a recommendation for disposition. The Committee may recommend the following dispositions:

- (1) dismiss the complaint or disclosure;
- (2) accept the complaint or disclosure and submit for action by an Investigation Panel;
- (3) recommend the FSC use its discretion to review the matter for educational purposes; or
- (4) take such other action as appropriate.

(c) The Complaint and Disclosure Screening Committee may assign staff to collect preliminary information related to a complaint or disclosure, including research into the status of any underlying criminal or civil case and whether the complaint or disclosure addresses a forensic analysis subject to investigation by the FSC. In addition, an actor named in a complaint or disclosure and the involved accredited laboratory, facility or entity may be given an opportunity to provide a brief, written reply, offering any reasons for or against accepting the complaint or disclosure for investigation. The following factors may be considered when a complaint or disclosure is screened by the Committee and considered by the FSC:

- (1) whether the FSC has jurisdiction;
- (2) the availability of the person who was the defendant in the criminal action associated with the forensic evidence;
- (4) the availability of any actor who conducted any part of the forensic analysis;
- (5) the length of time between the forensic analysis and the complaint or disclosure;
- (6) the availability of records in connection with the forensic analysis and any associated litigation;
- (7) the status of any criminal case or civil litigation associated with the forensic analysis;
- (8) the potential for additional relevant forensic analysis;
- (9) any other factor that would enhance or detract from a complete and accurate investigation of the forensic analysis and any alleged negligence or misconduct;
- (10) the availability of funds to complete an investigation; and
- (11) the opportunity for the investigation and report to educate the forensic science community, advance the standards and training associated with such a

forensic analysis or identify legislative recommendations for strengthening a field of forensic science.

(d) Upon reaching a recommended initial disposition for a complaint or disclosure, the Committee shall provide a summary of the recommendation to the FSC Chair for presentation to the full FSC.

(e) Following action by the full FSC regarding the disposition of a complaint or disclosure, the FSC shall notify the complainant, actor involved in the forensic analysis and the laboratory, facility or entity of the disposition.

(f) To ensure thorough consideration of all complaints and self-disclosures, complainants and laboratories submitting disclosures should make such submissions at least ten (10) business days before a particular quarterly Commission meeting to have the complaint or disclosure considered at that meeting. The Commission reserves the right to consider any complaint or disclosure that does not meet the 10-day deadline at the next quarterly meeting.

(g) A member of the Commission may, by formal motion, request that the full Commission reconsider a dismissed complaint or disclosure if the member identifies new evidence of negligence or professional misconduct that was not previously considered by the Commission. The new evidence may be derived from either:

1. Information in the existing record that the movant believes was not considered by the Commission previously; or
2. New information brought to the Commission's attention that was not previously considered by the Commission.

(h) A motion described in this section may be made only if the Commissioner believes in good faith that the information will have a material impact on the Commission's analysis of the complaint or disclosure pursuant to the screening criteria set forth in 3.0

(i) After considering the member's motion, the Commission shall vote to:

1. Affirm the original decision to dismiss the complaint or disclosure; or
2. Re-open the complaint or disclosure.

(j) The Commission shall notify the complainant and the appropriate laboratory, facility or entity in writing of the results of the Commission's vote under Subsection (h).

(k) The Commission shall conduct an appropriate investigation of a complaint or disclosure reopened under Subsection (i)(2).

(l) Each dismissed complaint or disclosure is limited to one motion for reconsideration under this section.

4.0 Investigation Panels

(a) After the full FSC votes to conduct an investigation, the Chair shall nominate three members of the FSC to an Investigation Panel subject to the approval of the full FSC, and the Investigation Panel shall elect one of the members as chair of the Panel.

(b) An Investigation Panel shall coordinate any investigation voted upon by the full FSC. The Panel initially shall specify the focus of the investigation, communicate with the entities or individuals involved in the investigation, and collect any appropriate records. The Panel also may initiate contact with any governmental agency, individual or entity to inquire about assistance in a full investigation. The Panel may:

- (1) collect and review appropriate documents as necessary;
- (2) conduct interviews with appropriate individuals;
- (3) refer the case to or collaborate with a governmental agency or accrediting body, pursuant to a memorandum of understanding or other appropriate agreement between the agencies;
- (3) contract with a subject matter expert if needed;¹³ or
- (4) take such other action as appropriate.

(c) If the FSC approves a full investigation, the Investigation Panel shall coordinate the completion of the investigation and draft a written report pursuant to Section 1.1(b), including a recommendation for final disposition to the full FSC. The Investigative Panel may delegate the initial draft of the report to Commission staff. An investigative report or recommendation is not final and does not represent the conclusions of the FSC until a final report is adopted and issued by the full FSC. Following consideration of the recommendation for final disposition from the Investigation Panel, the Commission shall issue a report using the criteria set forth in its enabling statute.

For investigations involving accredited crime laboratories and accredited forensic disciplines only, the FSC may:

- (1) find there is insufficient credible information to conclude that professional negligence or misconduct occurred in the forensic analysis;
- (2) find there is sufficient evidence to conclude that professional negligence or misconduct occurred in the forensic analysis;
- (3) require retrospective re-examination of evidence as appropriate;
- (4) require corrective action and follow-up as appropriate.

For all Commission investigations, regardless of whether they involve accredited crime laboratories and accredited forensic disciplines, the Commission's report may:

- (1) make observations regarding the integrity and reliability of the forensic analysis conducted;
- (2) identify applicable best practices; and
- (3) make other relevant recommendations.

(d) A finding is not a comment upon the guilt or innocence of any individual and is not necessarily a basis for relief in litigation or in any other forum. Reports of the Commission are not admissible in a civil or criminal action.¹⁴

¹³ Tex. Code Crim. Proc. art. 38.01, sec. 4(c).

(e) The FSC shall make the final report available to the public¹⁵ on the FSC website and provide a copy, as applicable, to the:

- (1) prosecutor, judge, defendant and defense attorney involved in the underlying criminal case, if any;
- (2) Board of Pardons and Paroles;
- (3) Director of the Department of Public Safety;
- (4) Governor;
- (5) Lieutenant Governor;
- (6) Speaker of the House of Representatives;
- (7) Complainant; and
- (8) Actor(s) and accredited laboratory, facility or entity involved in any part of the forensic analysis.¹⁶

(f) FSC Investigation Panels may meet by telephone for information-gathering purposes only. However, all deliberative discussions by FSC Investigative Panels shall be held in open, public meetings in accordance with the Texas Open Meetings Act.

5.0 Forensic Development Committee

The Forensic Development Committee shall develop, subject to the approval of the full FSC, plans to strengthen the use of forensic science in criminal courts in Texas. Such plans may include collection and dissemination of funding opportunities for forensic science, support for training and the development of professional standards and the collection of information that supports programs for strengthening forensic science.

6.0 Legislative Committee

The Legislative Committee shall study the ongoing work of the FSC and be prepared to monitor legislation and testify on the application of statutes within the purview of the FSC. The committee shall also review and recommend a legislative appropriations request to the full FSC and monitor the appropriations process as it affects the FSC.

7.0 Records

(a) All investigations shall be assigned a unique number to be used for subsequent documentation in that matter. Mere receipt of a complaint or disclosure does not imply any opinion by the FSC as to the merits of the allegations in the complaint or issues raised in the disclosure.

(b) FSC records shall be centralized and organized by staff for simplicity of access and ease of response to open records requests. To the extent feasible, records should be digitized and stored electronically.

¹⁴ Tex. Code Crim. Proc. art. 38.01, sec. 4(g), sec. 11.

¹⁵ Tex. Code Crim. Proc. art. 38.01, sec. 4(e).

¹⁶ Tex. Code Crim. Proc. art. 38.01, sec. 7.

8.0 Open Records Requests

(a) The Texas Public Information Act Section 552.002(c) applies to information in practically any medium and includes the following:

- (1) books;
- (2) paper;
- (3) letter;
- (4) document;
- (5) e-mail;
- (6) Internet posting;
- (7) text message;
- (8) instant message;
- (9) other electronic communication;
- (10) printout;
- (11) voice;
- (12) data;
- (13) or video representation held in computer memory

Information may be considered public and subject to disclosure under the Public Information Act even when it is sent from a personal email account or personal mobile device. *If the information concerns Commission business, it is public information under the Act regardless of where it is stored.*

(b) The FSC's designated Public Information Coordinator is:

Leigh M. Heidenreich
1700 North Congress Ave., Suite 445
Austin, Texas 78701
(512) 936-0661

(c) The FSC accepts open records requests on our designated public information request form (<http://www.fsc.state.tx.us/documents/TFSCPIARequestForm.pdf>) via facsimile to 1(888) 305-2432, by email to info@fsc.texas.gov, or by regular mail to our office at 1700 North Congress Avenue, Suite 445, Austin, TX 78701. Though the FSC encourages requesting parties to use the form provided, the FSC will accept a public information request in any form that complies with the Public Information Act.

(d) If the cost to provide public information exceeds \$40, the FSC may charge for personnel time, overhead, and postage. The FSC tries to waive and minimize fees wherever possible. However, a decision to waive a fee for one request does not necessarily mean the fee will be waived for a future request.

(e) Information filed as part of an allegation of professional misconduct or professional negligence or that is obtained during an investigation of an allegation of professional negligence or professional misconduct is not subject to release under the Public Information Act until the conclusion of an investigation by the FSC.¹⁷

(f) The FSC releases all documents in accordance with the Public Information Act. A decision on whether certain documents are subject to release may require a legal determination by the Texas Attorney General. If such a determination is necessary, the FSC will inform the requesting party as required by the Act.

9.0 Budget

The FSC shall adopt an operating budget each fiscal year. The Chair shall approve expenditures not specified within the budget.

10.0 Authority of Sam Houston State University

(a) Commission staff are employees of Sam Houston State University, but operate under the supervision of the Chair of the FSC. Staff includes a Commission Coordinator and General Counsel and any other such staff necessary to complete the duties of the FSC. The duties of staff shall be summarized in separate job descriptions.

(b) Sam Houston State University may contract for goods and services on behalf of FSC. The Commission Coordinator and the FSC Chair jointly monitor contract activities that are engaged for FSC.

(c) Only the Commission may exercise the duties of the Commission. Neither the Board of Regents of the Texas State University System nor Sam Houston State University has any authority or responsibility with respect to the duties of the Commission.

11.0 Additional Assistance

(a) As needed, the FSC shall seek the assistance of the Texas Legislative Council, the Legislative Budget Board, and the University of Texas at Austin.¹⁸

(b) As needed, the FSC may delegate the duties related to developing and implementing the reporting system described in 1.1(a)(1) to any person the FSC determines to be qualified to assume those duties.¹⁹

(c) The FSC shall develop a memorandum of understanding or other appropriate agreement with each assisting entity or person.

12.0 Public Comment

(a) The FSC shall include "public comment" as a topic on the agenda for each regularly scheduled meeting of the full FSC. The FSC reserves the right to eliminate, reduce or postpone the public comment period if deemed necessary due to time constraints or other exigent circumstances.

¹⁷ Tex. Code Crim. Proc. art. 38.01, sec. 10.

¹⁸ Tex. Code Crim. Proc. art. 38.01, sec. 6.

¹⁹ Tex. Code Crim. Proc. art. 38.01, sec. 4(c).

(b) During the public comment period, any member of the public, subject to the restrictions of this policy, may address the Commission regarding any matter related to the business of the Commission. Persons who attend or participate in the Commission meeting are expected to act in a manner that is respectful of the conduct of public business and conducive to orderly and polite public discourse. Public comment will typically occur at the end of the FSC meeting.

(c) Members of the public shall complete a public participation form before the FSC meeting and deliver the form to the FSC coordinator.

(d) Each speaker generally shall be provided three minutes to present public comment. The Commission reserves the right to expand or reduce the time allotted to each speaker and/or to set an overall time limit for the public comment period, dependent upon the particular circumstances and requirements of each meeting.

(e) Pursuant to Chapter 551 of the Texas Government Code, relating to open meetings, the Commission may respond to an inquiry regarding a subject not listed on the agenda only with:

- (1) a statement of specific factual information in response to the inquiry; or
- (2) a recitation of existing policy in response to the inquiry.

Any deliberation or decision about a subject not listed on the agenda must be limited to a proposal to place the subject on the agenda for a subsequent meeting.

(f) Members of the public are encouraged to submit written comments to the FSC at any time.

13.0 Communications Policy

(a) Legislative Hearings

- (1) An employee who attends or testifies at any public hearing shall obtain advance authorization from the FSC Chair and notify the Legislative Committee.
- (2) Commission members shall notify the FSC Coordinator regarding any hearing at which they intend to testify in their capacity as a member of the FSC.

(b) Media

- (1) To the extent feasible, Commission members shall inform the FSC Coordinator or FSC General Counsel of all FSC-related media inquiries for interviews, so that the inquiries may be properly organized, recorded and assigned for reply. Commission members may inform the media of this policy and direct media inquiries to the FSC Coordinator or FSC General Counsel.
- (2) Commission members and employees shall avoid discussing the details of pending investigations with the media, except upon final disposition of those investigations.

14.0 Conflicts Policy

(1) Any member of the FSC who has a personal or private interest in a matter pending before the FSC shall publicly disclose the fact to the FSC during an open meeting. The Commissioner may not vote or otherwise participate in the matter in which he or she has an interest. The disclosure shall be entered in the minutes of the meeting.

(2) In this section, "personal or private interest" has the same meaning as is given to it under Article III, Section 22, of the Texas Constitution governing the conduct of members of the legislature.

(3) The scope of the term "public or private interest" has not been clearly defined under either the constitutional provision or the Government Code section. Therefore, the question of whether a member has a personal or private interest in a matter pending before the FSC is a fact question to be analyzed on a case-by-case basis. Any questions should be brought to the attention of the FSC general counsel, who may in turn consult the Texas Ethics Commission and/or the Texas Attorney General as appropriate.

(4) For purposes of this section, an individual does not have a "personal or private interest" in a measure, proposal, or decision if the individual is engaged in a profession, trade, or occupation and the individual's interest is the same as all others similarly engaged in the profession, trade, or occupation.

15.0 Annual Report

The Commission will release an annual report by December 1 each year in accordance with the requirements of its enabling statute.

16.0 Staff Contact Information

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