TEXAS REGISTER

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Ashley Turner
10th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN ADDITION

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for November 24, 2010

Appointed to the Governing Board of the Texas School for the Deaf for a term to expire January 31, 2013, Tyran Paul Lee of Humble (replacing Nancy Carrizales of Katy who resigned).

Appointed to the Texas Military Preparedness Commission for a term to expire February 1, 2013, William H. Parry, III of Belton (replacing William J. Ehrie of Abilene who resigned).

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2015, Stephen H. Thomas of Portland (replacing James T. Clancy of Portland who resigned).

Appointed to the State Advisory Council on Early Childhood Education and Care for a term at the pleasure of the Governor, Sarah Reagan Miller of Austin (replacing Nicole Verver of Austin who no longer qualifies).

Appointed to the State Advisory Council on Early Childhood Education and Care for a term at the pleasure of the Governor, Rhonda G. Paver of Austin (pursuant to U.S. Code Title 42, Section 9873b(b)(1)(A)).

Appointed to the Commission on State Emergency Communications for a term to expire September 1, 2015, William H. Buchholtz of San Antonio (replacing Heberto Gutierrez of San Antonio whose term expired).

Rick Perry, Governor

TRD-201006811

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THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinions

RQ-0931-GA

Requestor:

The Honorable Todd Hunter

Chair, Committee on Judiciary and Civil Jurisprudence

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether section 271.121, Local Government Code, prohibits a governmental entity from requiring a contractor or other vendor to sign a project labor agreement (RQ-0931-GA

Briefs requested by December 30, 2010

RQ-0932-GA

Requestor:

The Honorable R. Lowell Thompson

Navarro County Criminal District Attorney

300 West Third Avenue, Suite 203

Corsicana, Texas 75110

Re: Whether a sheriff or a fire department is responsible for determining where to land a helicopter during the investigation of a traffic accident (RQ-0932-GA)

Briefs requested by December 30, 2010

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201006804
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: November 30, 2010

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Opinions

Opinion No. GA-0817

The Honorable Jo Anne Bernal

El Paso County Attorney

500 East San Antonio, Room 503

El Paso, Texas 79901

Re: Whether the El Paso County Attorney may provide legal advice and representation to the El Paso County Ethics Commission (RQ-0847-GA)

S U M M A R Y

Pursuant to section 161.061 of the Texas Local Government Code, the county attorney of El Paso County is required to represent the El Paso County Ethics Commission in all legal matters. It could be an improper usurpation of the county attorney's authority under section 161.061 if outside legal counsel were hired solely pursuant to section 161.101(d) of the Local Government Code to represent the Commission over the objection of the county attorney.

Requests for opinions regarding the propriety of a county attorney's representation under the Texas Disciplinary Rules of Professional Conduct should be addressed to the Texas Committee on Professional Ethics. Questions about actions of the county attorney under the County Ethics Code are for the Commission, in the first instance.

Opinion No. GA-0818

The Honorable Joe Deshotel

Chair, Committee on Business and Industry

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a civilian advisory committee to the police chief may review information maintained in a police department personnel file under Local Government Code, section 143.089(g) (RQ-0869-GA)

S U M M A R Y

Whether a civilian advisory committee may review information maintained in a police department personnel file under Texas Local Government Code section 143.089(g) will depend on specific facts establishing the committee as part of the department and limiting the committee's use of the files to department purposes only.

Opinion No. GA-0819

The Honorable Mark Homer

Chair, Committee on Culture, Recreation and Tourism

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the Development Corporation Act of 1979 permits a 4A economic development corporation to grant or use sales tax funds for certain purposes in connection with a nonprofit corporation that provides affordable housing assistance (RQ-0877-GA)

S U M M A R Y

It is for the board of directors of a development corporation to determine, in the first instance, whether a project or expenditure is authorized under the Development Corporation Act.

Opinion No. GA-0820

Mr. Victor Vandergriff

Chairman of the Board

Texas Department of Motor Vehicles

4000 Jackson Avenue

Austin, Texas 78731

Re: Delegation authority of the governing board of the Texas Department of Motor Vehicles (RQ-0879-GA)

S U M M A R Y

The Board of the Department of Motor Vehicles is authorized to issue a final order in a contested case under Occupations Code chapter 2301, except for cases under chapter 2301, subchapter M, the "Lemon Law." The director of the Motor Vehicle Division of the Department is authorized to issue final orders in cases under the Lemon Law and under Transportation Code chapter 503.

The Board has no implied authority to delegate its authority to issue final orders in contested cases to the director of the Motor Vehicle Division.

Board members are subject to conflict-of-interest provisions found in Transportation Code section 1001.028, Government Code chapter 572, and any other law that regulates the ethical conduct of state officers and employees. The application of these statutes to a Board member must be decided on a case-by-case basis in view of the relevant facts.

Opinion No. GA-0821

The Honorable Elizabeth Murray-Kolb

Guadalupe County Attorney

101 East Court Street, Suite 104

Seguin, Texas 78155-5779

Re: Whether a political subdivision, including a home-rule city, is required to pay impact fees imposed by another political subdivision under chapter 395, Local Government Code (RQ-0885-GA)

S U M M A R Y

Local Government Code chapter 395 does not give political subdivisions or governmental entities, other than school districts in some instances, the discretion to not pay impact fees as required under the chapter.

Opinion No. GA-0822

The Honorable Eddie Lucio Jr.

Chair, Committee on International Relations and Trade

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Eligibility for health insurance of survivors of a public servant killed in the line of duty (RQ-0886-GA)

S U M M A R Y

Given the latent ambiguity in section 615.073, Government Code, as well as the nature of the circumstances by which a surviving spouse becomes eligible for benefits under chapter 615, we will not speculate on the construction a court would give to the phrase "continued health insurance benefits."

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201006766
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: November 29, 2010

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PROPOSED RULES

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

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

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS
SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING EARLY CHILDHOOD EDUCATION PROGRAMS

19 TAC §102.1002

The Texas Education Agency (TEA) proposes an amendment to §102.1002, concerning the prekindergarten early start grant program. The section establishes procedures for the administration of grant awards for prekindergarten programs. The proposed amendment would revise the administration procedures.

The Texas Education Code (TEC), Chapter 29, Subchapter E, establishes a grant program that provides funding to districts interested in improving or expanding prekindergarten programs. The TEC, §29.155(e), authorizes the commissioner to adopt rules to administer the prekindergarten grant award program. Through 19 TAC §102.1002, Prekindergarten Early Start Grant Program, adopted to be effective April 2, 2009, the commissioner exercised rulemaking authority to establish procedures for the program's administration.

The proposed amendment to 19 TAC §102.1002 would revise procedures for the prekindergarten grant award program by updating provisions relating to definitions, including changes to the definitions for Tier 1 and Tier 2 grantees and deletion of the Tier 3 grantee definition; eligibility criteria; funding allocations and subsequent funding, including removal of Tier 3 funding; exemptions; and technical assistance. The proposed revisions would be implemented beginning with the 2011-2012 school year.

The proposed amendment would update procedures for school districts and open-enrollment charter schools to follow to apply for initial and subsequent funding under the Prekindergarten Early Start Grant Program. Grantees must continue to agree to submit all information, application materials, and reports required by the agency. The proposed amendment would have no new locally maintained paperwork requirements.

Barbara Knaggs, associate commissioner for state initiatives, has determined that for the first five-year period the proposed amendment is in effect there will be fiscal implications for local government (eligible school districts and open-enrollment charter schools) as a result of enforcing or administering the amendment. There will be no fiscal implications for state government.

The proposed amendment would create a funding structure from funds appropriated for the program beginning with the 2011-2012 school year (fiscal year 2012) for two categories of applicants. However, funding is contingent on appropriations made by the legislature for this purpose.

The proposed amendment may result in a redistribution of funds to school districts and open-enrollment charter schools, but the total distribution will not increase or decrease. Funds will continue to be distributed by the commissioner on a competitive and continuation grant basis to be used by schools for the purpose of providing grants for prekindergarten programs consistent with the provisions of the TEC, §29.155.

Ms. Knaggs has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be the significant expansion of the number of districts eligible to receive grant funding. The public would realize the benefit of increasingly improved school readiness programs for prekindergarten eligible children, thereby promoting individual student success and a more highly educated and prepared workforce. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins December 10, 2010, and ends January 10, 2011. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 10, 2010.

The amendment is proposed under the TEC, §29.155, which authorizes the commissioner to adopt rules to administer kindergarten and prekindergarten grants.

The amendment implements the TEC, §§29.1533, 29.155, 29.158, and 29.161.

§102.1002. Prekindergarten Early Start Grant Program.

(a) Definitions. The following words and terms when used in this section shall have the following meanings, unless the context clearly indicates otherwise.

(1) Eligible student--A child is eligible for enrollment in a prekindergarten class under this section if the child is at least three years

of age and meets eligibility criteria consistent with the Texas Education Code (TEC), §29.153.

(2) Licensed child care--Child care that meets the requirements adopted by the Texas Department of Family and Protective Services under the Human Resources Code, §42.002(3).

(3) Nonprofit--An organization that meets the requirements of the United States Code, Title 26, Subtitle A, Chapter 1, Subchapter F, Part I, Section 501(a).

(4) Partner--A non-public school organization collaborating with a public school to provide an educational component to eligible prekindergarten children.

(5) Prekindergarten Early Start Grant Program--A program established in accordance with the TEC, §29.155, to administer grant funds to implement and expand prekindergarten programs. [~~This grant program was formerly known as the Prekindergarten Expansion Grant Program.~~]

(6) Prekindergarten site--A public or non-public school classroom where teachers work with three- and four-year-old children in a prekindergarten school readiness program.

(7) Proven school readiness components--The components of proven school readiness are:

(A) a high-quality, developmentally appropriate, and rigorous curriculum, based on the Texas Prekindergarten Guidelines;

(B) continuous monitoring of student progress in the classroom; and

(C) professional development, including mentoring, to promote student achievement.

(8) School district--For the purposes of this section, the definition of a school district includes an open-enrollment charter school.

(9) School readiness certification system (SRCS)--In accordance with the TEC, §29.161, the school readiness certification system is a valid, research-based automated system provided by the State Center for Early Childhood Development through which an early childhood education program submits an application demonstrating the program's record of cognitive, social, and emotional development of young children to be certified as a school ready program.

(10) School readiness integration--In accordance with the TEC, §29.158, school readiness integration refers to cooperative strategies to share resources across public and non-public program delivery organizations in a community or communities that may include, but are not limited to:

(A) sharing certified or highly qualified teachers so that every child in each targeted classroom receives a minimum of three hours daily of high-quality skill development consistent with developing children's social and emotional well-being;

(B) developing a comprehensive instructional framework, based on the Texas Prekindergarten Guidelines, consisting of common performance goals that encompass the unique characteristics of each individual organization responsible for preparing young children for school success;

(C) sharing physical space if one organization lacks capacity while another has available capacity;

(D) conducting joint professional development programs that focus on proven school readiness components, including the Texas Prekindergarten Guidelines; and

(E) adopting similar approaches to student progress monitoring to inform classroom instruction.

(11) School readiness integration partnership--A collaboration among public prekindergarten programs and local workforce development boards, Head Start providers, college or university early childhood programs, and/or providers of private for-profit or nonprofit licensed child care services that provides a school readiness component to eligible prekindergarten students.

(12) School ready or school readiness--A term that refers to a child being able to function competently in a school environment in the areas of early language and literacy, mathematics, and social skills as objectively measured by state-approved assessment instruments.

(13) Shared services arrangement (SSA)--An agreement between two or more school districts and/or education service centers (ESCs) that provides services for entities involved.

(14) State Center for Early Childhood Development (SCECD)--The state center for early childhood education research and training for early childhood teachers and caregivers administered by The University of Texas Health Science Center at Houston.

(15) Texas Prekindergarten Guidelines--Guidelines approved by the commissioner of education that offer detailed descriptions of expected behaviors across multiple skill domains that should be observed in four- to five-year-old children by the end of their prekindergarten experience. The guidelines are to prepare prekindergarten children to master the skills and concepts in each subject area specified in §74.1 of this title (relating to Essential Knowledge and Skills) in the kindergarten Texas Essential Knowledge and Skills.

(16) Tier 1 grantee--An applicant not currently eligible to receive funds under Tier 2 eligibility criteria. [~~, with an average student performance over the last three consecutive years on the Grade 3 assessment instruments administered under the TEC, §39.023, substantially below the state average for this time period that meets one of the following:~~]

[~~(A) has not previously received Prekindergarten Expansion Grant funding; or~~]

[~~(B) has previously received Prekindergarten Expansion Grant funding but did not participate in Cycle 14 (school year 2008-2009).~~]

(17) Tier 2 grantee--An applicant that participated as a Tier 2 grantee in [~~Cycle 14 of~~] the Prekindergarten Early Start [~~Expansion~~] Grant Program in school years 2009-2010 and 2010-2011 [~~(school year 2008-2009)~~] that is eligible to receive continuation funding [~~due to the applicant's above state average student performance over the last three consecutive years on the Grade 3 assessment instruments administered under the TEC, §39.023~~].

[~~(18) Tier 3 grantee--An applicant that participated in Cycle 14 of the Prekindergarten Expansion Grant Program (school year 2008-2009) that is eligible to receive continuation funding on the basis of the applicant's substantially below state average Grade 3 student performance over the last three consecutive years on the Grade 3 assessment instruments administered under the TEC, §39.023.~~]

(b) Eligibility. Eligible applicants include school districts, open-enrollment charter schools, and ESCs operating as the fiscal agent of an SSA. An applicant may apply for Prekindergarten Early Start Grant Program funds if the applicant meets the criteria for a grantee as defined in subsection (a)(16) or (17) of this section and:

(1) establishes a school readiness integration partnership; [~~and~~]

(2) demonstrates how the applicant will measure student progress based on proven school readiness components and the SRCS [~~school readiness certification system~~] in accordance with TEC, §29.161; and[~~.~~]

(3) demonstrates a commitment to adopt a kindergarten reading diagnostic assessment instrument compatible with the requirements for submission of kindergarten data to the SRCS.

(c) Application and grant award.

(1) An eligible applicant must submit a Prekindergarten Early Start Grant Program application in accordance with the instructions provided by the Texas Education Agency (TEA).

(2) An applicant must document in the grant application its locally adopted procedures for:

(A) determining which eligible students will participate in the program;

(B) implementing a strategic plan encouraging eligible students to attend the program; and

(C) sustaining the level of program quality and services following the term of the grant period.

(3) Each applicant shall provide evidence that before establishing a new prekindergarten program, the school district considered the possibility of sharing use of an existing Head Start or other licensed child care prekindergarten site as a prekindergarten site.

(d) Notification. The TEA will notify each applicant in writing of its selection or non-selection for funding. In the case of an application selected for funding, notification to the grantee will include the contractual conditions which the grantee must accept in accordance with state law.

(e) Funding. Funding allocations may take into account the percentage of educationally disadvantaged students served in the district, in addition to other funding allocation methods as determined by the commissioner annually in the grant application. Contingent upon adequate appropriations, distribution of funds will be according to the following funding structure.

(1) Tier 1 funding. The highest percentage of available funding, as determined annually in the grant application, will be proportionately awarded to Tier 1 grantees. Funding will be provided for a period not to exceed five years from year one of grant application approval and will be based on annual accomplishment of grant objectives and requirements set forth in the application in subsequent years of the five-year cycle.

(A) Grants will be awarded first to Tier 1 applicants whose average student performance over the last three consecutive years on the Grade 3 assessment instruments administered under the TEC, §39.023, is substantially below state average and whose application score meets a minimum score as defined in the grant application.

(B) Any funds remaining after all grants for Tier 1 applicants meeting criteria defined in subparagraph (A) of this paragraph have been awarded may be awarded to Tier 1 applicants whose average student performance over the last three consecutive years on the Grade 3 assessment instruments administered under the TEC, §39.023, is at or above the state average and whose application score meets a minimum score as defined in the grant application.

(2) Tier 2 funding. A percentage of available funding, as determined [~~annually~~] in the grant application, will be awarded to Tier 2 grantees on a continuation basis. Continuation funding [~~Funding~~] will be provided for a period not to exceed three years or through the 2011-2012 school year. [~~from year one of grant application approval and will be based on annual accomplishment of grant objectives and requirements set forth in the application in subsequent years of the three-year cycle.~~]

[~~(3) Tier 3 funding. A percentage of available funding, as determined annually in the grant application, will be awarded to Tier 3 grantees. Funding will be provided for a period not to exceed two years. Tier 3 grantees will apply annually and shall be required to participate in intensive technical assistance provided by the SCECD focused on proven school readiness components aligned with the Texas Prekindergarten Guidelines.~~]

(f) Allowable expenditures. Allowable expenditures include, but are not limited to, the following:

(1) expenditures related to the continuation of existing full-day prekindergarten programs;

(2) personnel costs related to the teaching personnel needed to expand prekindergarten programs to meet the requirements of at least six hours of instruction by a certified teacher each day;

(3) curriculum materials based on scientific research that are consistent with the Texas Prekindergarten Guidelines and designed to improve the school readiness of preschool children;

(4) equipment, including computers and other technology;

(5) leases for space for prekindergarten programs;

(6) costs associated with developing plans for and entering into integrated school readiness partnerships, including costs associated with infrastructure and administration of the program and partnership;

(7) training activities on proven school readiness components conducted by the SCECD or another provider;

(8) costs associated with the grantee's participation in the SRCS [~~school readiness certification system~~]; and

(9) indirect costs.

(g) Unallowable expenditures. Grant funds may not be expended on the following:

(1) portable buildings;

(2) construction of classroom space;

(3) renovation or remodeling of existing space; or

(4) expenditures related to students who are not eligible for the program.

(h) Conditions of operation.

(1) Each grantee must agree to submit all information requested by the TEA through periodic activity/progress reports, a final evaluation report, and other activities related to the evaluation of the program. Reports must be submitted in the prescribed time and must contain all requested information in the prescribed format. These reports will be used by the TEA to evaluate the implementation and progress of grant-funded programs and to determine if modifications or adjustments to the program are necessary.

(2) Each grantee must provide a prekindergarten program designed to develop children's school readiness that is aligned with the Texas Prekindergarten Guidelines.

(3) Each grantee must collaborate in a school readiness integration partnership as established in its grant application. In coordinating school readiness services under this section and in making any

related decision to contract with partners such as local workforce development boards, Head Start and Early Head Start providers, licensed child care providers, or other licensed private for-profit or nonprofit child care services providers, a school district shall give preference to entities willing to commit through mutual agreement to implement proven school readiness components that are aligned with the Texas Prekindergarten Guidelines, including participation in:

(A) the SRCS [~~school readiness certification system~~] in accordance with the TEC, §29.161;

(B) a nationally recognized accrediting organization approved by the Texas Workforce Commission and the Texas Department of Family and Protective Services; or

(C) the Texas Rising Star Provider certification program administered by the Texas Workforce Commission.

(4) Each grantee must develop and implement, throughout the duration of the grant period, a sustainability plan to continue the quality and level of services of the program after the grant period ends. The sustainability plan must include continuation of the school readiness integration plan and participation in the SRCS. [~~school readiness certification system.~~]

(i) Subsequent funding. All subsequent funding will be awarded according to the tier funding structure described in subsection (e) of this section. To receive subsequent funding for the Prekindergarten Early Start Grant Program, all grantees must reapply for funding each year of the grant cycle and meet all applicable performance standards included in the prior year's grant agreement. A Tier 2 grantee applying for funding in year three must present valid, research-based empirical data as evidence that the grantee has implemented a prekindergarten program that includes proven school readiness components. [~~In addition, the following provisions apply.~~]

[~~(1) A Tier 2 grantee applying for funding in years two and three must present valid, research-based empirical data as evidence that the grantee has implemented a prekindergarten program that includes proven school readiness components. After three years of not receiving funds subsequent to the end of the last year of the three-year grant cycle, a Tier 2 grantee will be eligible to reapply for funding as a Tier 1 applicant if the school district's Grade 3 performance on the assessment instruments administered under the TEC, §39.023, is substantially below the state average, as defined in the grant application.~~]

[~~(2) A Tier 3 grantee will be eligible to reapply for funding as a Tier 2 grantee after the initial two-year cycle if the grantee's Grade 3 student performance level demonstrates improvement, based on valid and reliable measurement by the school readiness certification system, by the end of the grant period.~~]

(j) Exemptions.

(1) The requirement in subsection (h)(3) of this section for a school readiness integration partnership may be exempted if Head Start and/or licensed child care programs required for school readiness integration planning are unavailable in a local community. A school district must provide proof of inability to enter into a school readiness integration partnership by submitting an Exemption Request form in the grant application signed by the superintendent or his/her designee, including a statement signed by the authorized member of the school district's board of trustees certifying inability to submit the required school readiness integration plan based upon unavailability of eligible entities and programs with which to coordinate. An open-enrollment charter school board may also provide a statement certifying inability to enter into a school readiness integration plan based on limitations of the approved charter.

(2) All requests for exemptions from program requirements must be submitted as part of the application.

(3) A Tier 2 grantee [~~that does not administer the Texas Primary Reading Inventory (TPRI) or Tejas LEE by the effective date of this section~~] may request an exemption from the requirement in subsection (b)(2) of this section to participate in the SRCS if the Tier 2 grantee was not using a Kindergarten reading diagnostic instrument compatible with the SRCS by April 2, 2009, the original adoption date of this section. [~~school readiness certification system.~~] The grantee[~~, however,~~] will be required to establish a policy for providing another source of valid and reliable data to demonstrate program effectiveness. Approval of a request for an exemption from the requirement to participate in the SRCS [~~school readiness certification system~~] will also apply to the condition of operation specified in subsection (h)(3)(A) of this section. However, a district receiving such an exemption will be required to allow evaluation of Kindergarten-Grade 2 student performance by the state, or its designee or its evaluator, using a Kindergarten reading diagnostic instrument compatible with the SRCS or any other developmentally appropriate diagnostic assessment instrument.

(k) Technical assistance. The TEA or its contractors will provide technical assistance, contingent on available funding, to implement proven school readiness components to selected school districts and their school readiness integration partners. Based on a comprehensive analysis of student performance, SRCS results, periodic activity/progress reports, final evaluation reports, and other relevant data from grantees, selected grantees and their school readiness integration partners will be required to participate in the technical assistance.

(l) Evaluation. Each grantee operating a prekindergarten program using Prekindergarten Early Start Grant Program funds must comply with evaluation procedures consistent with the TEC, §29.154, in a manner established by the commissioner. Annual submission of evaluation reports based on program quality and student performance will be required in the manner and time set forth in the application for funding.

(m) Revocation.

(1) The commissioner may revoke a grant award for the Prekindergarten Early Start Grant Program based on the following factors:

(A) noncompliance with application assurances and/or the provisions of this section;

(B) lack of program success as evidenced by progress reports and program data;

(C) failure to participate in data collection and audits;

(D) failure to meet performance standards specified in the application; or

(E) failure to provide accurate, timely, and complete information as required by the TEA to evaluate the effectiveness of the Prekindergarten Early Start Grant Program.

(2) A decision by the commissioner to revoke the grant award of a Prekindergarten Early Start Grant Program is final and may not be appealed.

(n) Recovery of funds. The commissioner may audit the use of grant funds and may recover funds against any state provided funds.

(o) Implementation. The funding structure delineated in subsection (e) of this section takes effect beginning with school year 2011-2012 [~~2009-2010~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 24, 2010.

TRD-201006751
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: January 9, 2011
For further information, please call: (512) 475-1497

♦ ♦ ♦

CHAPTER 111. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR MATHEMATICS
SUBCHAPTER C. HIGH SCHOOL

19 TAC §111.37

The State Board of Education (SBOE) proposes new §111.37, concerning Texas essential knowledge and skills (TEKS) for advanced quantitative reasoning. The proposed new section would add a new mathematics course to satisfy the fourth mathematics graduation requirement.

A discussion item regarding proposed new 19 TAC Chapter 130, Texas Essential Knowledge and Skills for Career and Technical Education, was presented to the SBOE Committee of the Full Board during the March 2009 meeting. A request was made to the SBOE to add Advanced Mathematical Decision Making, a mathematics course, to the TEKS for CTE. Proposed new 19 TAC Chapter 130, Texas Essential Knowledge and Skills for Career and Technical Education, including Advanced Mathematical Decision Making, was approved for first reading and filing authorization at the May 2009 meeting. Proposed new 19 TAC Chapter 130, Texas Essential Knowledge and Skills for Career and Technical Education, as amended, was approved for second reading and final adoption at the July 2009 meeting. The Advanced Mathematical Decision Making course was removed from the proposal by amendment.

At the direction of the board chair, Texas Education Agency staff convened an independent group of mathematics educators to review standards for a mathematics course that would satisfy the fourth mathematics graduation requirement. The group's recommendations for revisions were presented to the SBOE Committee on Instruction at the September 2010 meeting. At that meeting, the committee directed staff to prepare rule text for the November meeting.

At the November 2010 meeting, the SBOE approved proposed new 19 TAC Chapter 111, Texas Essential Knowledge and Skills for Mathematics, Subchapter C, High School, §111.37, Advanced Quantitative Reasoning (One Credit), for first reading and filing authorization.

The proposed new section would have no new procedural and reporting implications. The proposed new section would have no new locally maintained paperwork requirements.

Anita Givens, associate commissioner for standards and programs, has determined that for the first five-year period the proposed new section is in effect there will be fiscal implications for local government as a result of enforcing or administering the proposed new section. There are anticipated fiscal implications for school districts to implement the new course, which may include the need for professional development and revisions to district-developed databases, curriculum, and scope and sequence documents. Since curriculum and instruction decisions are made at the local district level, it is difficult to estimate the fiscal impact on any given district. There are no additional costs anticipated for state government.

Ms. Givens has determined that for each year of the first five years the proposed new section is in effect the public benefit anticipated as a result of enforcing the rule action would be added flexibility for students in meeting high school graduation requirements. There is no anticipated economic cost to persons who are required to comply with the proposed rule action.

In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. A request for a public hearing on the proposed rule action submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register.*

The new section is proposed under the Texas Education Code (TEC), §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

§111.37. Advanced Quantitative Reasoning (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. Prerequisite: Algebra II.

(b) Introduction.

(1) In Advanced Quantitative Reasoning, students continue to build upon the K-8, Algebra I, Algebra II, and Geometry foundations as they expand their understanding through further mathematical experiences. Advanced Quantitative Reasoning includes the analysis of information using statistical methods and probability, modeling change and mathematical relationships, and spatial and geometric modeling for mathematical reasoning. Students learn to become critical consumers of real-world quantitative data, knowledgeable problem solvers who use logical reasoning, and mathematical thinkers who can use their quantitative skills to solve authentic problems. Students develop critical skills for success in college and careers, including investigation, research, collaboration, and both written and oral communication of their work, as they solve problems in many types of applied situations.

(2) As students work with these mathematical topics, they continually rely on mathematical processes, including problem-solving techniques, appropriate mathematical language and communication skills, connections within and outside mathematics, and reasoning. Students also use multiple representations, technology, applications and modeling, and numerical fluency in problem-solving contexts.

(c) Knowledge and skills.

(1) The student develops and applies skills used in college and careers, including reasoning, planning, and communication, to make decisions and solve problems in applied situations involving numerical reasoning, probability, statistical analysis, finance, mathematical selection, and modeling with algebra, geometry, trigonometry, and discrete mathematics. The student is expected to:

(A) gather data, conduct investigations, and apply mathematical concepts and models to solve problems in mathematics and other disciplines;

(B) demonstrate reasoning skills in developing, explaining, and justifying sound mathematical arguments, and analyze the soundness of mathematical arguments of others; and

(C) communicate with mathematics orally and in writing as part of independent and collaborative work, including making accurate and clear presentations of solutions to problems.

(2) The student analyzes real-world numerical data using a variety of quantitative measures and numerical processes. The student is expected to:

(A) apply, compare, and contrast ratios, rates, ratings, averages, weighted averages, or indices to make informed decisions;

(B) solve problems involving large quantities that are not easily measured;

(C) use arrays to efficiently manage large collections of data and add, subtract, and multiply matrices to solve applied problems; and

(D) apply algorithms and identify errors in recording and transmitting identification numbers.

(3) The student analyzes and evaluates risk and return in the context of real-world problems. The student is expected to:

(A) determine and interpret conditional probabilities and probabilities of compound events by constructing and analyzing representations, including tree diagrams, Venn diagrams, and area models, to make decisions in problem situations;

(B) use probabilities to make and justify decisions about risks in everyday life; and

(C) calculate expected value to analyze mathematical fairness, payoff, and risk.

(4) The student makes decisions based on understanding, analysis, and critique of reported statistical information and statistical summaries. The student is expected to:

(A) identify limitations or lack of information in studies reporting statistical information, including when studies are reported in condensed form;

(B) interpret and compare the results of polls, given a margin of error;

(C) identify uses and misuses of statistical analyses in studies reporting statistics or using statistics to justify particular conclusions; and

(D) describe strengths and weaknesses of sampling techniques, data and graphical displays, and interpretations of summary statistics or other results appearing in a study.

(5) The student applies statistical methods to design and conduct a study that addresses one or more particular question(s). The student is expected to:

(A) determine the purpose of a statistical investigation and what type of statistical analysis can be used to answer a specific question or set of questions;

(B) identify the population of interest, select an appropriate sampling technique, and collect data;

(C) identify the variables to be used in a study;

(D) determine possible sources of statistical bias in a study and how such bias may affect the ability to generalize the results;

(E) create data displays for given data sets to investigate, compare, and estimate center, shape, spread, and unusual features; and

(F) determine possible sources of variability of data, including those that can be controlled and those that cannot be controlled.

(6) The student communicates the results of reported and student-generated statistical studies. The student is expected to:

(A) report results of statistical studies, including selecting an appropriate presentation format, creating graphical data displays, and interpreting results in terms of the question studied;

(B) justify the design and the conclusion(s) of statistical studies, including the methods used for each; and

(C) communicate statistical results in both oral and written formats using appropriate statistical language.

(7) The student analyzes the mathematics behind various methods of ranking and selection. The student is expected to:

(A) apply, analyze, and compare various ranking algorithms to determine an appropriate method to solve a real-world problem; and

(B) analyze and compare various voting and selection processes to determine an appropriate method to solve a real-world problem.

(8) The student models data, makes predictions, and judges the validity of a prediction. The student is expected to:

(A) determine if there is a linear relationship in a set of bivariate data by finding the correlation coefficient for the data, and interpret the coefficient as a measure of the strength and direction of the linear relationship;

(B) collect numerical bivariate data; use the data to create a scatterplot; and select a function such as linear, exponential, logistic, or trigonometric to model the data; and

(C) justify the selection of a function to model data, and use the model to make predictions.

(9) The student uses mathematical models to represent, analyze, and solve real-world problems involving change. The student is expected to:

(A) analyze and determine appropriate growth or decay models, including linear, exponential, and logistic functions;

(B) analyze and determine an appropriate cyclical model that can be modeled with trigonometric functions;

(C) analyze and determine an appropriate piecewise model; and

(D) solve problems using recursion or iteration.

(10) The student creates and analyzes mathematical models to make decisions related to earning, investing, spending, and borrowing money to evaluate real-world situations. The student is expected to:

(A) determine, represent, and analyze mathematical models for various types of income calculations;

(B) determine, represent, and analyze mathematical models for expenditures, including those involving credit; and

(C) determine, represent, and analyze mathematical models for various types of loans and investments.

(11) The student uses a variety of network models represented graphically to organize data in quantitative situations, make informed decisions, and solve problems. The student is expected to:

(A) solve problems involving scheduling or routing situations that can be represented by methods such as a vertexedge graph using critical paths, Euler paths, or minimal spanning trees; and

(B) construct, analyze, and interpret flow charts in order to develop and describe problem-solving procedures.

(12) The student uses a variety of tools and methods to represent and solve problems involving static and dynamic situations. The student is expected to:

(A) create and use two- and three-dimensional representations of authentic situations using paper techniques or dynamic geometric environments for computer-aided design and other applications;

(B) use vectors to represent and solve applied problems;

(C) use matrices to represent geometric transformations and solve applied problems; and

(D) solve geometric problems involving inaccessible distances such as those encountered when building a bridge, constructing a skyscraper, or mapping planetary distances.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 24, 2010.

TRD-201006752
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: January 9, 2011
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 163. LICENSURE

22 TAC §163.13

The Texas Medical Board (Board) proposes amendments to §163.13, concerning Expedited Licensure Process.

The amendment deletes language that requires applicants for an expedited license to practice medicine to submit proof of eligibility for a visa immigration waiver.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have the board enforce rules that are consistent with the provisions of §155.1025 of the Texas Occupations Code.

Ms. Leshikar has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment are also authorized by §155.1025, Texas Occupations Code.

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

§163.13. Expedited Licensure Process.

Applications for licensure shall be expedited by the board's licensure division provided the applicant submits an affidavit stating that:

(1) the applicant intends to practice in a rural community as determined by the Office of Rural Health Initiatives; or

(2) the applicant[~~:~~]

[~~(A)~~ ~~has requested and is eligible for an immigration visa waiver as described by Section 12.0127 of the Texas Health and Safety Code; and~~]

[~~(B)~~] intends to practice medicine in a medically underserved area or health professional shortage area designated by the United States Department of Health and Human Services that has a shortage of physicians.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 22, 2010.

TRD-201006665

Mari Robinson, J.D.
Executive Director
Texas Medical Board
Earliest possible date of adoption: January 9, 2011
For further information, please call: (512) 305-7016

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CHAPTER 171. POSTGRADUATE TRAINING PERMITS

22 TAC §171.2, §171.5

The Texas Medical Board (Board) proposes amendments to §171.2, concerning Construction, and §171.5, concerning Duties of PIT Holders to Report.

The amendment to §171.2 removes reference to "annual" reporting requirements since annual reports are no longer required under §171.5.

The amendment to §171.5 clarifies that fines, citations, or violations that are over $250 must be reported, excluding traffic tickets unless the traffic violations relate to the use of alcohol or drugs.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the proposal will be to have rules that are not contradictory or confusing and to not have the agency investigate minor offenses unrelated to the practice of medicine, and to not place undue requirements on PIT holders to report information that does not reflect on a person's ability to safely practice medicine.

Ms. Leshikar has also determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposals may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §153.001, Texas Occupations Code.

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

§171.2. Construction.

(a) Unless otherwise indicated, permit holders under this chapter shall be subject to the duties, limitations, disciplinary actions, rehabilitation order provisions, and procedures applicable to licensees in the Medical Practice Act and board rules. Permit holders under this chapter shall also be subject to the limitations and restrictions elaborated in this chapter.

(b) Permit holders under this chapter shall cooperate with the board and board staff involved in investigation, review, or monitoring associated with the permit holder's practice of medicine. Such cooperation shall include, but not be limited to, permit holder's written response to the board or board staff written inquiry within 14 days of receipt of such inquiry.

(c) A physician-in-training permit holder's failure to comply with required [~~annual~~] reporting is grounds for disciplinary action by the Board.

(d) In accordance with §155.105 of the Medical Practice Act, the board shall retain jurisdiction to discipline a permit holder whose permit has been terminated, canceled, and/or expired if the permit holder violated the Medical Practice Act or board rules during the time the permit was valid.

(e) The issuance of a permit to a physician shall not be construed to obligate the board to issue the physician subsequent permits or licenses. The board reserves the right to investigate, deny a permit or full licensure, and/or discipline a physician regardless of when the information was received by the board.

§171.5. Duties of PIT Holders to Report.

(a) Failure of any PIT holder to comply with the provisions of this chapter or the Medical Practice Act §160.002 and §160.003 may be grounds for disciplinary action as an administrative violation against the PIT holder.

(b) The PIT holder shall report in writing to the executive director of the board the following circumstances within thirty days of their occurrence:

(1) the opening of an investigation or disciplinary action taken against the PIT holder by any licensing entity other than the TMB;

(2) an arrest, a fine, citation or violation [~~(~~over $250[~~)~~]] (excluding traffic tickets, unless drugs or alcohol were involved), charge or conviction of a crime, indictment, imprisonment, placement on probation, or receipt of deferred adjudication; and

(3) diagnosis or treatment of a physical, mental or emotional condition, which has impaired or could impair the PIT holder's ability to practice medicine.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 22, 2010.

TRD-201006666
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Earliest possible date of adoption: January 9, 2011
For further information, please call: (512) 305-7016

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CHAPTER 183. ACUPUNCTURE

22 TAC §183.3

The Texas Medical Board (Board) proposes amendments to §183.3, concerning Meetings.

The amendment provides that committee minutes are to be approved by the full board rather than by committee which is required under Robert's Rules of Order.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to provide a copy of committee minutes to the public immediately after the full board meets, rather than waiting for the committee to meet again at a future meeting.

Ms. Leshikar has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §205.201, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§183.3. Meetings.

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

(c) Acupuncture board and committee meetings shall, to the extent possible, be conducted pursuant to the provisions of Robert's Rules of Order Newly Revised unless, by rule, the acupuncture board adopts a different procedure.

(d) - (m) (No change.)

(n) Committee minutes shall be approved by the full board with a quorum of the committee members present to vote on approval of the minutes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 22, 2010.

TRD-201006667
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Earliest possible date of adoption: January 9, 2011
For further information, please call: (512) 305-7016

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PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 321. DEFINITIONS

22 TAC §321.1

The Texas Board of Physical Therapy Examiners proposes amendments to §321.1, concerning Definitions. The amendments would update the definition of "foreign-trained applicant" to reflect current educational requirements and also include in the definition the clarification that applicants with entry-level physical therapy degrees from CAPTE accredited programs abroad are not considered foreign for the purposes of licensure requirements.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendments.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be clarification of the status of "foreign-trained applicant." Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nina.hurter@ptot.texas.gov. Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendments.

§321.1. Definitions.

The following words, terms, and phrases, when used in the rules of the Texas Board of Physical Therapy Examiners, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accredited curriculum in physical therapy education--A body of courses in a physical therapy program at a school, college, or university which has satisfied the accreditation standards of the Commission on Accreditation for Physical Therapy Education.

(2) Accredited physical therapist assistant program--A body of courses at a school, college, or university which has satisfied the accreditation standards of the Commission on Accreditation for Physical Therapy Education.

(3) Asymptomatic--Without obvious signs or symptoms of disease.

(4) Board-approved organization or entity--An organization or entity to which the board has formally delegated a role in the licensure, regulation or enforcement functions of the Physical Therapy Practice Act and board rules.

(5) Endorsement--The process by which the board issues a license to a person currently licensed in another state, the District of Columbia, or territory of the United States that maintains professional standards considered by the board to be substantially equivalent to those set forth in the Act.

(6) Emergency circumstances--Instances where emergency medical care is called for, including first aid.

(7) Emergency medical care--Bona fide emergency services provided after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including

severe pain, such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

(8) Evaluation--A dynamic process in which the physical therapist makes clinical judgments based on data gathered during the examination.

(9) Evidence satisfactory to the board--Should all official school records be destroyed, sworn affidavits satisfactory to the board must be received from three persons having personal knowledge of the applicant's physical therapy education. These affidavits will not be used when official school records are available.

(10) [~~(9)~~] Examination--A comprehensive screening and specific testing process leading to diagnostic classification or, as appropriate, to a referral to another practitioner. The examination has three components: the patient/client history, the systems review, and tests and measures.

[~~(10) Evidence satisfactory to the board--Should all official school records be destroyed, sworn affidavits satisfactory to the board must be received from three persons having personal knowledge of the applicant's physical therapy education. These affidavits will not be used when official school records are available.~~]

(11) Foreign-trained applicant--Any applicant whose professional (entry-level) physical therapy degree was granted by a physical therapy program outside the U.S., the District of Columbia, or territories of the U.S. If the physical therapy program was accredited by the Commission on Accreditation of Physical Therapy Education (CAPTE) at the time the degree was granted, the program is considered equivalent to a domestic CAPTE-accredited physical therapy program. [~~Any applicant whose education is from a country outside the United States, the District of Columbia, or Territories of the United States.~~]

(12) Hearing--An adjudicative proceeding concerning the issuance, denial, suspension, reprimand, revocation of license, after which the legal rights of an applicant or licensee are to be determined by the board.

(13) Jurisprudence exam--An open-book examination made up of multiple-choice and/or true/false questions covering information contained in the Texas Physical Therapy Practice Act and Board rules.

(14) On-site supervision--The physical therapist or physical therapist assistant is on the premises and readily available to respond.

(15) Physical therapy--The evaluation, examination, and utilization of exercises, rehabilitative procedures, massage, manipulations, and physical agents including, but not limited to, mechanical devices, heat, cold, air, light, water, electricity, and sound in the aid of diagnosis or treatment. Physical therapists may perform evaluations without referrals. Physical therapy practice includes the use of modalities, procedures, and tests to make evaluations. Physical therapy practice includes, but is not limited to the use of: Electromyographic (EMG) Tests, Nerve Conduction Velocity (NCV) Tests, Thermography, Transcutaneous Electrical Nerve Stimulation (TENS), bed traction, application of topical medication to open wounds, sharp debridement, provision of soft goods, inhibitive casting and splinting, Phonophoresis, Iontophoresis, and biofeedback services.

(16) Supervision--The delegation and continuing direction by a person or persons responsible for the practice of physical therapist, physical therapist assistant, or physical therapy aide as specified in the Physical Therapy Practice Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 23, 2010.

TRD-201006729
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: January 9, 2011
For further information, please call: (512) 305-6900

CHAPTER 322. PRACTICE

22 TAC §322.1

The Texas Board of Physical Therapy Examiners proposes amendments to §322.1, concerning Provision of Services. The amendments would define "prior referral;" update references to documentation formats; rearrange and reword existing language regarding reevaluation and plans of care; and expand on requirements for documentation of physical therapy services.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendments.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be clearer guidelines for licensees, employers and consumers regarding the standards for the provision of physical therapy services. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; nina.hurter@ptot.texas.gov. Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendments.

§322.1. Provision of Services.

(a) Initiation of physical therapy services.

(1) Referral requirement. A physical therapist is subject to discipline from the board for providing physical therapy treatment without a referral from a qualified healthcare practitioner licensed by

the appropriate licensing board, who within the scope of the professional licensure is authorized to prescribe treatment of individuals. The list of qualifying referral sources includes physicians, dentists, chiropractors, podiatrists, physician assistants, and advanced nurse practitioners.

(2) Exceptions to referral requirement.

(A) A PT may evaluate without referral.

(B) A PT may provide instructions to any person who is asymptomatic relating to the instructions being given without a referral, including instruction to promote health, wellness, and fitness.

(C) Emergency Circumstances. A PT may provide emergency medical care to a person after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity without referral if the absence of immediate medical attention could reasonably be expected to result in a serious threat to the patient's health, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

(D) Prior referrals. A physical therapist may treat a patient for an injury or condition for which an episode of treatment has been completed [~~that is the subject of a prior referral~~] if all of the following conditions are met.

(i) The physical therapist must notify the original referring healthcare personnel of the commencement of therapy by telephone within five days, or by letter postmarked within five business days;

(ii) The physical therapy provided must not be for more than 20 treatment sessions or 30 consecutive calendar days, whichever occurs first. At the conclusion of this time or treatment, the physical therapist must confer with the referring healthcare personnel before continuing treatment;[~~.~~]

(iii) The treatment can only be provided to a client/patient who received the referral not more than one year previously; and [~~.~~]

(iv) The physical therapist providing treatment must have been licensed for one year. The physical therapist responsible for the treatment of the patient may delegate appropriate duties to another physical therapist having less than one year of experience or to a physical therapist assistant. A physical therapist licensed for more than one year must retain responsibility for and supervision of the treatment.

(3) Methods of referral. A referral may be transmitted by a qualifying referral source in the following ways:

(A) in a written document, including faxed and emailed documents [~~a document (including an electronically transmitted document or facsimile)~~]; or

(B) verbally, in person or by telephone. If a referral is transmitted verbally, whether in person or by telephone, it must be received, recorded and signed by the PT, PTA or other authorized personnel, and include all of the information that would appear on a written referral.

(b) Evaluation and screening.

(1) Evaluation. Physical therapy treatment may not be provided prior to the completion of an evaluation of the patient's condition by a PT.

(2) PTAs may screen patients designated by a PT as possible candidates for physical therapy services. Screening entails the collection of uniform information from all patients screened using a predetermined, standardized format. The information collected is delivered to the supervising PT. Only a PT may determine whether further intervention for patients screened is necessary.

[~~(2) Reevaluation. A patient receiving treatment must be reevaluated by a PT:~~]

[~~(A) at least once every 30 days, or at a higher frequency as established by the PT; or~~]

[~~(B) In response to a change in the patient's medical status that affects physical therapy~~] treatment, ~~when a change in the physical therapy plan of care is needed, or prior to any planned discharge.~~]

[~~(C) A reevaluation must include:~~]

[~~(i)~~ ~~An onsite reexamination of the patient, and~~]

[~~(ii)~~ ~~A review of the plan of care with appropriate revision or termination.~~]

[~~(3) PTAs may screen patients designated by a PT as possible candidates for physical therapy services. Screening entails the collection of uniform information from all patients screened using a predetermined, standardized format. The information collected is delivered to the supervising PT. Only a PT may determine whether further intervention for patients screened is necessary.~~]

(c) Physical therapy plan of care development and implementation.

(1) The PT must develop a written plan of care, based on his evaluation, for each patient.

(2) Treatment may not be provided by a PTA or aide until the plan of care has been established.

(3) The plan of care must be reviewed and updated as necessary following a reevaluation of the patient's condition.

(4) The plan of care or treatment goals may only be changed or modified by a PT.

[~~(1) A written plan of care must be developed for each patient by a PT.~~]

[~~(2) The plan of care must be updated following the periodic reevaluation of the patient's condition.~~]

[~~(3) The plan of care or treatment goals may only be changed or modified by a PT.~~]

[~~(4) Physical therapy treatment may not be provided by a PTA or an aide until a written plan of care, based on an evaluation by a PT, has been completed.~~]

(5) A PTA may modify treatment techniques as indicated in the plan of care.

(6) A PT or PTA must interact with the patient regarding his/her condition, progress and/or achievement of goals during each treatment session.

(d) Reevaluation.

(1) A patient receiving treatment must be reevaluated by a PT:

(A) at a minimum of once every 30 days after treatment is initiated, or at a higher frequency as established by the PT; and

(B) In response to a change in the patient's medical status that affects physical therapy treatment, when a change in the physical therapy plan of care is needed, or prior to any planned discharge.

(2) A reevaluation must include:

(A) An onsite reexamination of the patient; and

(B) A review of the plan of care with appropriate continuation, revision, or termination of treatment.

(3) Provision of physical therapy treatment by a PTA or an aide may not continue if the PT has not performed the required reevaluation.

(e) Documentation of treatment.

(1) At a minimum, documentation of physical therapy services must include the following:

(A) any referral authorizing treatment;

(B) the initial examination and evaluation;

(C) the plan of care;

(D) documentation of each treatment session by the PT or PTA providing the services;

(E) reevaluations as required by this section;

(F) any conferences between the PT and PTA, as described in this section; and

(G) the discharge summary.

(2) The PTA must include the name of the supervising PT in his documentation of each treatment session.

(3) Physical therapy aides may not write or sign any physical therapy documents in the permanent record. However, a physical therapy aide may enter quantitative data for tasks delegated by the supervising PT or PTA.

(4) Discharge Summary. The PT must provide final documentation for discharge of a patient, including patient response to treatment at the time of discharge and any necessary follow-up plan. A PTA may participate in the discharge summary by providing subjective and objective patient information to the supervising physical therapist.

~~[(d) Documentation of treatment.]~~

~~[(1) Each progress note in a patient's permanent record completed by a PTA must include the name of the supervising PT.]~~

~~[(2) A PTA may not sign progress notes which design or modify the plan of care.]~~

~~[(3) Physical therapy aides may not write or sign physical therapy documents in the permanent record. However, a physical therapy aide may record quantitative data for tasks delegated by the supervising PT or PTA. Any document reflecting aide activities must identify the aide and the supervising PT or PTA.]~~

~~[(e) Discharge. The supervising PT is responsible for the content and validity of the discharge summary and must sign it. A PTA may provide clerical assistance with a discharge summary.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 23, 2010.

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John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: January 9, 2011
For further information, please call: (512) 305-6900

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22 TAC §322.2

The Texas Board of Physical Therapy Examiners proposes amendments to §322.2, concerning Role Delineation. The amendments would add a section describing the role of the PT; delete paragraphs regarding the PTA that do not directly relate to the services the PTA may provide as instructed in a physical therapy plan of care; clarify which portions of the discharge summary the PTA may not compose; and clarify the requirements for onsite supervision of a physical therapy aide.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendments.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be clearer guidelines for licensees, employers and consumers regarding the standards for the provision of physical therapy services. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nina.hurter@ptot.texas.gov. Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code are affected by the amendments.

§322.2. Role Delineation.

(a) The role of the PT.

(1) The PT holds primary responsibility for physical therapy care rendered under his supervision.

(2) The PT's professional responsibilities include, but are not limited to:

(A) Performance and documentation of the initial physical therapy examination and evaluation of the patient;

(B) Interpretation of the practitioner's referral;

(C) Development and documentation of a plan of care;

(D) Implementation of, or directing implementation of, the plan of care;

(E) Delegation of tasks to appropriate personnel; of appropriate tasks;

(F) Direction and supervision of the PTA and physical therapy aide;

(G) Completion and accuracy of the patient's physical therapy record;

(H) Performance and documentation of the reexamination and reevaluation of the patient as described in this section; and when necessary, modification of the plan of care;

(I) Discharge of a patient or discontinuation of treatment;

(J) Development of any follow-up plan for the patient; and

(K) Collaboration with members of the health care team when appropriate.

(3) The PT shall not implement any plan of care that, in his judgment, is contraindicated.

(b) [~~(a)~~] The role of the PTA.

(1) A PTA may provide physical therapy services only under the supervision of a PT (See §322.3 of this title[~~,~~] (relating to Supervision)).

(2) A PTA may be assigned responsibilities by a supervising PT to:

(A) screen patients designated by a PT as possible candidates for physical therapy services (See §322.1(b) of this title [~~chapter,~~] (relating to Evaluation and screening));

(B) provide physical therapy services as specified in the physical therapy plan of care (See §322.1(c) of this title [~~chapter,~~] (relating to Physical therapy plan of care development and implementation)) which may include:

(i) preparing patients, treatment areas, and equipment;

(ii) implementing treatment programs that include therapeutic exercises; gait training and techniques; ADL training techniques; administration of therapeutic heat and cold; administration of ultrasound; administration of therapeutic electric current; administration of ultraviolet; application of traction; performance of intermittent venous compression; application of external bandages, dressings, and support; performance of goniometric measurement;

(iii) modifying treatment techniques as indicated in the plan of care;

(C) responding [~~respond~~] to acute changes in physiological state;

(D) teaching [~~teach~~] other health care providers, patients, and families to perform selected treatment procedures and functional activities; and

(E) identifying [~~identify~~] architectural barriers and reporting them to the PT. [~~;~~]

~~[(F) interact with patients and families in a manner which provides the desired psycho-social support by:]~~

~~*[(i)* recognizing his own reaction to illness and disability;]~~

~~*[(ii)* recognizing patients' and families' reactions to illness and disability;]~~

~~*[(iii)* respecting individual cultural, religious, and socioeconomic differences in people;]~~

~~*[(iv)* utilizing appropriate communicative processes;]~~

~~[(G) demonstrate appropriate and effective written, oral, and nonverbal communication with patients and their families, colleagues, and the public;]~~

~~[(H) recognize his own strengths and limitations and interpret for others his scope and function;]~~

~~[(I) demonstrate safe, ethical, and legal practice;]~~

~~[(J) understand basic concepts related to the health care system, including multidisciplinary team approach, quality care, governmental agencies, private sector, role of other health care providers, health care facilities, issues, and problems;]~~

~~[(K) understand basic principles of levels of authority and responsibility, planning, time management, supervisory process, performance evaluations, policies and procedures, and fiscal consideration (provider and consumer).]~~

(3) The PTA may not:

(A) specify and/or perform definitive (decisive, conclusive, final) evaluative and assessment procedures, including the assessment portion of the discharge summary;

(B) alter a plan of care or goals;

(C) recommend wheelchairs, orthoses, prostheses, other assistive devices, or alterations to architectural barriers to persons;

(D) sign progress notes which design or modify the plan of care.

(c) [~~(b)~~] The role of the physical therapy aide.

(1) All rules governing the services provided by a PTA are further modified for the physical therapy aide.

(2) A physical therapy aide may be assigned responsibilities by the supervising PT or PTA to provide services as specified in the physical therapy plan of care [~~(See §322.1(c) of this chapter, (relating to Physical Therapy Plan of Care development and implementation))~~] within the scope of on-the-job training with [~~onsite~~] supervision by a PT or PTA who is on the premises and readily available to respond in person [~~within reasonable proximity~~].

(3) A physical therapy aide may not:

(A) perform any evaluative or assessment activities;

(B) initiate physical therapy treatment, to include exercise instruction; or

(C) write or sign physical therapy documents in the permanent record, except as provided for in §322.1(e)[~~(d)~~] of this title (relating to Documentation of treatment).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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John P. Maline
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Texas Board of Physical Therapy Examiners
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22 TAC §322.3

The Texas Board of Physical Therapy Examiners proposes amendments to §322.3, concerning Supervision. The amendments would clarify the meaning of the term of "readily available" and correct a citation format.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering this amendment.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be clearer guidelines for licensees, employers and consumers regarding the standards for the provision of physical therapy services. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nina.hurter@ptot.texas.gov. Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendments.

§322.3. Supervision.

(a) It is the responsibility of each PT and/or PTA to determine the number of PTAs and/or aides he or she can supervise safely.

(b) Supervision of PTAs.

(1) A supervising PT is responsible for and will participate in the patient's care.

(2) A supervising PT must be on call and readily available to respond in person when physical therapy services are being provided.

(3) A PT may assign responsibilities to a PTA to provide physical therapy services, based on the PTA's training, that are within the scope of activities listed in §322.1 of this title (relating to [,] Provision of Services).

(4) The supervising PT must hold documented conferences with the PTA regarding the patient. The PT is responsible for determining the frequency of the conferences consistent with accepted standards of practice.

(c) Supervision of physical therapy aides.

(1) A supervising PT or PTA is responsible for the supervision of, and the physical therapy services provided by, the PT aide.

(2) A PT or PTA must provide onsite supervision of a physical therapy aide, and remain within reasonable proximity during the aide's interaction with the patient.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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22 TAC §322.4

The Texas Board of Physical Therapy Examiners proposes amendments to §322.4, concerning Practicing in a Manner Detrimental to the Public Health and Welfare. The amendments will clarify that failure to document treatment is, along with inaccurately or falsely documenting treatment, considered detrimental to the public health and welfare and may subject a license to disciplinary action by the Board, and will add specific mention of abandonment or neglect of a patient to the list of actions that the Board considers to be detrimental practice.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendments.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be clearer guidelines for licensees, employers and consumers regarding the standards for the provision of physical therapy services. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nina.hurter@ptot.texas.gov. Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendments.

§322.4. Practicing in a Manner Detrimental to the Public Health and Welfare.

(a) The board may deny a license to or discipline an applicant/respondent who is found to be practicing in a manner detrimental to the public health and welfare. The board may deny a registration for a physical therapy facility to an applicant or discipline a physical therapy facility required to be registered by the act which is found to be practicing in a manner detrimental to the public health and welfare.

(b) Practicing in a manner detrimental to the public health and welfare may include, but is not limited to, the following:

(1) failing to document physical therapy services, inaccurately recording, falsifying, or [~~otherwise~~] altering patient/client records;

(2) obtaining or attempting to obtain or deliver medications through means of misrepresentation, fraud, forgery, deception, and/or subterfuge;

(3) failing to supervise and maintain the supervision of supportive personnel, licensed or unlicensed, in compliance with the Act and rule requirements;

(4) aiding, abetting, authorizing, condoning, or allowing the practice of physical therapy by any person not licensed to practice physical therapy;

(5) permitting another person to use an individual's physical therapist's or physical therapist assistant's license for any purpose;

(6) failing to cooperate with the agency by not furnishing papers or documents requested or by not responding to subpoenas issued by the agency;

(7) interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts before the agency or the board, or by the use of threats or harassment against any patient/client or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action;

(8) engaging in sexual contact with a patient/client as the result of the patient/client relationship;

(9) practicing or having practiced with an expired temporary or permanent license;

(10) failing to conform to the minimal standards of acceptable prevailing practice, regardless of whether or not actual injury to any person was sustained, including, but not limited to:

(A) failing to assess and evaluate a patient's/client's status;

(B) performing or attempting to perform techniques or procedures or both in which the physical therapist or physical therapist assistant is untrained by education or experience;

(C) delegating physical therapy functions or responsibilities to an individual lacking the ability or knowledge to perform the function or responsibility in question; or

(D) causing, permitting, or allowing physical or emotional injury or impairment of dignity or safety to the patient/client;

(11) intentionally or knowingly offering to pay or agreeing to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for receiving or soliciting patients or patronage, regardless of source of reimbursement, unless said business arrangement or payments practice is acceptable under 42 United States Code §1320a-7b(b) or its regulations;

(12) advertising in a manner which is false, misleading, or deceptive;

(13) knowingly falsifying and/or forging a referring practitioner's referral for physical therapy;

(14) failing to register a physical therapy facility which is not exempt or failing to renew the registration of a physical therapy facility which is not exempt;

(15) practicing in an unregistered physical therapy facility which is not exempt;

(16) failing to notify the Board of any conduct by another licensee which reasonably appears to be a violation of the Practice Act and rules, or aids or causes another person, directly or indirectly, to violate the Practice Act or rules of the Board; and[~~.~~]

(17) abandoning or neglecting a patient under current care without making reasonable arrangements for the continuation of such care.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.5

The Texas Board of Physical Therapy Examiners proposes amendments to §329.5, concerning Licensing Procedures for Foreign-Trained Applicants. The amendments would: eliminate the requirement that a person be physically in the U.S. prior to receiving a license; eliminate the requirement for a designated representative letter; make educational credentialing requirements for applicants by endorsement and examination the same regarding advanced placement exams; and lower the required score for the paper-based and computer-based TOEFL Test of Spoken English (TSE) to 50.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendment.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be eligibility requirements for foreign-trained applicants that are less onerous than the current ones; therefore more therapists will seek licensure in Texas. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701;

email: nina.hurter@ptot.texas.gov. Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendments.

§329.5. Licensing Procedures for Foreign-Trained Applicants.

[~~(a)~~] A foreign-trained applicant must complete the license application process as set out in §329.1 of this title (relating to General Licensing Procedure). In addition, the applicant must submit the following: [~~, if applying for licensure by examination, or as set out in §329.6 of this title (relating to Licensure by Endorsement), if applying for licensure by endorsement.~~]

(1) An evaluation of professional education and training prepared by a board approved credentialing entity. The board will maintain a list of approved credentialing entities on the agency website.

(A) The evaluation must:

(i) be based on the Course Work Tool (CWT) adopted by the Federation of State Boards of Physical Therapy, specifically the version of the tool appropriate to the year the applicant graduated from the foreign physical therapy program; and

(ii) provide evidence and documentation that the applicant's education is substantially equivalent to the education of a physical therapist who graduated from a physical therapy education program accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE); and

(iii) establish that the institution at which the applicant's received his physical therapy education is recognized by the Ministry of Education or the equivalent agency in that country.

(B) If the credentialing entity determines that the physical therapy education is substantially equivalent, but no evidence is found of specific required courses or content areas, the applicant is responsible for remedying those deficiencies. The applicant may use college credit obtained through applicable College Level Examination Placement (CLEP) or other college advanced placement exams to remedy any deficiencies in general education.

(C) An evaluation prepared by board-approved credentialer reflects only the findings and conclusions of the credentialer, and shall not be binding on the board. In the event that the board determines that the applicant's education is not substantially equivalent to an entry-level physical therapy program accredited by CAPTE, the board will notify the applicant in writing stating the reasons why the applicant's education is not substantially equivalent.

(2) Proof of English language proficiency. A foreign-trained applicant must demonstrate the ability to communicate in English by making the minimum score accepted by the board on the TOEFL tests administered by the Educational Testing Service (ETS).

(A) This requirement is waived for graduates of entry-level physical therapy programs in Australia, Canada (except Quebec), Ireland, New Zealand and the United Kingdom.

(B) Minimum acceptable scores are as follows:

(i) Paper-based TOEFL tests (pbt) - TOEFL (reading/comprehension) 580; TWE (writing/essay) 5.0; TSE (speaking) 50;

(ii) Computer-based TOEFL tests (cbt) - TOEFL (reading/comprehension) 237; TWE (writing/essay) 5.0; TSE (speaking) 50;

(iii) Internet-based (ibt) - Writing 24; Speaking 26; Reading Comprehension 21; Listening Comprehension 18.

(C) The board may grant an exception to the English language proficiency requirements under the following conditions:

(i) the applicant holds a current license in physical therapy in another state and has been licensed in the another state in the U.S. for 10 years prior to application; or

(ii) the applicant submits satisfactory proof that he/she is a citizen or lawful permanent resident of the U.S., and has attended four or more years of secondary or post-secondary education in the U.S.

[~~(b) The board will issue a license only after the applicant is physically in the United States and has met all requirements for the license.~~]

[~~(c) Designated representative letter.~~]

[~~(1) An applicant may designate a person as a representative by providing in writing to the board the name, telephone number, and address of the person and by stating in the letter that the person will be the designated representative for the applicant.~~]

[~~(2) This letter must be notarized by a notary of the country in which the applicant resides and sent directly to the board. A copy should be sent to the representative by the applicant.~~]

[~~(3) A designated representative may obtain confidential information regarding the application.~~]

[~~(4) A designated representative of an applicant will remain so until the applicant receives his permanent license or until the board is notified in writing by the applicant that the designated representative has been eliminated or replaced. An applicant may have only one designated representative at any time.~~]

[~~(5) The designated representative is not required by the board to have power of attorney for the applicant. A person who does have power of attorney for an applicant may not submit any document that is required by the board to be signed by the applicant and notarized. Documents submitted by a person with power of attorney for the applicant must be submitted in accordance with all requirements set by the Act and rules regarding these documents. Any falsification of documents required for licensing submitted by a designated representative or a person with power of attorney for the applicant may result in denial of license or other penalties to the applicant.~~]

[~~(d) Credentials evaluation. A foreign trained applicant must submit to the board a credentials evaluation of professional education and training prepared by a Board-approved credentialing entity. The board will maintain a list of approved credentialing entities on the agency website. It is the applicant's responsibility to pay the expenses associated with the credentials evaluation.~~]

[~~(1) The credentials evaluation must provide evidence and documentation that the applicant's education outside a state or territory of the United States is substantially equivalent to the education of a physical therapist who graduated from a physical therapy education program accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE). The evaluation must also establish that the institution at which the applicant's received his physical therapy~~

education is recognized by the Ministry of Education or the equivalent agency in that country.]

[(2) To determine substantial equivalency, the approved credentialing evaluation entity shall use the Course Work Tool (CWT) adopted by the Federation of State Boards of Physical Therapy.]

[(A) The entity may use the version of the CWT in place at the time the foreign-trained applicant graduated from his physical therapy program, or the latest edition of the CWT, at the request of the applicant.]

[(B) If the applicant's education has already been evaluated using an appropriate version of the CWT and all educational requirements were met, the board will accept a copy of the evaluation from an approved credentialing entity or a state in which the applicant holds or has held a physical therapy license.]

[(3) If the credentialing entity determines that the physical therapy education is substantially equivalent, but no evidence is found of specific required courses or content areas, the applicant is responsible for remedying those deficiencies. The applicant may use college credit obtained through College Level Examination Placement (CLEP) or other college advanced placement exams to complete up to 14 hours, but no more than 4 courses, of general education requirements.]

[(4) If the applicant received an entry-level physical therapy degree from a CAPTE-accredited program located outside the U.S., the program is considered equivalent to a domestic CAPTE-accredited physical therapy program, and the applicant is exempt from meeting the requirements of the CWT.]

[(5) An evaluation prepared by board-approved credentialer reflects only the findings and conclusions of the credentialer, and shall not be binding on the board. In the event that the board determines that the applicant's education is not substantially equivalent to an entry-level physical therapy program accredited by CAPTE, the board will notify the applicant in writing stating the reasons why the applicant's education is not substantially equivalent.]

[(e) English language proficiency. A foreign-trained applicant must demonstrate his ability to communicate in English by making the minimum score accepted by the board on the TOEFL tests administered by the Educational Testing Service (ETS). Minimum acceptable scores are as follows: Paper based TOEFL tests (pbt) - TOEFL (reading/comprehension) 580; TWE (writing/essay) 5.0; TSE (speaking) 55; Computer-based TOEFL tests (cbt) - TOEFL (reading/comprehension) 237; TWE (writing/essay) 5.0; TSE (speaking) 55; Internet-based (ibt) - Writing 24; Speaking 26; Reading Comprehension 21; Listening Comprehension 18.]

[(1) This requirement is waived for graduates of entry-level physical therapy programs in Australia, Canada (except Quebec), Ireland, New Zealand and the United Kingdom, and for graduates of entry-level programs accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE) at time of graduation. For graduates of entry-level physical therapy programs in other countries, the Board may grant an exception to the English language proficiency requirements under the following conditions:]

[(A) the applicant holds a current license in physical therapy in another state and has been licensed in the another state in the U.S. for 10 years prior to application.]

[(B) The applicant submits satisfactory proof that he/she is a citizen or lawful permanent resident of the U.S., and has attended four or more years of secondary or post-secondary education in the U.S.]

[(2) With a score of 50 on the paper-based and computer-based Test of Spoken English (TSE), the board will allow the applicant to submit three original, notarized letters of recommendation from individuals who have practical knowledge of the applicant's ability to communicate successfully in spoken English. Individuals who provide this written testimony must be native English speakers, cannot be related by blood or marriage to the applicant, and at least one of the letters must be from a PT licensed to practice in the U.S. These letters must be submitted by their authors directly to the board. At the board's discretion, the letters may be considered satisfactory evidence of proficiency in spoken English.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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John P. Maline
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22 TAC §329.6

The Texas Board of Physical Therapy Examiners proposes an amendment to §329.6, concerning Licensure by Endorsement. The amendment would give the board the ability to accept web-based verification of licensure from another jurisdiction if the board is satisfied that the license is valid.

John P. Maline, Executive Director, has determined that for the first five-year period this amendment is in effect there will be no additional costs to state or local governments as a result of enforcing or administering this amendment.

Mr. Maline has also determined that for each year of the first five-year period this amendment is in effect the public benefit will be a more efficient licensing process. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendment. There are no anticipated costs to individuals who are required to comply with the amendment as proposed.

Comments on the proposed amendment may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nina.hurter@ptot.texas.gov. Comments must be received no later than 30 days from the date the proposed amendment is published in the *Texas Register.*

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendment.

§329.6. Licensure by Endorsement.

(a) Eligibility. The board may issue a license by endorsement to an applicant currently licensed in another state, District of Columbia,

or territory of the United States, if they have not previously held a permanent license issued by this board.

(b) Requirements. An applicant seeking licensure by endorsement must:

(1) meet the requirements as stated in §329.1 of this title (relating to General Licensure Requirements and Procedures);

(2) submit a passing score on the National Physical Therapy Examination sent directly to the board by the board-approved reporting service, or scores on the Registry Examination sent directly to the board by the American Physical Therapy Association; and

(3) provide verification of license from every jurisdiction in which the applicant has held or still holds a license, sent directly to the board by the issuing jurisdiction. The board may accept web-based verification in place of verification sent by another jurisdiction if the board is satisfied that the applicant's license(s) is/are valid. [~~submit verification of licensure in good standing from all states in which the applicant holds or has held a license. This verification must be sent directly to the board by the licensing board in that jurisdiction.~~]

(c) Provisional licensure. The board may grant a provisional license under the conditions listed in paragraphs (1) and (2) of this subsection. The applicant must submit the provisional license fee as set by the executive council, and meet all other requirements of licensure by examination or endorsement as set by the board. The board may not grant a provisional license to an applicant with disciplinary action in their licensure history. The provisional license is valid for 180 days, or until a permanent license is issued or denied, whichever is first. The conditions under which the board may grant a provisional license are:

(1) The applicant is applying for licensure by endorsement, and there is a delay in the submission of required documents outside the applicant's control; or

(2) The applicant has previously held a Texas license and is currently licensed in another state that has licensing requirements substantially equivalent to those of Texas, but has not worked as a PT or PTA for the two years prior to application for a license in Texas, and must submit to reexamination to restore the Texas license as stated in §341.1 of this title (relating to Requirements for Renewal).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 23, 2010.

TRD-201006735
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: January 9, 2011
For further information, please call: (512) 305-6900

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CHAPTER 341. LICENSE RENEWAL

22 TAC §341.1

The Texas Board of Physical Therapy Examiners proposes amendments to §341.1, concerning Requirements for Renewal. The amendments would clarify in rule that a person who completes the renewal process online prior to the expiration of his license may use the printed transaction receipt in lieu of the certificate for the period of time specified on the receipt.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendments.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be a more efficient licensing process. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nina.hurter@ptot.texas.gov. Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendments.

§341.1. Requirements for Renewal.

(a) Biennial renewal. Licensees are required to renew their licenses every two years by the end of the month in which they were originally licensed. A licensee may not provide physical therapy services without a current license or renewal certificate in hand. If a license expires after all required items are submitted, but before the licensee receives the renewal certificate, the licensee may not provide physical therapy services. A licensee who completes the renewal process online prior to the expiration of his license may use the printed transaction receipt in lieu of the renewal certificate for the period of time specified on the receipt.

(b) General requirements. The renewal application is not complete until all required items are received by the board. The components required for license renewal are:

(1) a signed renewal application form or the online equivalent, documenting completion of board-approved continuing competence activities, as described in §341.2 of this title (relating to[~~, concerning~~] Continuing Competence Requirements);

(2) the renewal fee, and any late fees which may be due; and

(3) a passing score on the jurisprudence examination.

(c) Notification of license expiration. The board will send notification to each licensee at least 30 days prior to the license expiration date. The licensee bears the responsibility for ensuring that the license is renewed.

(d) Late renewal. A renewal application is late if all required items are not postmarked prior to the expiration date of the license. Licensees who do not submit all required items prior to the expiration date are subject to late fees as described.

(1) If the license has been expired for 90 days or less, the late fee is one-half of the examination fee for the license.

(2) If the license has been expired for more than 90 days but less than one year, the late fee is equal to the examination fee for the license. Licensees who are more than 90 days late in renewing a license are not included in the audit as described in [~~(ref.~~] §341.2[~~(c)~~] of this title [~~chapter)~~], and must submit documentation of completion of continuing competence activities at time of renewal.

(3) If the license has been expired for one year or longer, the person may not renew the license. To obtain a new license, the applicant must take and pass the national examination again and comply with the requirements and procedures for obtaining an original license set by §329.1 of this title (relating to General Licensure Requirements and Procedures [~~Procedure~~]).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: January 9, 2011
For further information, please call: (512) 305-6900

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CHAPTER 345. ACCESSIBLE SERVICES

22 TAC §345.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Board of Physical Therapy Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Board of Physical Therapy Examiners proposes the repeal of §345.1, concerning Accessible Services. This section addresses the board's compliance with the Americans with Disabilities Act, Public Law 101-336. The board's authority to make rules stems from Chapter 453 of the Texas Occupations Code, and addresses the provision of physical therapy in the state. The board believes that compliance with a federal law is more appropriately addressed in board and agency policy and procedure.

John P. Maline, Executive Director, has determined that for the first five-year period the repeal is in effect there will be no additional costs to state or local governments as a result of enforcing or administering the repeal.

Mr. Maline has also determined that for each year of the first five-year period the repeal is in effect the public benefit will be the elimination of unnecessary rules. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the repeal. There are no anticipated costs to individuals who are required to comply with the repeal as proposed.

Comments on the proposed repeal may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nina.hurter@ptot.texas.gov. Comments must be received no later than 30 days from the date the proposed repeal is published in the *Texas Register.*

The repeal is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the repeal.

§345.1. Accessible Services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
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For further information, please call: (512) 305-6900

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 213. EDWARDS AQUIFER

SUBCHAPTER C. DISCHARGE OF PESTICIDES

30 TAC §213.31

The Texas Commission on Environmental Quality (commission or TCEQ) proposes new §213.31.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

On September 9, 2010, the Texas Parks and Wildlife Department submitted a petition for rulemaking which requested an exemption for discharges associated with pesticide applications authorized by the commission or exempted from permit requirements by federal or state statutes from discharge prohibitions currently found in Chapter 213, Subchapters A and B; and in 30 TAC Chapter 311, Subchapters A, B, and F. On November 3, 2010, the commission recommended approval of the petition for rulemaking.

A recent decision from the Sixth Circuit Court of Appeals overturned the United States Environmental Protection Agency's (EPA) rule which provided that National Pollutant Discharge Elimination System (NPDES) permits were not required for pesticide applications into, over, or near waters of the United States *(National Cotton Council of America v. U.S. EPA, 553 F.3d 927).* As a result of the Sixth Circuit Court of Appeals decision and because Texas is a delegated state, the discharge of pesticides must now be regulated through the Texas Pollutant Discharge Elimination System (TPDES). By court order, applications of pesticides into, over, or near water in the United

States must be authorized under the NPDES program by April 9, 2011. Currently, because the discharge of pesticides is not a point source, Chapters 213 and 311 allow the application of pesticides. However, on April 9, 2011, pesticide application will be prohibited within the Highland Lakes area (Lakes Travis, Austin, Inks, Buchanan, Lyndon B. Johnson, and Marble Falls) and Edwards Aquifer recharge, contributing, and transition zones.

This proposed rulemaking would allow the application of pesticides to continue within these areas for protection of human health and the environment. The inability to control pests could impact public health by preventing mosquito control, restricting recreational activities in the regulated areas due to invasive aquatic vegetation or invasive animals, restrict state and federal agencies from administering programs within their jurisdiction, restrict the volume of water flow in surface waters overlying the aquifer due to invasive aquatic vegetation, and increase the potential for public water supply systems to experience taste and odor problems due to excessive vegetation and algae in surface waters overlying the aquifer.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning Chapter 311, Watershed Protection.

SECTION DISCUSSION

The proposed new Subchapter C, §213.31, Discharge of Pesticides, would allow for the continued use of commission authorized pesticide application in areas of the Edwards Aquifer where the increase of discharges or new pollutant loading will be prohibited after April 9, 2011.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rule. The proposed new rule is not expected to have a fiscal impact on other state agencies or units of local government.

A recent decision from the Sixth Circuit Court of Appeals overturned the EPA's rule which provided that NPDES permits were not required for pesticide applications into, over, or near waters of the United States. The proposed rulemaking would add Subchapter C to Chapter 213 to allow the application of pesticides to continue within the Edwards Aquifer recharge, contributing, and transition zones after April 9, 2011.

The proposed rule will not have a fiscal impact on state agencies and units of local government in the Edwards Aquifer recharge zone. The proposed rule will allow governmental entities to continue to apply pesticides for pest control purposes. Unless continued pesticide application is allowed, governmental entities in the Edwards Aquifer recharge, contributing, and transition zones could not control pests that impact public health, have the potential to restrict water flow volumes in surface waters overlying the aquifer due to invasive aquatic vegetation, and increase the potential for public water supply systems to experience taste and odor problems due to excessive vegetation and algae in surface waters overlying the aquifer.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed new rule is in effect, the public benefit anticipated from the changes seen in the proposed rules will be continued protection of the public health and the environment in the Edwards Aquifer recharge, contributing and transition zones.

The proposed rule will not have a fiscal impact on individuals or businesses in the Edwards Aquifer recharge, contributing, and transition zones. The proposed rule will allow individuals and businesses to continue to apply pesticides to control pests, which, without pesticide use, would not be adequately controlled. Examples of pest control that will be allowed under the proposed rule are: control of mosquitoes, control of invasive aquatic vegetation, control of algae, and control of invasive animals.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses in the Edwards Aquifer recharge, contributing, and transition zones as a result of the proposed rule. Small and micro-businesses will be allowed to continue to apply pesticides to control pests, which, without pesticide use, would not be adequately controlled.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is required to comply with federal regulations and to protect human health and the environment. The proposed rule does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a major environmental rule. A "major environmental rule" means that a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking would exempt discharges associated with pesticide applications authorized by the commission or exempted from permit requirements by federal or state statue from the discharge prohibitions in Chapter 213, Subchapters A and B. This rule is not a major environmental rule and do not meet any of the four applicability requirements that apply to a major environmental rule. Under Texas Government Code, §2001.0225, this proposed rule does not exceed a standard set by federal law or a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. The proposed rule does not exceed a standard set by federal law nor exceeds the requirement of a delegation agreement.

The rulemaking does not adopt a rule solely under the general powers of the commission and does not exceed an express requirement of state law.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007, does not apply to the proposed rulemaking because it is not a taking as defined in Chapter 2007, nor is it a constitutional taking of private real property. The purpose of the rule is to exempt discharges associated with pesticide applications authorized by the commission or exempted from permit requirements by federal or state statue from the discharge prohibitions in Chapter 213, Subchapters A and B.

Promulgation and enforcement of the proposed rule will not affect private real property which is the subject of the rule because the proposed rulemaking will neither restrict or limit the owner's right to the property, nor cause a reduction of 25% or more in the market value of the property. The proposed rule only allows the continued application of pesticides over the Edwards Aquifer recharge, contributing, and transition zones. Property values will not be decreased, because the proposed rulemaking will not limit the use of real property. Thus, the proposed rule will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin, Texas, on January 6, 2011, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Ms. Natalia Henricksen, Texas Register Coordinator, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2010-055-311-OW. The comment period closes January 14, 2011. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* For further information, please contact Ms. Lynda Clayton, Water Quality Division, (512) 239-4591; or Mr. George Ortiz, Field Operations Support Division, (512) 239-1457.

STATUTORY AUTHORITY

The new section is proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws of Texas; TWC, §5.102 which establishes the commission's authority necessary to carry out its jurisdiction; TWC, §5.105, which provides the commission with the authority to establish and approve all general policy of the commission by rule; and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC; and TWC, §26.011 which provides that the commission administer the provisions of TWC, Chapter 26, and establishes the level of quality to be maintained, and controls the quality of the water in the state; TWC, §26.011, which grants the commission the powers necessary or convenient to carry out its responsibilities; TWC, §26.046, which requires the commission to hold annual public hearings to receive evidence from the public on actions the commission should take to protect the Edwards Aquifer from pollution; TWC, §26.121, which prohibits unauthorized discharges into or adjacent to water in the state; TWC, §26.401, which states the goal for groundwater protection in the state; TWC, §28.011, which authorizes the commission to make and enforce rules for the protection and preservation of groundwater quality; and Chapter 213, which regulates activities over the recharge, contributing, and transition zones of the Edwards Aquifer.

The proposed new section implements TWC, §§26.011, 26.121, 26.401, and 28.011, and Chapter 213.

§213.31. Discharge of Pesticides.

Discharges associated with pesticide applications authorized by the commission or exempted from permit requirements by federal or state statute are exempt from the prohibition of increased pollutant load found in Subchapters A and B of this chapter (relating to Edwards Aquifer).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 23, 2010.

TRD-201006709
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 9, 2011
For further information, please call: (512) 239-0177

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CHAPTER 290. PUBLIC DRINKING WATER

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§290.38, 290.39, 290.41, 290.42, 290.46, 290.47, 290.111 - 290.115, 290.119, 290.121, 290.122, 290.271, 290.272, and the repeal

of §290.117. The commission simultaneously proposes new §290.117.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The primary purpose of the proposed rulemaking is to implement federal regulations pertaining to the safety of drinking water from groundwater and surface water sources. Federal rules controlling levels of the metals lead and copper in drinking water have been in place since 1991. Lead and copper can leach into drinking water from pipes or solder under corrosive conditions. The federal rules require public water systems to monitor for lead and copper; monitor for water quality parameters related to corrosivity; perform corrosion control studies; install optimum corrosion control treatment; meet lead and copper action levels; and, when action levels are exceeded, educate the public. The United States Environmental Protection Agency (EPA) adopted the National Primary Drinking Water Regulations for Lead and Copper: Short-Term Regulatory Revisions and Clarifications (LCSTR) on October 10, 2007. Under 40 Code of Federal Regulations (40 CFR) §142.10, the commission must adopt rules at least as stringent as the federal rules to maintain primary enforcement authority (primacy) over public water systems in Texas. This rulemaking proposes to incorporate the federal rules for lead and copper and to make minor changes for consistency with the adopted federal rules to retain primacy for the Safe Drinking Water Act and its amendments (SDWA). In addition, staff proposes to repeal and replace the rule language for lead and copper to reorganize the rules to match the organizational structure for other chemicals in drinking water. The intent of this proposal is to assist the regulated community by making the rules easier to use. No part of the proposed rulemaking differs from the federal requirements or existing Texas requirements in stringency.

This rulemaking also proposes to make minor changes to Chapter 290 for consistency with the federal Long Term 2 Enhanced Surface Water Treatment Rule (LT2), Stage 2 Disinfectants and Disinfection Byproducts Rule (DBP2), and Ground Water Rule (GWR). Rule Project Number 2006-045-290-PR incorporated the major requirements of the federal LT2, DBP2 and GWR on December 19, 2007. In the time since that adoption, as part of the EPA's primacy review, the EPA identified some rule elements inadvertently omitted from that rulemaking. These omissions are proposed to be corrected in the current rulemaking. These changes, though important in order to meet primacy, are relatively minor in terms of extent and scope.

SECTION BY SECTION DISCUSSION

In addition to implementation of the federal laws discussed previously, the commission proposes administrative changes throughout the proposed rule to reflect the agency's current practices and to conform with *Texas Register* and agency guidelines. These changes include updating cross-references and correcting typographical, spelling, and grammatical errors.

Subchapter D: Rules and Regulations for Public Water Systems

The commission proposes to amend §290.38, Definitions. The commission proposes to amend §290.38(4) and (11) to correct references to "certified" laboratories. On July 1, 2005, the commission published rules under 30 TAC §25.4(f) changing the requirements for environmental laboratories, a classification that includes laboratories that perform sample analyses required under the SDWA. The rulemaking eliminated the historical certification program, and replaced it with an accreditation program consistent with the environmental laboratory testing program known as the National Environmental Laboratory Accreditation Conference standards. Specifically, the rule stated that after the third anniversary of the publishing in the *Texas Register,* an environmental testing laboratory that provides analytical data used for a commission decision relating to the SDWA would no longer be certified but must be accredited. The third anniversary of publishing was June 30, 2008. Therefore, after June 30, 2008, laboratories ceased to be "certified" by the agency, and are now "accredited" according to 30 TAC §25.4(f). The commission proposes to amend §290.38(6) to update the reference to the American Society for Testing and Materials standards. The commission proposes to amend §290.38(40) to ensure consistency with normal syntax standards by adding a closing parenthesis.

The commission proposes to amend §290.39, General Provisions. The commission proposes to amend §290.39(b) to remove the word "a" in order to ensure consistency with normal English usage standards. The commission proposes to amend §290.39(j) to incorporate requirements contained in the federal LCSTR. Specifically, the commission proposes to amend §290.39(j) to contain requirements of the federal rules under 40 CFR §§141.82(h), 141.83(b)(6), and 141.86(d)(4)(vii) and (g)(4)(iii) that systems seek approval from the TCEQ for any change in treatment that may affect the corrosivity of the water. The commission proposes to amend §290.39(j)(1)(E) and (F) to move the word "and," together with its semicolon, to the correct location in the sequential list of requirements. The commission proposes §290.39(j)(1)(G) to include the requirements of the new federal LCSTR under 40 CFR §141.90(a)(3) giving examples of changes that the TCEQ must approve before use, consistent with existing requirements of §290.117(g)(2)(E). The commission proposes §290.39(j)(1)(G) to incorporate the requirements of the new federal LCSTR under 40 CFR §141.86(g)(4)(iii) and (iv) requiring systems to notify the TCEQ of the addition of any lead-containing or copper-containing material in writing within 60 days of becoming aware of its presence.

The commission proposes to amend §290.41, Water Sources, to correct references to "certified" or "approved" laboratories in subsection (c)(3)(F)(i) and (G). After June 30, 2008, laboratories are not certified by the agency, but are instead "accredited" by the agency, consistent with existing state rule under 30 TAC §25.4(f).

The commission proposes to amend §290.42, Water Treatment, to maintain consistency with the federal requirements of the LT2 and LCSTR rules. The commission proposes to amend §290.42(c)(6) to correct a cross-reference. The commission proposes to amend §290.42(d)(3) to delete the phrase "relating to Public Notice" in conformance to agency syntax standards for internal references. The commission proposes to amend §290.42(d)(15)(A) and (B) to correct references to "certified" laboratories. After June 30, 2008, laboratories are not certified by the agency, but are instead "accredited" by the agency consistent with existing state rule under 30 TAC §25.4(f). The commission proposes to amend §290.42(e)(4)(C) and (6) to remove a space between the last word of the sentence and the period, in order to ensure consistency with normal syntax standards. The commission proposes to amend §290.42(g) and (2)(B) to correct references to be consistent with agency syntax standards. The commission proposes to amend §290.42(g)(2) to allow *Giardia* removal credit of up to 3.0-log after April 1, 2012. The federal LT2 rule only discusses removal credits for *Cryptosporidium* not for *Giardia* as seen in 40 CFR §141.719(a). The current state rule under §290.42(g)(4) allows a 3-log re-

moval credit for *Giardia* for bag and cartridge systems installed or replaced before April 1, 2012. Section 290.42(g)(4) describes the *Giardia* credits allowed until April 1, 2012, and §290.42(g)(2) describes the *Giardia* credits allowed after April 1, 2012. The LT2 rule did not change the *Giardia* requirements. The proposed change amends §290.42(g)(2) to continue the same level of *Giardia* credit as is currently available for bag and cartridge filters. The commission proposes to amend §290.42(g)(3) to clarify that removal credits can only be given to those systems or modules that meet the criteria in the paragraph. The current rule may imply that systems have other options to receive credits, whereas the federal LT2 rule under 40 CFR §141.719(a) provides only one method of approving credits. The commission proposes to amend §290.42(g)(3)(D)(i) and (ii) to correct the reference to meet agency syntax standards. The commission proposes §290.42(n) to reference the requirements for installation of corrosion control or source water treatment referenced in proposed §290.117(f) and (g). The proposed §290.42(n) language is consistent with existing §290.117(j)(1). It is proposed under this section because this section contains all other treatment requirements for public water systems.

The commission proposes to amend §290.46, Minimum Acceptable Operating Practices for Public Drinking Water Systems. The commission proposes to amend §290.46(b) to correct a reference to "certified" laboratories. After June 30, 2008, laboratories are not certified by the agency, but are instead "accredited" by the agency consistent with existing state rule under 30 TAC §25.4(f). The commission proposes to remove the three-year turbidity record retention requirement in §290.46(f)(3)(B)(iv) and proposes to replace it with a five-year record retention requirement in §290.46(f)(3)(C)(iv), consistent with the federal DBP2 rule under 40 CFR §141.33(a). As written, the rule is currently less stringent than the federal rule. Section 290.46(f)(3)(B)(v) - (ix) is proposed to be relettered to maintain the sequence of lettering and amended to correct references to other rules to meet agency syntax standards. The commission proposes to amend §290.46(f)(3)(C)(ii) to remove the word "and" in order to maintain correct numerical sequence in the list of requirements. Section 290.46(f)(3)(C)(iii) is proposed to be amended to add the word "and" in order to incorporate the proposed new turbidity analysis record retention requirement of §290.46(f)(3)(C)(iv). The commission proposes to amend §290.46(f)(3)(C)(iv) and to correct the reference to meet agency syntax standards. The commission proposes to amend §290.46(f)(3)(E)(v) to remove the hyphen in the word "by-products" to be consistent with current federal usage standards. Section 290.46(f)(3)(F) is proposed to contain the requirement of the federal LCSTR under 40 CFR §141.80(j) and §141.91 that records related to compliance with the lead and copper requirements be maintained for 12 years, consistent with the existing state rules for lead and copper under §290.117(m)(2). Existing §290.46(f)(3)(F) is proposed to be relettered as §290.46(f)(3)(G) in order to maintain the correct sequence of rule requirements. The commission proposes to amend §290.46(f)(4)(C) to replace the incorrect term "certified" with the correct term "licensed" in reference to water operators.

The commission proposes to amend §290.47, Appendices. The commission proposes to amend the figure in §290.47(a), concerning Appendix A, Recognition as a Superior or Approved Public Water System, to replace the incorrect term "certified" with the correct term "licensed" in reference to water operators and to correct a cross-reference. The commission proposes to amend the figure in §290.47(b), concerning Appendix B, Service Agreement, to add the word "retail" to the title and text in order to specify that the agreement is for retail connections. In the first sentence of the form, the commission proposes to replace the term "private water distribution" with the term "retail connection owner's side of the meter" to make the reference more specific, and easier for public water systems and their customers to understand. The commission proposes to replace the word "utility" with the phrase "public water system" to correctly reflect the type of regulated entity to which the rule applies because the retail service agreement provided under §290.47(b) is applicable to all public water systems, not just to that subset of public water systems that also meet the definition of a utility. The Texas rules under Chapter 290 apply to public water systems, which are defined therein, not to utilities, which are defined in 30 TAC Chapter 291, Utility Regulations. The commission proposes to amend the figure in §290.47(c), concerning Appendix C, Sample Sanitary Control Easement Document for a Public Water Well, to correct a misspelling. Additionally, the current sample sanitary control easement form does not include all of the items that are required by §290.41(c)(1)(F) to be included in a sanitary control easement. The fifth list item has been deleted and its substantive information moved to other list items, specifically the third and fourth list items. The commission proposes to amend the figure in §290.47(d), concerning Appendix D, Customer Service Inspection Certification, to correct the formatting. The check boxes were not aligned with the compliance criteria. The commission proposes to amend the figure in §290.47(f), concerning Appendix F, Sample Backflow Prevention Assembly Test and Maintenance Report. The current heading of "Reduced Pressure Principle Assembly" is separated from the "Relief Valve" column. This separation makes it unclear that a Reduced Pressure Principle Assembly contains the components of a Double Check Valve Assembly (a 1st Check and a 2nd Check) and a Relief Valve. The proposed revision would eliminate the line separating the heading of "Reduced Pressure Principle Assembly" from the "Relief Valve" column. Only this formatting is proposed to be changed, no substantive changes are proposed.

Subchapter F: Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems

The commission proposes to amend §290.111, Surface Water Treatment. The commission proposes to amend §290.111(b) to be consistent with the federal requirements for raw surface water monitoring under the LT2 rule, to allow the state to require more than two rounds of special raw surface water monitoring. The federal rule under 40 CFR §141.711(d) requires the state to assess the watershed of a system and if a significant change has occurred that could increase *Cryptosporidium* contamination, the system must perform actions specified by the state. The federal rule lists additional source water monitoring as a potential action that the state may require. The current wording of the existing state rule would not allow the commission to require additional source water monitoring. The change is proposed to assure the state rules are as stringent as the federal rules. As written, the rule is currently less stringent than the federal rule.

The commission proposes to amend §290.111(b)(4)(B) to allow the state to require a second round of raw surface water sampling for systems that install new intakes after the federal deadlines. The commission proposes to move the requirement for the first round of sampling in the deleted language from existing §290.111(b)(4)(B) to proposed §290.111(b)(4)(B)(i). The commission proposes to add §290.111(b)(4)(B)(ii) to include the requirement for the second round of raw surface water sampling for new surface water intakes consistent with the

federal LT2 rule requirements under 40 CFR §141.701(f)(3). The change is proposed to assure the state rules are as stringent as the federal rules. The commission proposes to amend §290.111(b)(6) to correct a reference to a "certified" laboratory to use the term "accredited" consistent with existing state rule under 30 TAC §25.4(f). The commission proposes to amend §290.111(b)(7)(A)(i) to provide the correct internal references. Currently, the rule incorrectly references paragraph (4)(A) and (B). The commission proposes to amend the figure in §290.111(c)(3)(B) to add the word "clarification" to footnote "b." In this context, the word "clarification" refers to a unit process required in surface water treatment that removes turbidity from the water, thus making it physically clearer. Currently, in §290.111(c)(3)(B), footnote b is a copy of footnote a, which is inconsistent with the federal rule requirements of 40 CFR §141.711(a) relating to *Cryptosporidium* treatment requirements under the federal LT2 rules. The commission proposes to amend §290.111(c)(3)(B)(i) and (ii) to provide the correct internal references and ensure consistency with agency syntax standards. Currently, the rule references §291.114(b)(4)(A) and (B) incorrectly. To meet federal LT2 rules for early implementation sampling in 40 CFR §141.701(c) and (f) internal references are proposed to be amended to §290.111(b)(4)(A) and (B), respectively. The commission proposes to amend the figure in §290.111(d)(1) to move a footnote to the appropriate location and add a definition of the abbreviation "NA". The reference to footnote 3 in the figure in §290.111(d)(1) that is currently describing "0.0-log" in the Membrane filters and Cartridge Filters, *Giardia* column in §290.111(d)(1), Microbial Inactivation Requirements, should describe the heading of *"Giardia"* in the Membrane Filters and Cartridge Filters, *Giardia* column to be consistent with the existing state rule under §290.42(g)(3). Also, the abbreviation "NA" contained in this table is proposed to be defined correctly as "not allowed" in the context of this table and a footnote is proposed to be added to define the term. The commission proposes to amend §290.111(f)(1)(A) to ensure that the requirements are correctly applied to combined filter effluent as distinct from individual filter effluent consistent with the federal LT2 rule requirements in 40 CFR §141.551 and §141.719(b)(4)(v). The commission proposes to amend §290.111(g)(4)(B) to add a space between the reference and the hyphen in accordance with normal syntax standards. The commission proposes to amend §290.111(h)(11) to include a reference to §290.111(b)(7), relating to the LT2 requirement that public water systems provide all reports required under §290.111 to their primacy agency. The commission proposes to renumber existing §290.111(h)(11) as paragraph (12).

The commission proposes to amend §290.112, Total Organic Carbon, to be consistent with the federal DBP2 rule. The commission proposes to amend §290.112(c)(2) and (2)(C) to establish that only source water total organic carbon monitoring can be reduced to quarterly instead of monthly, and that finished water sampling may not be reduced, consistent with the federal rule in 40 CFR §141.132(b)(iii). The commission also proposes to amend §290.112(c)(2)(C) and (e)(3)(A) to remove the hyphen in the words "by-product" and "by-products" to be consistent with current federal usage standards. Additionally, the commission proposes to amend §290.112(c)(2)(C) to correct a cross-reference.

The commission proposes to amend §290.113, Stage 1 Disinfection Byproducts (TTHM and HAA5), to be consistent with the federal DBP1 rule, current federal usage standards, and agency language usage standards. The commission proposes to amend §290.113(b)(2) to abbreviate the term "milligrams per liter" in its second usage to "mg/L" in accordance with the TCEQ usage standards. The commission proposes to amend §290.113(c)(4) to remove a space after the opening quote in conformance with normal syntax standards. The commission proposes to add §290.113(c)(4)(D) to describe the levels of total organic carbon that are required in order for a system with a surface water treatment plant to remain eligible for reduced monitoring, consistent with the federal DBP1 rule in 40 CFR §141.132(b)(1)(iii). As written, the rule is currently less stringent than the federal rule. Additionally the commission proposes to spell out the term "total organic carbon" in its first use in the section, consistent with normal syntax standards. The commission proposes to amend §290.113(c)(5)(A) to correctly reference the paragraphs containing requirements for any system to return to routine monitoring, and to specifically include the levels of total organic carbon required that would trigger a return to routine monitoring from reduced monitoring, consistent with the federal DBP1 rule in 40 CFR §141.132(b)(1)(iii). The commission proposes to add §290.113(c)(5)(D) to establish the authority of the executive director to return a system that has been on reduced monitoring to routine monitoring consistent with the federal rule in 40 CFR §141.132(b)(1)(vi). The commission proposes to add §290.113(c)(6) to ensure that systems that are monitoring annually or less frequently must increase monitoring if any single sample exceeds the maximum contaminant level, consistent with the federal rule in 40 CFR §141.132(b)(1)(iv). The commission proposes to amend §290.113(d) to correct a reference to a "certified" laboratory to instead reference an "accredited" laboratory consistent with existing state rule under 30 TAC §25.4(f). The commission proposes to amend §290.113(f)(3)(C) to add the term "monitoring plan" to correctly reference the document in which public water systems are required to maintain a list of sample locations. The commission proposes to add §290.113(h) to adopt the federal definitions of best available technology for trihalomethane and haloacetic acid treatment at 40 CFR §141.64(b)(1)(ii) by reference.

The commission proposes to amend §290.114, Other Disinfection Byproducts (Chlorite and Bromate), to be consistent with the federal DBP1 rule, current federal usage standards, and existing state rules. The commission proposes to amend §290.114(a) to require transient public water systems that use chlorine dioxide to comply with the requirements of the subsection, consistent with federal rule in 40 CFR §141.65(b)(2). The commission proposes to amend §290.114(a)(3)(B) to correct a reference to a "certified" laboratory to instead use the correct term "accredited" laboratory consistent with existing state rule under 30 TAC §25.4(f). The commission proposes to amend §290.114(a)(4)(B) to correct the rule citation to meet agency syntax standards. The commission proposes to add §290.114(b)(5)(E) to include the compliance calculation protocol for a system that does not perform all required sampling, consistent with the federal rule in 40 CFR §141.133(b)(2). The requirement is added to maintain consistency between state and federal regulations.

The commission proposes to amend §290.115, Stage 2 Disinfection Byproducts (TTHM and HAA5), for consistency with federal rules, current federal usage standards, and agency rule writing standards. Section 290.115 contains requirements for both the Stage 1 Disinfectants and Disinfection Byproducts Rule, promulgated by EPA on December 16, 1998, as well as requirements from the DBP2 rule, promulgated by the EPA on January 4, 2006. The commission also proposes to amend §290.115(c)(1) to remove the hyphen in the word "by-product"

to be consistent with current federal usage standards. The commission proposes to amend §290.115(c)(1)(A) to ensure that systems include results collected under the requirements of the current Stage 1 Disinfectants and Disinfection Byproducts Rule in making the determinations for sample sites required under the DBP2 rule, consistent with 40 CFR §141.600(a). The commission proposes to amend §290.115(c)(1)(C) to correctly reference the federal requirements for setting Stage 2 sample sites that are adopted by reference, consistent with the federal rule in 40 CFR §141.605(c) - (e). The commission proposes to add the catch line of "Monitoring frequency and number of sample sites" to §290.115(c)(2) in accordance with the TCEQ standards for formatting rule language. The commission proposes to amend footnote 1 of the figure located in §290.115(c)(2), entitled "Routine Stage 2 Monitoring Frequency and Number of Sites," to remove the hyphen in the words "by-product" to be consistent with current federal usage standards; and the commission proposes to also amend footnote 3 in §290.115(c)(2) to clarify the number of sample sites required at small systems, consistent with the federal rule in 40 CFR §141.620(c)(6). The commission proposes to add the catch line of "Reduced monitoring for TTHM and HAA5" to §290.115(c)(3) in accordance with the TCEQ standards for formatting rule language. The commission proposes to amend §290.115(c)(3)(A) to remove the hyphen in the word "by-products" to be consistent with current federal usage standards. The commission proposes to amend §290.115(c)(3)(B) to correctly identify the conditions under which reduced monitoring can be continued, consistent with the federal DBP2 rule under 40 CFR §141.623(c). The commission proposes to amend §290.115(c)(3)(B)(i) to correctly refer to infrequent monitoring as reduced monitoring, rather than routine, to be consistent with the federal DBP2 rule under 40 CFR §141.623(c). The commission proposes to amend §290.115(c)(3)(B)(iii) to ensure that low total organic carbon levels are accurately referenced as a requirement for continuing on a reduced monitoring frequency schedule, as required under the federal DBP2 rule under 40 CFR §141.623(c). The commission proposes to add the catch line of "Increased monitoring for TTHM and HAA5" to §290.115(c)(4) in accordance with the TCEQ standards for formatting rule language. The commission proposes to add the catch line of "Initial Distribution System Evaluation (IDSE) requirements" to §290.115(c)(5) in accordance with the TCEQ standards for formatting rule language. The commission proposes to amend §290.115(c)(5) to ensure that it is absolutely clear that all community systems must perform initial distribution system evaluation monitoring as required by 40 CFR §141.600(b). As currently written, the sentence could be construed to mean that the limitation to systems serving fewer than 10,000 people can apply to both community and nontransient, noncommunity systems. The commission proposes to amend footnote 1 to the figure in §290.115(c)(5)(B) to correct a misspelling and also proposes to define the acronym "IDSE" in the figure's heading. The commission proposes to amend §290.115(c)(5)(B)(iii) to include the authority of the executive director to require initial distribution system evaluation monitoring even if a system meets the criteria for receiving a very small system waiver, consistent with the federal DBP2 rule under 40 CFR §141.600(d). The commission proposes to amend footnote 3 in the figure located in §290.115(c)(5)(C) by adding a period after the last sentence and also proposes to define the acronym "IDSE" in the figure's heading. The commission also proposes to amend the figure titled "Frequency of IDSE Monitoring" located in §290.115(c)(5)(C)(ii)(V) to define the acronym "IDSE" in the figure's heading. The commission also proposes to amend the figure in §290.115(c)(5)(C)(ii)(V) to remove from footnote 2 the terminology of "hottest month" for annual sampling and replace it with the terminology of "peak historical month" as contained in the federal DBP2 rule under 40 CFR §141.601(b)(1). The commission proposes to add §290.115(c)(5)(C)(iii)(V) to include the requirement that the initial distribution system evaluation report include recommendations and justifications for the frequency of sample collection as contained in the federal DBP2 rule under 40 CFR §141.605(a). The commission proposes to amend §290.115(c)(5)(D) to specify that the executive director can require a system to perform an initial distribution system evaluation for any reason, as contained in the federal DBP2 rule under 40 CFR §141.600(d). The commission proposes to amend §290.115(d) to correct a reference to a "certified" laboratory to refer to an "accredited" laboratory consistent with existing state rule under 30 TAC §25.4(f). The commission proposes to amend §290.115(e)(1)(B) to specify when compliance determinations are initiated under the DBP2 rule as contained in 40 CFR §141.620(d)(1). The commission proposes to amend §290.115(e)(1)(C) to correct two cross-references. The commission proposes to amend §290.115(g) to correct letter capitalization in the catch line, in accordance with the TCEQ standards for formatting rule language. The commission proposes to add §290.115(h) to adopt the federal definitions of best available technology for trihalomethane and haloacetic acid treatment by reference consistent with the federal rule in 40 CFR §141.64(b)(2)(ii). The requirements for best available technology are proposed to be included in both §290.113(h) and §290.115(h) in order to ensure continuity between Stage 1 Disinfectants and Disinfection Byproducts Rule and DBP2 requirements.

The commission proposes to repeal existing §290.117, Regulation of Lead and Copper, and replace it with a new §290.117 to incorporate the provisions of the federal LCSTR in 40 CFR Part 141, Subpart I. All of the sections that regulate chemicals in drinking water are arranged in a standard order. Specifically, subsections are organized as follows: applicability; specific standards, like maximum contaminant levels, action levels, or treatment techniques; monitoring frequency and location; analytical methods; reporting; compliance determination; and public notification. The current language, initially adopted in 1991 to incorporate the original Lead Copper Rule and subsequent revisions, is not organized in that manner. It is therefore proposed that new §290.117 be reorganized in the manner of the rules regulating other chemicals. The intent of this reorganization is to make the rules easier for the regulated community to use. No change in stringency is intended, except as specifically related to the incorporation of the LCSTR rule, federally adopted on October 10, 2007. Additionally, as part of the LCSTR, the EPA is requiring that a full primacy crosswalk be performed by states. During other recent revisions to the lead and copper requirements, only partial crosswalks were required. Repealing and replacing the section would allow staff to ensure that all elements of the original Lead Copper Rule and subsequent changes contained in 40 CFR Part 141, Subpart I, Lead and Copper, are appropriately incorporated in Texas rules. The specific organization proposed is as follows: applicability; regulatory levels, including action levels, reduced monitoring levels, maximum permissible source water levels, and optimization levels; lead and copper tap sampling frequency and locations; lead and copper entry point monitoring frequency and locations; water quality parameter monitoring frequency and locations; corrosion control requirements; source treatment requirements; analytical methods, including sample

analysis, collection, and invalidation methods; reporting; consumer notification; public education; compliance determination; lead service line replacement; and additional sampling.

The commission proposes new §290.117(a) to contain the applicability requirements of the current state rule of §290.117(a)(1) and federal rule in 40 CFR §141.80(a), (a)(1), and (b), that these requirements apply to community and nontransient, noncommunity public water systems.

The commission proposes new §290.117(b) to contain specific standards for lead and copper in drinking water from the current state rules and new federal rules. Unlike other rules for chemicals in drinking water, the EPA has not set maximum contaminant levels for lead and copper levels in drinking water. Instead, the federal rule sets action levels and other requirements. New §290.117(b) is proposed to include action levels for lead and copper in the distribution system, trigger levels for allowing reduced lead and copper tap sampling, practical quantitation levels for lead and copper, optimal water quality parameter ranges, the conditions defining a system as having been deemed to have optimized corrosion control, and maximum permissible source water lead levels.

New §290.117(b)(1) is proposed to contain the lead and copper action levels for drinking water in distribution systems, currently contained in the existing state rule language under §290.117(a)(3). New §290.117(b)(1)(A) is proposed to contain the lead action level of 0.015 mg/L for tap sampling results, currently contained in the existing state rule language under §290.117(a)(3) and 40 CFR §141.80(c)(1). New §290.117(b)(1)(B) is proposed to contain the copper action level of 1.3 mg/L for tap sampling results, currently contained in §290.117(a)(3), and in the federal rule at 40 CFR §141.80(c)(2).

New §290.117(b)(2) is proposed to contain the lead and copper tap sample levels that will allow systems to initiate and remain on reduced tap sampling schedules. These requirements are currently in state rules in §290.117(e)(5) and are contained in 40 CFR §141.86(d)(4)(v).

New §290.117(b)(3) is proposed to contain the practical quantitation levels for lead and copper currently contained in the existing state rule language under §290.117(l)(2). New §290.117(b)(3)(A) is proposed to contain the practical quantitation level for lead of 0.005 mg/L, as contained in 40 CFR §141.89(a)(1)(ii)(A); new §290.117(b)(3)(B) is proposed to contain the practical quantitation level for copper of 0.050 mg/L, in the federal rule at 40 CFR §141.89(a)(1)(ii)(B).

New §290.117(b)(4) is proposed to contain the optimal water quality parameter ranges that public water systems may be required to set in the event of a lead or copper tap sampling exceedance currently contained in the state rules in §290.117(h)(1)(P) and (j)(1) and in the federal rules in 40 CFR §141.81(d)(7) and (e)(8). New §290.117(b)(4)(A) is proposed to list the constituents and sample sites that make up optimal water quality parameter ranges. New §290.117(b)(4)(A)(i) is proposed to contain the requirement that optimal water quality parameter ranges be set for pH in entry point samples, as contained in 40 CFR §141.82(f)(1). New §290.117(b)(4)(A)(ii) is proposed to contain the requirement that optimal water quality parameter ranges be set for pH in distribution samples, with a minimum not below 7.0, as contained in the federal rule in 40 CFR §141.82(f)(2). New §290.117(b)(4)(A)(iii) is proposed to contain the optimal water quality parameter range requirements for systems that use a corrosion inhibiting chemical as contained in 40 CFR §141.82(f)(3). New §290.117(b)(4)(A)(iv) is proposed to contain the optimal water quality parameter range requirements for systems that use an alkalinity adjusting treatment or chemical as contained in 40 CFR §141.82(f)(4). New §290.117(b)(4)(A)(v) is proposed to contain the optimal water quality parameter range requirements of 40 CFR §141.82(f)(5) for systems that use calcium carbonate to control corrosion. New §290.117(b)(4)(B) is proposed to include the requirement of §290.117(h)(1)(P) that systems must submit their proposed, system-specific optimal water quality parameter ranges in writing, consistent with 40 CFR §141.82(c)(6) and (h). New §290.117(b)(4)(C) is proposed to contain the approval time line for optimal water quality parameter ranges of §290.117(h)(1)(Q), consistent with 40 CFR §141.81(e)(7) and §141.82(f).

New §290.117(b)(5) is proposed to contain the levels to be achieved in order for a system to be deemed to have optimized their corrosion control treatment strategy, as described in 40 CFR §141.80(d)(2), consistent with §290.117(j). New §290.117(b)(5)(A) is proposed to contain the requirement for small and medium systems serving 50,000 or fewer people to meet the lead and copper action levels in two consecutive initial or routine monitoring periods in order to be deemed to have optimized corrosion control, as currently contained in existing §290.117(j)(4)(G), consistent with 40 CFR §141.81(b)(1). New §290.117(b)(5)(B) is proposed to contain the requirement that large systems serving more than 50,000 people may be deemed to have optimized corrosion control if the difference between the 90th percentile lead level and the highest entry point lead level is less than the practical quantitation level and the system meets the copper action levels in two consecutive initial or routine monitoring periods as currently contained in existing §290.117(h)(2)(A) and (j)(5)(B), consistent with 40 CFR §141.81(b)(3). New §290.117(b)(5)(C) is proposed to include the general requirement that those systems whose highest lead level measured at the entry point is less than the method detection limit may also be deemed to have optimized corrosion control if their 90th percentile tap water lead level is less than or equal to the practical quantitation level for lead for two consecutive six-month monitoring periods as provided by 40 CFR §141.81(b)(3)(i). New §290.117(b)(5)(D) is proposed to include the language of current state rule in existing §290.117(j)(5)(A) consistent with the federal requirements of 40 CFR §141.81(b)(2) that a system that performs activities equivalent to corrosion control may be deemed to have optimized corrosion control treatment. New §290.117(b)(5)(E) is proposed to describe the conditions under which a system will no longer be deemed to have optimized corrosion control treatment contained in the current state rule in existing §290.117(j)(3) and (4)(G), and consistent with the federal requirements of 40 CFR §141.81(b)(2) and (3)(iv).

New §290.117(b)(6) is proposed to provide authority for the executive director to establish the maximum permissible levels for source water lead for systems that are required to install source water treatment as contained in the federal rules at 40 CFR §141.83(a)(5) and (b)(4). The proposed rule also describes the method to be used by the executive director when setting these levels.

New §290.117(c) is proposed to contain requirements for lead and copper tap sampling locations and frequency currently contained in existing §290.117(b) and (c), consistent with the federal requirements of 40 CFR §§141.80(h), 141.81(e)(1) and (8), and 141.86(g)(5) and (5)(iii).

New §290.117(c)(1) is proposed to contain the specific procedures and requirements for selecting lead and copper tap sampling locations requirements currently contained in existing §290.117(c), consistent with the federal rule at 40 CFR §141.86(a)(1). New §290.117(c)(1)(A) is proposed to specify the number of required sample sites, based on the population of the system, currently contained in existing §290.117(c)(6), and 40 CFR §141.86(c). In order to accomplish this, it is proposed that a table, entitled "Required Number of Lead and Copper Tap Sample Sites", be added as §290.117(c)(1)(A), containing the requirements currently in the table in existing §290.117(c)(6). New §290.117(c)(1)(B) is proposed to describe what taps can be used as sample sites, as currently described in existing §290.117(b)(3), consistent with the federal rules, 40 CFR §141.86(a) and (a)(1).

New §290.117(c)(1)(C)(i) is proposed to specifically reference new TCEQ Form Number 20467, the Sample Site Selection and Material Survey Form to submit proposed sample locations. The requirement for types of sites to be selected is contained in existing and proposed §290.117(c)(1), but it is proposed that the official form number be added. The requirements for the survey of materials are contained in existing §290.117(b)(1) and (2), and (c)(1)(A), and are consistent with the federal requirements of 40 CFR §141.86(a)(1) and (2). New §290.117(c)(1)(C)(i)(I) - (IV) is proposed to contain the specific federal requirements of 40 CFR §141.86(a)(2)(i) - (iii), relating to the sources of information that a public water system must use when performing their material survey. These specific requirements are not currently contained in state language, but are implemented through standard operating procedures for submittal of forms.

New §290.117(c)(1)(C)(ii) is proposed to contain the specific process that a public water system must use to consider selection of sample sites starting with worst case--tier 1 sites--first, followed by less vulnerable sites, requirements which are currently contained in existing §290.117(b)(1) and (2), consistent with the federal requirements of 40 CFR §141.86(a). New §290.117(c)(1)(C)(ii)(I) is proposed to reference the definitions of age and materials for tier 1, 2, and 3 sites that is proposed in new subparagraph (D), immediately following this subparagraph, as currently contained in the existing §290.117(b)(3), consistent with 40 CFR §141.86(a)(3) and (4). New §290.117(c)(1)(C)(ii)(II) is proposed to contain the provision that a community system that does not have enough sites meeting the tier 1, 2, and 3 definitions of proposed new §290.117(c)(1)(D) may sample at other representative sites throughout the distribution system, as provided by 40 CFR §141.86(a)(5). Similarly, new §290.117(c)(1)(C)(ii)(III) is proposed to contain the provision that nontransient, noncommunity public water systems that do not have enough tier 1, 2, or 3 sites shall select sites potentially vulnerable to copper corrosion, followed by selection of sites representing the distribution system, consistent with 40 CFR §141.86(a)(7). New §290.117(c)(1)(C)(ii)(IV) is proposed to contain the provisions for selecting sample sites in systems with lead service lines, consistent with the federal rule at 40 CFR §141.86(a)(8); historically, the use of lead pipes in Texas was extremely rare, so this is not likely to impact any public water systems in Texas. New §290.117(c)(1)(C)(ii)(V) is proposed to require submittal of any explanatory information with submittal of the Site Selection Form as currently required by existing §290.117(b)(2). The use of TCEQ form numbers is specific to the TCEQ implementation practices, so there is not a concurrent federal citation.

New §290.117(c)(1)(D) is proposed to contain the definitions of tier 1, 2, and 3 sites in terms of materials, type of facility, and date of installation, in order to explicitly adopt the federal requirements of 40 CFR §141.86(a). New §290.117(c)(1)(D)(i) is proposed to contain the definition of tier 1, worst case, sites at community public water systems, as contained in 40 CFR §141.86(a)(3). New §290.117(c)(1)(D)(i)(I) and (II) is proposed to contain the federal requirements of 40 CFR §141.86(a)(3)(i) and (ii), respectively, detailing the age and material for tier 1 sites at community systems. New §290.117(c)(1)(D)(ii) is proposed to contain the definition of tier 2 sites at community public water systems, as contained in the federal rule at 40 CFR §141.86(a)(4). New §290.117(c)(1)(D)(ii)(I) and (II) is proposed to contain the federal requirements of 40 CFR §141.86(a)(4)(i) and (ii), respectively, detailing the age and material qualifications for tier 2 sites in community public water systems. New §290.117(c)(1)(D)(iii) is proposed to contain the definition of tier 3 sites in community systems, as contained in 40 CFR §141.86(a)(5). New §290.117(c)(1)(D)(iv) is proposed to define other representative sites for community systems that do not have enough sites that meet the tier 1, 2, or 3 definitions, as contained in existing §290.117(b)(3), consistent with 40 CFR §141.86(a)(5). New §290.117(c)(1)(D)(v) is proposed to define tier 1, worst case, sites at nontransient, noncommunity public water systems, consistent with the federal requirements of 40 CFR §141.86(a)(6). New §290.117(c)(1)(D)(v)(I) and (II) is proposed to contain the federal requirements of 40 CFR §141.86(a)(6)(i) and (ii), respectively, requiring that tier 1 sites at nontransient, noncommunity systems contain either lead or copper materials. New §290.117(c)(1)(D)(vi) is proposed to contain the definition of other representative sites at nontransient, noncommunity public water systems, consistent with the federal requirements of 40 CFR §141.86(a)(7).

New §290.117(c)(1)(E) is proposed to contain federal provisions in 40 CFR §141.85(b) and §141.90(a) allowing systems that do not have appropriate locations to accomplish first-draw sampling to use other sites; these requirements predate the LCSTR but were not previously contained in Texas rule language. Adding these provisions would make Texas language more closely correspond to federal language, and be consistent with the level of stringency in the federal rule. New §290.117(c)(1)(E)(i) is proposed to describe the specific types of systems that may request non-first-draw sample sites, as contained in the federal rules, 40 CFR §141.85(b)(7) and §141.90(a)(2). New §290.117(c)(1)(E)(i)(I) is proposed to provide that prisons and hospitals, or other facilities where the population served cannot change the plumbing or add point of use devices, may request approval of non-first-draw sites, consistent with 40 CFR §141.85(b)(7)(i). New §290.117(c)(1)(E)(i)(II) is proposed to contain the requirement that these systems may only request non-first-draw sample sites if the system provides water as part of the cost of services provided and does not separately charge for water consumption, as contained in 40 CFR §141.85(b)(7)(ii). New §290.117(c)(1)(E)(ii) is proposed to require that any request for approval of non-first-draw sample sites must be in writing, and must be updated when conditions change, as required under the federal rules at 40 CFR §141.90(a)(1)(v) and (2).

New §290.117(c)(1)(F) is proposed to contain the current requirement of existing §290.117(c)(1) for systems that have fewer than five taps, which is the minimum number of sample sites required; consistent with 40 CFR §141.86(c) and (d)(4)(i), these systems may request a reduction in the minimum number of sites to be used.

New §290.117(c)(1)(G) is proposed to contain the requirement that the same sample sites be used in each sampling round, as currently contained in existing §290.117(m)(1)(G), consistent with the federal requirement of 40 CFR §141.90(b)(2). New §290.117(c)(1)(G)(i) is proposed to contain the current requirement of existing §290.117(m)(1)(G) that changes must be requested in writing. New §290.117(c)(1)(G)(ii) is proposed to provide the protocol to be used by the system when circumstances outside their control make it necessary for them to replace sampling sites due to changes occurring in their distribution system, as currently provided by the state rule language under existing §290.117(c)(3), and consistent with the federal requirements of 40 CFR §141.90(a)(1)(v).

New §290.117(c)(2) is proposed to contain the monitoring frequency requirements for lead and copper tap sampling, consistent with existing requirements of §290.117(c) and federal requirements of 40 CFR §141.86(c). New §290.117(c)(2)(A) is proposed to contain the most frequent, initial and routine tap sample monitoring requirements; specifically, the requirements that new systems, systems that exceed any action level, systems that install corrosion control treatment, systems that exceed a reduced monitoring level, and systems that operate outside an approved optimal water quality parameter range shall perform lead and copper tap sampling in two consecutive six-month monitoring periods at the initial/routine number of sample sites identified in proposed new §290.117(c)(1), consistent with existing §290.117(j)(4)(G) and the federal requirements of 40 CFR §141.86(d). New §290.117(c)(2)(A)(i) is proposed to contain the timing for initial tap sampling for new systems, starting in the year after they become active, as currently referenced in existing §290.117(c)(5), (7), and (8), consistent with 40 CFR §141.86(d)(1). The new rule is proposed to provide consistency with implementation practice. Currently, the Texas state rule specifically states that initial tap sampling must occur in the calendar year following assignment of a new public water system identification number. However, a public water system identification number is assigned to systems during design, development, and construction, which may take longer than one year. Therefore, the rule is proposed to require systems to start sampling the year after they become active. In practice, a public water system's activity status is changed from "proposed" to "active" after construction is complete and the system starts delivering water to at least 25 people (or at least 15 homes) for 60 days or more each year. New §290.117(c)(2)(A)(ii) is proposed to contain the routine tap sampling requirements for systems that have been triggered out of reduced monitoring because of an action level exceedance, reduced monitoring trigger level exceedance, or failure to operate within approved optimal water quality parameter ranges, consistent with the implicit requirements of §290.117(e), containing the federal requirements of 40 CFR §141.86(d)(4). New §290.117(c)(2)(A)(ii)(I) is proposed to require that systems which exceed a lead or copper action level, based on the 90th percentile of their sample set, return to routine tap sampling, consistent with 40 CFR §141.86(d)(4)(vi)(B). New §290.117(c)(2)(A)(ii)(II) is proposed to require systems that operate outside of approved optimal water quality parameter ranges return to routine tap sampling, consistent with 40 CFR §141.86(d)(4)(vi)(B). New §290.117(c)(2)(A)(ii)(III) is proposed to contain the timing requirement that systems that return to routine monitoring do so in the calendar year following the triggering event, consistent with 40 CFR §141.86(d)(4)(vi)(B). New §290.117(c)(2)(A)(ii)(IV) is proposed to include the timing for small and medium systems that are required to perform one year of routine monitoring after designation of optimal corrosion control treatment, currently contained in existing §290.117(j)(4)(G), consistent with 40 CFR §141.81(e)(6) and §141.86(d)(2)(i) and (ii), and (4)(vi)(B). New §290.117(c)(2)(A)(ii)(V) is proposed to require that a system perform tap sampling on the routine schedule after they install corrosion control treatment, consistent with the federal rule, 40 CFR §141.86(d)(2)(iii). New §290.117(c)(2)(A)(ii)(VI) is proposed to contain the requirement of 40 CFR §141.86(d)(2)(iii) that any system that installs source treatment return to routine tap sample monitoring.

New §290.117(c)(2)(B) is proposed to describe the reduced annual monitoring requirements for lead and copper tap sampling. Generally, systems that successfully perform initial monitoring with no exceedances, that meet all optimal water quality parameter ranges, and that are not in the process of determining and installing corrosion control treatment are allowed to reduce sampling to once a year, in the summer, as currently contained in existing §290.117(e)(1) - (3), consistent with the federal requirements of 40 CFR §141.86(c), and (d)(4)(i), (ii), and (iv). New §290.117(c)(2)(B)(i) is proposed to allow systems serving more than 50,000 people that meet the lead action levels and optimal water quality parameter ranges during two consecutive six-month initial or routine sampling periods to reduce their sampling frequency to once a year, consistent with the federal requirements of 40 CFR §141.86(d)(4)(i). New §290.117(c)(2)(B)(ii) is proposed to allow systems serving 50,000 or fewer people that meet both the lead and copper action levels during two consecutive six-month initial or routine sampling periods to reduce their sampling frequency to once a year, consistent with the federal requirements of 40 CFR §141.86(d)(4)(i). New §290.117(c)(2)(B)(iii) is proposed to allow systems serving 50,000 or fewer people that meet the lead action levels and optimal water quality parameter ranges during two consecutive six-month initial or routine sampling periods to reduce their sampling frequency to once a year, consistent with the federal requirements of 40 CFR §141.86(d)(4)(i). New §290.117(c)(2)(B)(iv) is proposed to require that systems with initial or routine lead and copper results falling between the reduced monitoring levels and the action levels must continue annual monitoring for two consecutive years before becoming eligible for triennial reduced monitoring, consistent with the federal requirements of 40 CFR §141.86(d)(4)(iv). New §290.117(c)(2)(B)(v) is proposed to provide the timing for systems that take advantage of flexibility under the new federal LCSTR that allows systems that are not operational in the summer to collect tap samples in an alternate period, when they are operational, consistent with the federal requirements of 40 CFR §141.86(d)(4)(iv)(B). New §290.117(c)(2)(B)(v) is proposed to ensure that systems that start collecting tap samples in an alternate period start doing so within 21 months of ceasing their summer sampling, consistent with the federal requirements of 40 CFR §141.86(d)(4)(iv)(B). New §290.117(c)(2)(B)(vi) is proposed to contain the general requirement that systems operating outside of any approved optimal water quality parameter ranges are ineligible for reduced monitoring, consistent with the federal requirements of 40 CFR §141.86(d)(4)(iv)(B).

New §290.117(c)(2)(C) is proposed to contain the requirements that apply to further reduction of tap sampling frequency from annual to once every three years currently contained in existing §290.117(e)(5), consistent with the federal requirements of 40 CFR §141.86(c) and (d)(4)(iv). New §290.117(c)(2)(C)(i) is proposed to contain the requirement of existing §290.117(e)(5) that a system with lead levels lower than the reduced monitoring triggers during initial or routine monitoring may immediately

be placed on a three-year tap sampling schedule, consistent with the federal rule requirements of 40 CFR §141.86(d)(4)(v). New §290.117(c)(2)(C)(ii) is proposed to establish that systems serving 50,000 or fewer people may lessen tap sampling frequency to every three years after three years of consecutive annual monitoring during which the system meets the action levels for lead and copper, consistent with the federal requirements of 40 CFR §141.86(d)(4)(iii). New §290.117(c)(2)(C)(iii) is proposed to incorporate the provision of the new federal LCSTR in 40 CFR §141.86(d)(4)(iii) that a system must operate within any approved optimal water quality parameter ranges in order to be allowed to reduce monitoring to every three years. New §290.117(c)(2)(C)(iv) is proposed to incorporate the provision of the new federal LCSTR in 40 CFR §141.86(d)(4)(iii) that systems scheduled for triennial tap sampling collect those samples no later than every third calendar year. New §290.117(c)(2)(C)(v) is proposed to incorporate the provisions of the new federal LCSTR in 40 CFR §141.81(b)(3)(ii) and §141.86(d)(4)(iv)(B) that systems on reduced three-year monitoring that are approved to sample during some time period other than the summer must collect subsequent tap sampling during a time period that ends no later than 45 months after the previous round of sampling.

New §290.117(c)(2)(D) is proposed to incorporate the reduced nine-year lead copper tap sampling requirements for small water systems in existing §290.117(g), consistent with the federal requirements of 40 CFR §141.86(c) and (g). New §290.117(c)(2)(D)(i) is proposed to incorporate the provision of the new federal LCSTR in 40 CFR §141.86(g)(7)(i) that the first round of nine-year reduced tap sampling shall be completed no later than nine years after the last time the system monitored for lead and copper at the tap. New §290.117(c)(2)(D)(ii) is proposed to contain the provisions of existing §290.117(g)(2)(A) related to distribution system material requirements for nine-year sampling eligibility consistent with the federal requirements of 40 CFR §141.86(g)(4) and (4)(i). New §290.117(c)(2)(D)(ii)(I) is proposed to contain the specifics of materials allowed in distribution systems in order to be eligible for nine-year tap sampling, as currently provided in existing §290.117(g)(2)(A), consistent with 40 CFR §141.86(g)(1). New §290.117(c)(2)(D)(ii)(II) is proposed to contain the provision that a system certify in writing and document the absence of lead-containing materials in their distribution system in order to be eligible for nine-year reduced tap sampling, as provided by existing §290.117(g)(2)(A), consistent with the federal rules at 40 CFR §141.86(g)(1)(i)(A) and (B). New §290.117(c)(2)(D)(ii)(III) is proposed to contain the provision that a system certify in writing and document the absence of copper-containing materials in their distribution system in order to be eligible for nine-year reduced tap sampling, as provided by existing §290.117(g)(2)(A), consistent with 40 CFR §141.86(g)(1)(ii). New §290.117(c)(2)(D)(ii)(IV) is proposed to contain the provision in existing §290.117(g)(2)(D) that partial waivers shall not be issued. New §290.117(c)(2)(D)(iii) is proposed to contain the levels of lead and copper that a system must maintain in order to be allowed to reduce tap sampling to every nine years, as contained in existing §290.117(g)(2)(B), consistent with the federal requirements of 40 CFR §141.86(g)(2), (2)(i) and (ii), (4), and (5)(i). New §290.117(c)(2)(D)(iv) is proposed to contain the provisions allowing the state to require additional activities, such as public notice, as a condition of a waiver, as currently contained in existing §290.117(g)(2)(C), consistent with the federal requirements of 40 CFR §141.86(g)(3). New §290.117(c)(2)(D)(v) is proposed to contain the existing requirement of §290.117(g)(2)(E) that systems notify the TCEQ of changes that could affect their nine-year monitoring eligibility status, consistent with 40 CFR §§141.82(h), 141.83(b)(6), and 141.86(d)(4)(vii) and (g)(4)(iii). New §290.117(c)(2)(D)(vi) is proposed to contain the federal requirements of 40 CFR §141.86(g)(4)(iv), (6) and (6)(ii) requiring the system to notify the executive director if the materials in their system change, and the requirement that a system may be required to return to more frequent monitoring. New §290.117(c)(2)(D)(vii) is proposed to contain the provisions of existing §290.117(g)(1) relating to grandfathered nine-year waivers, consistent with 40 CFR §141.86(g)(7), (7)(i), and (ii). New §290.117(c)(2)(D)(viii) is proposed to contain the federal requirement of 40 CFR §141.86(d)(4)(iv)(B) that subsequent rounds of sampling, after a return to routine monitoring, must be collected annually, every three years, or every nine years, as required by this section.

New §290.117(c)(2)(E) is proposed to incorporate flexibility provided by the new federal LCSTR under 40 CFR §141.86(d)(4)(iv)(A) allowing systems that are not operational during June through September to request an alternate monitoring period for any required annual or less frequent monitoring.

New §290.117(c)(2)(F) is proposed to incorporate the provision of the new federal LCSTR under 40 CFR §141.85(b)(2)(vii) requiring that the end of the monitoring for normal summer monitoring is September 30 of the calendar year in which the sampling occurs, or, if the executive director has established an alternate monitoring period, the last day of that period.

New §290.117(c)(2)(G) is proposed to summarize requirements for systems to return to initial/routine monitoring frequency under this proposed subsection, to establish that the executive director shall determine whether a system continues to meet the requirements to remain on reduced monitoring, and to specifically establish the general requirement that systems required to return to routine monitoring shall sample at the number of routine sites, as opposed to the number of reduced sites, consistent with the federal requirements of 40 CFR §141.86(d)(4)(iii).

New §290.117(c)(2)(H) is proposed to include the special timing requirements for replacement lead or copper samples that are collected after any sample is invalidated, for example, when a sample exceeds hold time. The existing rules under §290.117(f)(4) require that replacement samples be collected within ten days, whereas the federal rules under 40 CFR §141.86(f)(4) allow 20 days for collection of these replacement samples. It is proposed that the new provision be 20 days, to provide greater flexibility to the regulated community and greater consistency with the federal rules.

New §290.117(c)(2)(I) is proposed to include the special tap sampling requirements for a nontransient, noncommunity system with less than five sampling taps, as provided under the federal rule in 40 CFR §141.86(c). These systems must collect at least one sample from each tap and then must collect additional samples from those same taps on different days during the monitoring period to meet the required number of samples unless they have a waiver. In the current Texas rule language, systems are required to submit results within ten days; this is being changed to conform with the federal rule requiring that systems must submit samples within 20 days.

New §290.117(c)(3) is proposed to incorporate the provision of the new federal LCSTR under 40 CFR §141.85(c) that public water systems that exceed the lead action level must arrange for special tap sampling at the tap of any customer who requests

it, but that any analytical costs incurred may be borne by the consumer rather than the water system.

Under certain conditions, public water systems that may be at risk of having lead and copper in their drinking water may be required to do sampling to determine whether lead or copper is entering the system from the original sources that they use, rather than leaching into the system because of corrosive water. New §290.117(d) is proposed to contain the requirements for determining the lead and copper samples in sources through entry point sampling, currently contained in existing §290.117(h)(2)(A) and (D), consistent with the federal provisions of 40 CFR §141.80(h) and §141.88(a)(1) and (2). Under these requirements, systems must perform entry point lead and copper sampling after the system exceeds a lead or copper action level, installs source water treatment, exceeds any maximum permissible source water levels set by the executive director, and as part of normal entry point monitoring for inorganic contaminants.

New §290.117(d)(1) is proposed to identify the sample sites for entry point sampling currently contained in existing §290.117(h)(2), consistent with the federal requirements of 40 CFR §141.88(a)(1)(i) and (ii). The federal rule refers to composite sampling that is no longer practiced by TCEQ, as a result of instructions from EPA, so no reference to composite sampling is proposed to be included in the proposed rule language.

New §290.117(d)(2) is proposed to contain timing and frequency requirements for entry point lead and copper sampling under the federal rules at 40 CFR §141.88(a)(1)(iii), consistent with the existing requirements of §290.117(h)(2), including the requirement that samples be collected under normal operating conditions. New §290.117(d)(2)(A) is proposed to contain the requirements of existing §290.117(h)(2)(A), consistent with the federal requirements of 40 CFR §141.88(b), that entry point lead and copper sampling be performed if a system exceeds lead or copper action levels. New §290.117(d)(2)(B) is proposed to provide that systems meeting the lead and copper action levels do not have to conduct entry point sampling, as provided under the federal rules at 40 CFR §141.88(d)(2). New §290.117(d)(2)(C) is proposed to establish that public water systems must perform entry point lead and copper sampling after installation of source water treatment, as contained in existing §290.117(h)(2)(C), consistent with the federal requirements of 40 CFR §141.88(c).

New §290.117(d)(2)(D) is proposed to incorporate provisions of §290.117(h)(2)(D), consistent with the federal rule at 40 CFR §141.88(d) relating to entry point lead and copper sampling after specification of maximum permissible levels. New §290.117(d)(2)(D)(i) is proposed to incorporate the provision that systems using surface water sources shall collect lead and copper entry point samples annually after maximum permissible levels are set, consistent with the provisions of 40 CFR §141.88(d)(1) and (d)(1)(ii). New §290.117(d)(2)(D)(ii) is proposed to incorporate the provision that systems using groundwater sources shall collect entry point lead and copper samples once every three calendar years, consistent with the federal rule at 40 CFR §141.88(d)(1)(i). New §290.117(d)(2)(D)(iii) is proposed to incorporate reduced nine-year monitoring for entry point lead and copper under certain criteria for systems that use only groundwater, consistent with the federal rule at 40 CFR §141.88(e)(1). New §290.117(d)(2)(D)(iii)(I) and (II) is proposed to incorporate the criteria for reduced nine-year entry point lead and copper monitoring contained in 40 CFR §141.88(e)(1)(i) and (ii), respectively, that the entry point levels not exceed maximum permissible levels, or that the executive director determined source water treatment is not needed and that during three consecutive rounds the lead and copper entry point levels were less than the reduced monitoring trigger levels for groundwater systems. Similarly, new §290.117(d)(2)(D)(iv) is proposed to incorporate reduced nine-year entry point lead and copper sampling requirements for surface water systems, consistent with the federal rule at 40 CFR §141.88(e)(2). New §290.117(d)(2)(D)(iv)(I) and (II) is proposed to incorporate the specific criteria in the federal rules at 40 CFR §141.88(e)(2)(i) and (ii), respectively, that either the entry point lead and copper levels remain below the maximum permissible levels for three consecutive years or that the entry point lead and copper levels remain below the reduced monitoring trigger levels and the executive director has determined that source water treatment is not required. New §290.117(d)(2)(D)(v) is proposed to incorporate the federal provision of 40 CFR §141.88(e)(3) that new sources are not eligible for reduced monitoring. New §290.117(d)(2)(D)(vi) is proposed to add the special confirmation sampling requirements after any lead or copper entry point sample exceeds the maximum permissible level, consistent with the federal rule at 40 CFR §141.88(a)(2).

New §290.117(d)(2)(E) is proposed to incorporate the provisions of existing §290.117(h)(2)(F), consistent with the federal rule of 40 CFR §141.86(d)(4)(vii) that water systems shall notify the executive director in writing of any proposed change in treatment or the addition or deletion of a source of water, and that the executive director may require any such system to conduct additional monitoring or to take other action to ensure that the system maintains minimal levels of corrosion in the distribution system.

New §290.117(e) is proposed to contain the monitoring requirements for water quality parameters used to track the corrosivity of the drinking water in the distribution system, consistent with the federal requirements of 40 CFR §141.80(h) and §141.87. The new federal LCSTR under 40 CFR §141.87 provides a table summarizing and clarifying all of the various water quality monitoring parameter requirements; throughout proposed §290.117(e) this tabular format is proposed to be incorporated into the state rules in order to make the rules easier for the regulated community to understand.

New §290.117(e)(1) is proposed to incorporate requirements for water quality parameter sample locations currently contained in existing §290.117(h)(1)(D), consistent with 40 CFR §141.87(a)(2). The new figure located in §290.117(e)(1) is proposed to specify the number of water quality parameter distribution system sample sites as a function of system population in tabular form. New §290.117(e)(1)(A) is proposed to contain the entry point sample site requirements of existing §290.117(h)(1)(D), consistent with 40 CFR §141.87(c)(3). New §290.117(e)(1)(B) is proposed to contain the provision that water quality parameter distribution system sample sites can be located outside of a customer's home, as currently contained in existing §290.117(h)(1)(E), and consistent with the federal requirements of 40 CFR §141.87(a)(1)(i).

New §290.117(e)(2) is proposed to incorporate initial or routine monitoring requirements for water quality parameter sampling frequency as currently provided under existing §290.117(h)(1)(D), consistent with the federal requirements of 40 CFR §141.87(b). The figure in §290.117(e)(2) is proposed to present initial and routine distribution and entry point sampling requirements in tabular form. This proposed table is consistent with the list of sampling parameters and number of sites for

initial and routine water quality parameters that currently exists under §290.117(h)(1)(C), and is consistent with the federal requirements of 40 CFR §141.87(b)(1)(i) - (vii) and (2). New §290.117(e)(2)(A) is proposed to incorporate provisions for initial and routine water quality parameter monitoring of existing §290.117(h)(1)(D), consistent with the federal rule under 40 CFR §141.87. New §290.117(e)(2)(B) is proposed to incorporate the requirement that systems which exceed a lead or copper action level must monitor for water quality parameters at the routine frequency, as currently contained in existing §290.117(h)(1)(B), consistent with the federal requirements of 40 CFR §141.87(b). The federal rule under 40 CFR §141.87(b)(1) requires that two samples be collected during each six-month period; the current Texas rule requires quarterly sampling. These requirements are equally stringent, so the proposed rule retains the quarterly monitoring requirement of the existing state rule under §290.117(h)(1)(C) in proposed §290.117(e)(2).

New §290.117(e)(3) is proposed to incorporate the requirements for water quality parameter monitoring after installation of corrosion control treatment currently contained in existing §290.117(h)(1)(F), consistent with the federal requirements of 40 CFR §141.86(d)(2)(ii) and §141.87(c). The figure in §290.117(e)(3) is proposed to present these monitoring requirements in tabular form consistent with the current requirements of existing §290.117(h), consistent with the federal requirements of 40 CFR §141.87(c)(1) - (3). New §290.117(e)(3) is proposed to retain requirements for collection of one sample set each quarter of existing §290.117(h)(1)(H), consistent with the federal requirement under 40 CFR §141.87(c) and (c)(1), which requires a system to collect two sample sets in each six-month period. New §290.117(e)(3)(A) is proposed to contain the required frequency of water quality parameter monitoring after installation of corrosion control treatment currently contained in existing §290.117(h)(1)(O), consistent with the federal requirements of 40 CFR §141.87(c)(2). New §290.117(e)(3)(B) is proposed to contain the requirements for documentation for water quality parameter sample locations after installation of corrosion control treatment currently contained in existing §290.117(h)(1)(G) and (M), consistent with the federal requirements of 40 CFR §141.87(c)(3). New §290.117(e)(3)(C) is proposed to incorporate the new federal requirement of the LCSTR under 40 CFR §141.82(a) and §141.87(b), establishing that the state may require additional water quality parameter monitoring in order to assist in determining the optimal corrosion control treatment.

New §290.117(e)(4) is proposed to incorporate the requirements for water quality parameter monitoring after designation of optimal water quality parameter ranges, as provided by the new federal LCSTR under 40 CFR §141.87. The figure in §290.117(e)(4) is proposed to present these requirements in tabular form, consistent with the federal requirements of 40 CFR §141.87. New §290.117(e)(4)(A) is proposed to contain the new federal LCSTR requirement under 40 CFR §141.87(d) for large systems to begin water quality parameter monitoring starting with the first six-month period after the executive director specifies the optimal water quality parameters beginning on either January 1 or July 1, whichever comes first, and that those systems monitor every six months. It is proposed that new §290.117(e)(4) contain quarterly monitoring requirements synonymous with the existing Texas requirements of §290.117(h)(1)(C); this is consistent with the stringency of the federal rule that requires two sampling events during each six-month period under 40 CFR §141.87(d) and (e). New §290.117(e)(4)(B) is proposed to contain the new federal LCSTR requirement under 40 CFR §141.87(d) for small and medium systems to begin water quality parameter monitoring starting with the six-month period when the system exceeds the lead or copper action levels. New §290.117(e)(4)(C) is proposed to incorporate the requirement that water quality parameter sampling be accomplished within 36 months after the executive director designates optimal corrosion control treatment, consistent with the federal requirements of 40 CFR §141.81(e)(6).

New §290.117(e)(5) is proposed to contain the requirements for reduced water quality parameter monitoring for systems that demonstrate a low risk of corrosion of lead and copper into the drinking water currently contained in existing §290.117(h), consistent with the federal rules in 40 CFR §141.87(d) and (e)(1). The figure in §290.117(e)(5) is proposed to present these requirements in tabular form. New §290.117(e)(5)(A) is proposed to contain the specific requirements for monitoring at a reduced number of sites, but on the routine frequency, for a system that operates within approved optimal water quality parameter ranges in all samples taken during two consecutive six-month initial or routine monitoring periods, consistent with existing §290.117(h)(1)(N) and the federal requirements in 40 CFR §141.87(e) and (e)(1). Under proposed new §290.117(e)(5) the same justification as in proposed §290.117(e)(4) for quarterly sampling applies because the federal rule has both sampling after optimal water quality parameter designation and reduced sampling in the same rule. The federal rule in 40 CFR §141.87(d) requires sampling during a six-month period, then under 40 CFR §141.87(e)(1) the rule adds that two samples must be collected in this six-month period, which is equivalent to the quarterly sampling currently required in existing §290.117(h)(1)(C). New §290.117(e)(5)(B) is proposed to include the requirements for a system to be scheduled for reduced annual water quality parameter monitoring, as provided in the federal rules under 40 CFR §141.87(e)(2) and (3). New §290.117(e)(5)(C) is proposed to include the requirements for a system to be scheduled for triennial water quality parameter monitoring as provided in the federal rule at 40 CFR §141.87(e)(2). New §290.117(e)(5)(C)(i) and (ii) is proposed to incorporate the provisions of the federal rule under 40 CFR §141.87(e)(2)(i) and (ii), respectively, setting the specific conditions under which triennial sampling may be scheduled, and when it shall begin. New §290.117(e)(5)(D) is proposed to contain the conditions under which a system that is on reduced water quality parameter monitoring must return to routine monitoring currently contained in §290.117(h)(1)(H) - (J), consistent with 40 CFR §141.87(e)(4). New §290.117(e)(5)(E) is proposed to describe the entry point sampling requirements for systems on reduced water quality parameter monitoring, consistent with the requirements of the federal LCSTR in 40 CFR §141.87(e) and (e)(1).

Finally, new §290.117(e)(6) is proposed to establish the conditions under which the executive director may allow a system to forego entry point monitoring, while continuing distribution system monitoring, as provided in the federal rule under 40 CFR §141.87(c)(3).

New §290.117(f) is proposed to contain requirements related to corrosion control. New §290.117(f)(1) is proposed to establish the requirements for corrosion control studies. Systems may be required to perform corrosion control studies to determine whether treatment is necessary to reduce the corrosivity of the water, as currently contained in existing §290.117(j), consistent with the federal requirements of 40 CFR §141.81(d) and (e).

New §290.117(f)(1)(A) is proposed to describe the applicability for a public water system being required to perform a

corrosion control study consistent with current Texas rules in §290.117(j) and the federal requirements under 40 CFR §141.81. New §290.117(f)(1)(A)(i) is proposed to require large systems to perform corrosion control studies if they are not deemed to have optimized corrosion control, consistent with the existing state rule in §290.117(j)(2) as consistent with the federal rule requirements of 40 CFR §141.81(a)(1). New §290.117(f)(1)(A)(i)(I) is proposed to establish the requirement of existing §290.117(j)(2) for large systems that have a lead or copper action level exceedance to perform a corrosion control study within six months, consistent with the federal requirements of 40 CFR §141.81(b)(3)(v). New §290.117(f)(1)(A)(i)(II) is proposed to incorporate the requirement currently contained in existing §290.117(j)(2) specifying that large systems that have never been deemed to have optimized corrosion control must perform a demonstration study as opposed to a desk-top study, consistent with the federal requirements of 40 CFR §141.81(d) and §141.82(c). New §290.117(f)(1)(A)(i)(III) is proposed to contain the federal 12-month deadline of 40 CFR §141.81(e)(2) for systems to conduct a corrosion control study and submit the results. New §290.117(f)(1)(A)(ii) is proposed to contain the corrosion control study requirements for small and medium systems, currently existing in §290.117(j)(4)(A), and consistent with the timing and applicability requirements of the federal rules in 40 CFR §141.81(e)(2) and (3). New §290.117(f)(1)(A)(ii) is also proposed to contain the conditions under which a small or medium system can cease performing corrosion control activities, consistent with the federal requirements of 40 CFR §141.81(a)(2) and (c).

New §290.117(f)(1)(B) is proposed to contain the scope of any corrosion control study that is required under the previous paragraph, consistent with the requirements given in the existing state rules in §290.117(j)(4)(A) and the federal rules under 40 CFR §141.82(c)(4). New §290.117(f)(1)(B)(i) is proposed to contain the various corrosion treatment methods that must be investigated as part of any corrosion control study, as contained in existing §290.117(j)(4)(A), consistent with the federal requirements of 40 CFR §141.82(c), (c)(1) and (2). New §290.117(f)(1)(B)(i)(I) is proposed to specify that a system must investigate the effectiveness of alkalinity and pH adjustment as part of any corrosion control treatment as currently contained in existing §290.117(j)(4)(A)(i), consistent with the federal requirements of 40 CFR §141.82(c)(1)(i). New §290.117(f)(1)(B)(i)(II) is proposed to specify that a system must investigate the effectiveness of calcium hardness adjustment as part of any corrosion control treatment, as currently contained in existing §290.117(j)(4)(A)(ii), consistent with the federal requirements of 40 CFR §141.82(c)(1)(ii). New §290.117(f)(1)(B)(i)(III) is proposed to specify that a system must investigate the effectiveness of the addition of a phosphate-based or silicate-based corrosion inhibitor at a concentration sufficient to maintain an effective residual concentration in all test tap samples as part of any corrosion control treatment, as currently contained in existing §290.117(j)(4)(A)(iii), consistent with the federal requirements of 40 CFR §141.82(c)(1)(iii). New §290.117(f)(1)(B)(ii) is proposed to require that systems performing corrosion control studies identify potential constraints to corrosion control treatment methods, consistent with the federal requirements of 40 CFR §141.82(c)(4) and (5). New §290.117(f)(1)(B)(ii)(I) and (II) is proposed to specify that a system must submit data regarding any adverse effects of a given treatment as part of their corrosion control study, consistent with the federal rule requirements of 40 CFR §141.82(c)(4)(i) and (ii), respectively.

New §290.117(f)(1)(C) is proposed to contain the existing requirements of §290.117(j)(4)(B) describing the specific procedures for performing demonstration corrosion control studies, as contrasted with a desk-top study, consistent with the federal rule at 40 CFR §141.82(c)(2). New §290.117(f)(1)(C) is proposed to introduce the list of parameters that must be evaluated during a demonstration corrosion control study, as contained in existing §290.117(j)(4)(C), consistent with the federal requirements of 40 CFR §141.82(c)(3). New §290.117(f)(1)(C)(i) - (ix) is proposed to contain the list of specific parameters, consistent with the existing rule in and the federal requirements of 40 CFR §141.82(c)(3)(i) - (ix).

New §290.117(f)(1)(D) is proposed to contain the requirements for systems that are allowed to perform a desk-top corrosion control study instead of a demonstration study, as currently contained in existing §290.117(j)(4)(B), consistent with the federal requirements of 40 CFR §141.82(c)(2).

New §290.117(f)(2) is proposed to establish the requirement that systems base recommended optimal water quality parameter ranges on the results of corrosion control studies; this requirement is currently contained in existing §290.117(j)(4)(D) and (E), and is consistent with the federal requirements of 40 CFR §141.82(f) and (f)(5).

New §290.117(f)(3) is proposed to contain the basis and timing for designation of optimal corrosion control treatment as contained in existing §290.117(j)(4)(D) and (E), consistent with the federal requirements of 40 CFR §141.81(e)(1) and (4). New §290.117(f)(3)(A) is proposed to specify that the results of corrosion control studies must be used to determine optimal corrosion control treatment recommendations, as contained in existing §290.117(j)(4)(D), consistent with the federal requirements of 40 CFR §141.82(a) and (c)(6). New §290.117(f)(3)(B) is proposed to specify that the optimal corrosion control treatment process is the process that the executive director approves, not necessarily the process recommended by the system, as currently contained in existing §290.117(j)(4)(E), consistent with the federal requirements of 40 CFR §141.82(d)(1) and (2). New §290.117(f)(3)(C) is proposed to provide the more specific conditions under which corrosion control treatment shall be designated as contained in the federal rule under 40 CFR §141.82(h), consistent with the existing requirements of §290.117(j)(4)(E). New §290.117(f)(3)(D) is proposed to contain the condition that optimal corrosion control treatment designations shall be documented in writing, as currently required by §290.117(j)(4)(E), consistent with the federal requirements of 40 CFR §141.81(e)(4) and (7) and §141.82(d)(1). New §290.117(f)(3)(D)(i) - (iii) is proposed to contain the timing for designation of optimal corrosion control treatment. Specifically, §290.117(f)(3)(D)(i) is proposed to contain the federal requirements of 40 CFR §141.81(e)(2) for large systems; §290.117(f)(3)(D)(ii) is proposed to contain the federal requirements of 40 CFR §141.81(e)(2)(i) for medium systems; and §290.117(f)(3)(D)(iii) is proposed to contain the federal requirements of 40 CFR §141.81(e)(2)(ii) for small systems.

New §290.117(f)(4) is proposed to contain the requirement that a system install the treatment that the executive director has designated as the optimal corrosion control treatment within 24 months, as contained in existing §290.117(j)(1) and (4)(F), consistent with the federal requirements of 40 CFR §141.81(e)(5) and §141.82(e).

New §290.117(f)(5) is proposed to require that corrosion control treatment, after installation, be operated in a manner that

ensures that the system will meet the approved optimal water quality parameter ranges, as required by the federal rule under 40 CFR §141.82(g). New §290.117(f)(5)(A) is proposed to contain the federal requirement of 40 CFR §141.82(f) that results of any sampling done by the system shall be used to determine whether a system is operating corrosion control treatment appropriately. New §290.117(f)(5)(B) is proposed to provide the authority of the federal rule under 40 CFR §141.81(b) for the executive director to set any requirements needed to ensure that optimal corrosion control treatment is maintained.

New §290.117(f)(6) is proposed to contain the allowance for small systems to discontinue corrosion control activities if sampling shows that the system no longer exceeds the lead action level consistent with the federal rule in 40 CFR §141.81(e)(2) and (3).

New §290.117(g) is proposed to contain the various requirements for systems that are required to install source water treatment consistent with existing §290.117(h) and the federal requirements of 40 CFR §141.80(e) and §141.83.

New §290.117(g)(1) is proposed to contain the applicability requirements currently contained in existing §290.117(h)(2)(B) describing the conditions under which a system may be required to install source water treatment as contained in the federal rule under 40 CFR §141.83(b), (b)(1), and (2). New §290.117(g)(1)(A) is proposed to contain the federal requirement of 40 CFR §141.83(b)(2) for a system to provide data to the TCEQ, consistent with the existing requirements of §290.117(h)(2). New §290.117(g)(1)(B) is proposed to provide the list of possible treatment processes given in the federal rule under 40 CFR §141.83(b)(2), consistent with the existing requirements of §290.117(h)(2). New §290.117(g)(1)(C) is proposed to contain the requirement of 40 CFR §141.83(b)(2) requiring systems to provide any information requested by the TCEQ, consistent with the existing requirements of §290.117(h)(2)(B). Proposed new §290.117(g)(1)(D) would contain the so-called "no treatment" option for a system to provide data demonstrating that treatment of the source water is not necessary in order to minimize lead and copper levels at users' taps, as contained in the federal rule under 40 CFR §141.83(b)(1). Proposed new §290.117(g)(1)(E) establishes that the executive director shall notify the system in writing of its determination and set forth the basis for its decision, consistent with the federal requirements of 40 CFR §141.83(b)(2).

New §290.117(g)(2) is proposed to contain the required schedule for installation of treatment of source water lead and copper as currently contained in existing §290.117(h)(2)(B), consistent with the federal rule at 40 CFR §141.83(a). New §290.117(g)(2)(A) is proposed to require that a system exceeding the lead or copper action level recommend treatment to the executive director within 180 days, as required by the federal rule under 40 CFR §141.83(a)(1), consistent with the adoption by reference of that federal language currently contained in the Texas rules under existing §290.117(h)(2)(B). New §290.117(g)(2)(B) is proposed to contain the schedule for determination of source water treatment within six months after the system submits the treatment recommendation, as currently adopted by reference in existing §290.117(h)(2)(B), and specifically required by the federal rules in 40 CFR §141.83(a)(2). New §290.117(g)(2)(C) is proposed to contain the requirement that a system install the source water treatment approved by the executive director within 24 months after the executive director's determination, as contained in existing §290.117(h)(2)(B), consistent with federal rules in 40 CFR §141.83(a)(3) and (b)(3). New §290.117(g)(2)(D) is proposed to identify required sampling after installation of source water treatment, as contained in existing §290.117(h)(2)(B), consistent with federal rules in 40 CFR §§141.83(a)(4), 141.86(d)(2), and 141.88(c).

New §290.117(g)(3) is proposed to incorporate requirements for operation of source water lead and copper treatment contained in the federal rules in 40 CFR §141.83(a)(6) and (b)(3) and §141.88(d). New §290.117(g)(3)(A) is proposed to contain the requirement of the federal rule under 40 CFR §141.83(b)(5) that a system maintain entry point lead and copper levels below the maximum permissible levels consistent with existing §290.117(h)(2)(D). New §290.117(g)(3)(B) is proposed to contain the authority of the federal rule at 40 CFR §141.83(b)(4) that the TCEQ may review the system's data and determine whether the system has properly installed and operated the source water treatment, consistent with existing §290.117(h)(2)(F).

New §290.117(g)(4) is proposed to contain requirements of the federal rule under 40 CFR §141.83(b)(6) related to modification of source water treatment decisions, consistent with existing §290.117(h)(2)(B) - (F).

New §290.117(h) is proposed to specify that the analytical methods, sample collection, and sample invalidation requirements for lead and copper sampling as well as water quality parameter sampling, required by this section must be consistent with the federal rule requirements in 40 CFR Part 141, Subpart I relating to Lead and Copper. New §290.117(h)(1) is proposed to contain the procedure for collecting lead and copper tap samples currently contained in existing §290.117(c)(1) and (2), consistent with the requirement for first-draw sample sites in the federal rule under 40 CFR §141.86(b)(2).

New §290.117(h)(2) is proposed to contain the required lead and copper tap sample analytical methods currently contained in existing §290.117(l)(1) and contained in the federal rules under 40 CFR §141.89. New §290.117(h)(2)(A) is proposed to contain the accuracy that a lab must achieve in order to analyze lead and copper samples for rule compliance, as currently contained in existing §290.117(l)(1) and contained in the federal rules under 40 CFR §141.89(a)(1)(iii). New §290.117(h)(2)(B) is proposed to allow the use of previously collected data currently contained in existing §290.117(l)(1) and contained in the federal rules under 40 CFR §141.89(a)(2). New §290.117(h)(2)(C) is proposed to specify reporting requirements for low-level lead results, as contained in existing §290.117(l)(4), consistent with the federal requirements of 40 CFR §141.89(a)(3). New §290.117(h)(2)(D) is proposed to specify reporting requirements for low-level copper results, as contained in existing §290.117(l)(4), consistent with the federal requirements of 40 CFR §141.89(a)(4). New §290.117(h)(2)(E) is proposed to contain the holding time requirement currently contained in existing §290.117(l)(5), consistent with the federal rule in 40 CFR §141.86(b)(2).

New §290.117(h)(3) is proposed to describe the conditions under which the executive director may invalidate a lead or copper tap sample, as currently contained in existing §290.117(f)(2) and in federal requirements under 40 CFR §141.86(f)(1). New §290.117(h)(3)(A) is proposed to contain the allowance currently contained in existing §290.117(f)(2)(A) that lead or copper tap samples may be invalidated if the laboratory establishes that improper sample analysis caused erroneous results, consistent with the federal rule at 40 CFR §141.86(f)(1)(i). New §290.117(h)(3)(B) allows for sample invalidation if it is determined that the sample was taken from an

inappropriate site, as currently contained in §290.117(f)(2)(B), consistent with the federal rule at 40 CFR §141.86(f)(1)(ii). New §290.117(h)(3)(C) is proposed to allow sample invalidation if the sample was damaged in transit, as currently contained in existing §290.117(f)(2)(C), consistent with the federal requirements of 40 CFR §141.86(f)(1)(iii). New §290.117(h)(3)(D) is proposed to contain the existing requirement of §290.117(f)(2)(D) that a sample subject to tampering may be invalidated, consistent with the federal rule requirement under 40 CFR §141.86(f)(1)(iv). New §290.117(h)(3)(E) is proposed to ensure that a sample can not be invalidated solely because the follow-up sample result is higher or lower than the original sample, as contained in the federal rule under 40 CFR §141.86(f)(3). New §290.117(h)(3)(F) is proposed to contain the requirement that systems request sample invalidation in writing, as currently provided in existing §290.117(f)(3), and in the federal rules under 40 CFR §141.86(f)(2) and (3).

New §290.117(h)(4) is proposed to contain the requirement in existing §290.117(h)(1)(K) that the analytical methods for water quality parameters must be conducted at a lab that uses the methods provided in the federal rules under 40 CFR §141.89(a). New §290.117(h)(4)(A) is proposed to specify the analytical methods of the federal rules in 40 CFR §141.23(k)(1) for parameters mentioned in this section by reference as currently contained in existing §290.117(l)(1), consistent with §290.122 and the federal rule at 40 CFR §141.89(a). New §290.117(h)(4)(B) is proposed to contain the requirements that water quality parameter analyses may be performed in an approved lab, as contrasted with an accredited lab, as contained in existing §290.117(l)(1), and is proposed to adopt the requirements of 40 CFR §141.89(a)(1)(i) - (iv) by reference. New §290.117(h)(4)(C) is proposed to establish that in order for any grandfathered data to be used, that data must have been analyzed using the methods referenced in this subsection, consistent with the federal requirements of 40 CFR §141.89(a)(2).

New §290.117(i) is proposed to contain reporting requirements, consistent with existing state rules and the federal rules under 40 CFR §141.80(i) and various parts of 40 CFR Part 141, Subpart I. New §290.117(i)(1) is proposed to contain requirements for reporting lead and copper tap sample results currently contained in existing §290.117(m)(1)(B), consistent with the federal requirements of 40 CFR §141.90(a)(1) and (1)(i) and (h) and (h)(1). New §290.117(i)(1)(A) is proposed to contain the requirement that invalidation requests be submitted in writing, as required under the federal rule in 40 CFR §141.90(a)(1)(ii). New §290.117(i)(1)(B) is proposed to contain the requirements for reporting tap sampling results, as contained in the federal rule in 40 CFR §141.90(h)(2); specifically, §290.117(i)(1)(B)(i) and (ii) is proposed to contain the federal requirements of 40 CFR §141.90(a)(1)(i) and (v), and (h)(2)(i) and (ii), respectively, requiring systems to report lead and copper tap sample sites used for sampling. New §290.117(i)(2) is proposed to specify that systems must report entry point lead and copper sample results, consistent with the federal rules under 40 CFR §141.90(b)(1).

New §290.117(i)(3) is proposed to contain the requirement that systems report water quality parameter results, as required under current rules in existing §290.117(m)(1)(A), and under federal rules in 40 CFR §141.90(a), (a)(1), and (1)(viii). New §290.117(i)(3)(A) is proposed to list the distribution system water quality parameters that must be reported, consistent with the federal rule under 40 CFR §141.90(a)(1)(vi). New §290.117(i)(3)(B) is proposed to provide the reporting requirement for samples taken at entry points, consistent with the federal rule under 40 CFR §141.90(a)(1)(vii). New §290.117(i)(3)(C) is proposed to include the requirement of the federal rule under 40 CFR §141.90(a)(5), that a system limiting entry point sampling must report germane information.

New §290.117(i)(4) is proposed to contain requirements for reporting distribution material and sample site data currently contained in existing §290.117(b)(1) and (2). New §290.117(i)(4)(A) is proposed to contain the reporting requirements related to lead and copper tap sampling sites, as currently contained in existing §290.117(b)(1), consistent with the federal rule under 40 CFR §141.86(a)(1). New §290.117(i)(4)(B) is proposed to contain the requirement that a system must report documentation to ensure the absence of lead and copper materials in order to be considered for a nine-year tap sampling waiver, consistent with the federal requirements of 40 CFR §141.90(a)(4)(i). New §290.117(i)(4)(B)(i) - (iii) is proposed to contain the federal rule requirements in 40 CFR §141.90(a)(4)(i) - (iii), respectively, describing reporting requirements for systems seeking nine-year waivers for lead and copper tap sampling. New §290.117(i)(4)(C) is proposed to contain the current requirement of existing §290.117(m)(1)(G) related to changes in sample sites, consistent with the federal requirements of 40 CFR §141.90(a)(1)(v).

New §290.117(i)(5) is proposed to contain the reporting requirements related to public education, as currently contained in the existing state rules under §290.117(i)(1) and (m)(1)(F), consistent with 40 CFR §141.85 and §141.90(f). New §290.117(i)(6) is proposed to contain the specific requirements for reporting consumer notification activities, consistent with the federal requirements of 40 CFR §141.85(d)(1) and §141.90(f)(3). New §290.117(i)(6) is proposed to contain the reporting requirements related to consumer notification, as contained in the new federal LCSTR rule requirements under 40 CFR §141.80(g) and §141.85(d).

New §290.117(i)(7) is proposed to contain the reporting requirements related to corrosion control studies and treatment, as currently contained in existing §290.117(m)(1)(H), consistent with the federal requirements of 40 CFR §141.90(c). New §290.117(i)(7)(A) is proposed to require systems to provide documentation demonstrating optimization of corrosion control treatment, as currently contained in existing §290.117(m)(1)(H)(i), consistent with the federal requirements of 40 CFR §141.90(c)(1). New §290.117(i)(7)(B) is proposed to contain the requirements of existing §290.117(m)(1)(H)(ii) that systems report information related to recommending optimal corrosion control treatment, consistent with the federal requirements of 40 CFR §141.82(a) and §141.90(c)(2). New §290.117(i)(7)(C) is proposed to contain the existing reporting requirements of existing §290.117(m)(1)(H)(iv) for systems evaluating the effectiveness of corrosion control treatments consistent with the federal requirements of 40 CFR §141.82(a) and §141.90(c)(3). New §290.117(i)(7)(D) is proposed to contain the requirements of existing §290.117(m)(1)(H)(iii) for systems required to install optimal corrosion control, consistent with the federal rules in 40 CFR §141.90(c)(4).

New §290.117(i)(8) is proposed to contain the source water treatment reporting requirements currently contained in existing §290.117(m)(1)(D), consistent with the federal rules in 40 CFR §141.90(d), (d)(1) and (2).

New §290.117(i)(9) is proposed to contain reporting requirements related to documentation of system conditions and facility changes. New §290.117(i)(9)(A) is proposed to contain

the requirements related to reporting changes related to the use and treatment at entry points, contained in the existing rules under §290.117(h)(1)(M), and consistent with the federal requirements in 40 CFR §141.90(a)(3). New §290.117(i)(9)(B) is proposed to require systems to submit documentation related to treatment changes, as contained in the federal rule under 40 CFR §141.90(a)(3). New §290.117(i)(10) is proposed to provide the timing for reporting extra sample data, as contained in the federal rules under 40 CFR §141.90(g). New §290.117(i)(11) is proposed to contain reporting requirements for lead service line replacement currently contained in existing §290.117(m)(1)(E), consistent with the federal rules in 40 CFR §141.84 and §141.90(e).

New §290.117(j) is proposed to require that public water systems must provide consumers with a notice of lead tap sampling results if their homes are tested, as contained in the new federal LCSTR requirements of 40 CFR §141.80(g) and §141.85. New §290.117(j)(1) - (3) is proposed to contain provisions of the new federal LCSTR rules under 40 CFR §141.85(d)(2) - (4), respectively. New §290.117(j)(1) is proposed to contain the timing of consumer notification under the federal rule in 40 CFR §141.85(d)(2); new §290.117(j)(2) is proposed to contain the required content of consumer notification as provided under the federal rule in 40 CFR §141.85(d)(3); and new §290.117(j)(3) is proposed to contain the requirements for delivery of consumer notification as provided under the federal rule in 40 CFR §141.85(d)(4).

New §290.117(k) is proposed to contain the reporting requirements for public education as contained in existing §290.117(i), consistent with the federal requirements of 40 CFR §141.85 and §141.80(g). New §290.117(k)(1) is proposed to contain the required content of public education reporting requirements as contained in 40 CFR §141.85(a)(1). New §290.117(k)(1)(A) is proposed to contain the required heading language alerting consumers to the issue of lead in drinking water, in accordance with the federal requirements of 40 CFR §141.85(a)(1)(i), consistent with the existing requirements in §290.117(i)(2)(A). New §290.117(k)(1)(B) is proposed to contain the mandatory health effects language regarding lead in drinking water that must be contained in any public education materials, as contained in the federal rule under 40 CFR §141.85(a)(1)(ii). New §290.117(k)(1)(C) is proposed to contain the requirement that a system performing public education must provide information regarding lead and the possible sources of lead, as contained in the federal rule under 40 CFR §141.85(a)(1)(iii). New §290.117(k)(1)(C)(i) - (iii) is proposed to contain the requirements of 40 CFR §141.85(a)(1)(iii)(A) - (C) providing that public education materials must explain what lead is, explain possible sources, and discuss other risks of lead exposure, specifically lead-based paint or lead-contaminated soils.

New §290.117(k)(1)(D) is proposed to contain the federal requirements of 40 CFR §141.85(a)(1)(iv) that public education materials must discuss the steps consumers can take to reduce their exposure to lead in drinking water. New §290.117(k)(1)(D)(i) - (v) is proposed to contain the federal requirements of 40 CFR §141.85(a)(1)(ii)(A) - (E), respectively, that public education materials should encourage running the water to flush out the lead, explain that customers should not use hot water to prepare baby formula, explain that boiling water will not help lead levels, discuss the use of alternate water sources, and suggest that parents have children's blood lead levels tested. New §290.117(k)(1)(E) is proposed to contain the federal requirement under 40 CFR §141.85(a)(1)(v) providing that public education materials must explain why there are elevated levels of lead in the system's drinking water (if known) and what the water system is doing to reduce the lead levels in homes and buildings in this area. New §290.117(k)(1)(F) is proposed to contain the mandatory language regarding web resources, as required under the federal rule in 40 CFR §141.85(a)(1)(vi). New §290.117(k)(1)(G) is proposed to contain additional requirements for community systems' public education materials, as contained in the federal rules under 40 CFR §141.85(a)(2). Specifically, §290.117(k)(1)(G)(i) and (ii) is proposed to contain the requirement that community systems' public education materials tell consumers how to get their water tested, and discuss lead in plumbing components and the difference between low lead and lead free, as contained in the federal rules under 40 CFR §141.85(a)(2)(i) and (ii), respectively, consistent with the existing requirements of §290.117(i)(5). New §290.117(k)(1)(H) is proposed to contain the multilingual requirements for public education materials contained in the federal rules under 40 CFR §141.85(b)(1).

New §290.117(k)(2) is proposed to contain the delivery requirements for public education materials for community systems, as required by the federal rules under 40 CFR §141.85(b). New §290.117(k)(2)(A) is proposed to contain the requirement that a community system must directly deliver printed public education materials to all bill paying customers, consistent with the current requirements of existing §290.117(i)(2)(A), as contained in the federal rule under 40 CFR §141.85(b)(2)(i). New §290.117(k)(2)(A)(i) is proposed to contain the requirement that community systems deliver public education materials to local public health agencies, as required under the federal rule in 40 CFR §141.85(b)(2)(ii)(A). New §290.117(k)(2)(A)(ii) is proposed to reference the list of at-risk customers that community systems must deliver public education materials to, as required by the federal rule under 40 CFR §141.85(b)(2)(ii)(B). Section 290.117(k)(2)(A)(ii) is also proposed to list the required institutional customers for public education, as provided in the federal rules in 40 CFR §141.85(b)(2)(ii)(B)(-1-) - (-6-), consistent with the current rules in existing §290.117(i)(2)(C). New §290.117(k)(2)(A)(iii) is proposed to contain the requirements contained in the federal rules under 40 CFR §141.85(b)(2)(ii)(C) that community systems must make a good faith effort to locate potentially at-risk organizations and deliver public education materials to them. Section 290.117(k)(2)(A)(iii) is also proposed to list the potentially at-risk customers listed in the federal rules under 40 CFR §141.85(b)(2)(ii)(C)(-1-) - (-3-). New §290.117(k)(2)(A)(iv) is proposed to contain the federal requirements for additional public activities under 40 CFR §141.85(b)(2)(vi). Section 290.117(k)(2)(A)(iv) is also proposed to list the additional activity requirements of the federal rule under 40 CFR §141.85(b)(2)(vi)(A) - (I). New §290.117(k)(2)(A)(v) is proposed to contain the requirement that community water systems provide public education information on water bills at least quarterly, as long as the system exceeds the lead action level, as required in the federal rule under 40 CFR §141.85(b)(2)(iii). New §290.117(k)(2)(A)(vi) is proposed to contain the federal requirement under 40 CFR §141.85(b)(2)(iv) that a community system serving more than 100,000 people must post public education materials on the water system's Web site. New §290.117(k)(2)(A)(vii) is proposed to contain the federal requirement under 40 CFR §141.85(b)(2)(v) that community systems must submit a press release to newspaper, television and radio stations.

New §290.117(k)(2)(B) is proposed to contain the provision of the federal rule under 40 CFR §141.85(b)(8) that a small community water system serving 3,300 or fewer people may be allowed to limit certain aspects of their public education programs. New §290.117(k)(2)(B)(i) is proposed to contain the provision of the federal rule under 40 CFR §141.85(b)(8)(ii) that a small system may be allowed to deliver public education materials to only those potentially affected customers that are most likely to be visited regularly by pregnant women and children. New §290.117(k)(2)(B)(ii) is proposed to contain the federal provisions under 40 CFR §141.85(b)(8)(iii) that a small system may be allowed to waive press releases. New §290.117(k)(2)(B)(iii) is proposed to contain the federal provisions under 40 CFR §141.85(b)(8)(i) that a small system may be allowed to perform only one of the required additional activities instead of all three activities.

New §290.117(k)(2)(C) is proposed to contain the provisions of 40 CFR §141.85(b)(7) for certain community systems to limit their public education activities. New §290.117(k)(2)(C)(i) is proposed to specify that in order to limit these public education activities, the system must be a facility, such as a prison or a hospital, where the population served is not capable of or is prevented from making improvements to plumbing or installing point of use treatment devices as contained in the federal rule under 40 CFR §141.85(b)(7)(i). New §290.117(k)(2)(C)(ii) is proposed to specify that, in order to limit these public education activities, the system must provide water as part of the cost of services as provided by the federal rule under 40 CFR §141.85(b)(7)(ii).

New §290.117(k)(3) is proposed to contain the federal requirements of 40 CFR §141.85(b)(4) for delivery of public education materials by nontransient, noncommunity systems. New §290.117(k)(3)(A) is proposed to require that nontransient, noncommunity systems that exceed the lead action level must post informational posters as contained in the federal requirements under 40 CFR §141.85(b)(4)(i), consistent with the current requirements of existing §290.117(i)(3)(A). New §290.117(k)(3)(B) is proposed to require that these systems must distribute informational materials as contained in existing §290.117(i)(3)(B), consistent with the requirements of 40 CFR §141.85(b)(4)(ii).

New §290.117(k)(4) is proposed to contain the frequency and timing requirements for public education, as contained in the federal rules under 40 CFR §141.85(b)(2) and (2)(vii), and (b)(4) and (4)(iii), consistent with the existing state rules in existing §290.117(i)(2). New §290.117(k)(4)(A) is proposed to contain the required frequency and timing of public education activities for community systems, as provided by the federal rules under 40 CFR §141.85(b)(3). New §290.117(k)(4)(A)(i) is proposed to contain the requirement that community systems provide informational statements every billing cycle, as required under the federal rule in 40 CFR §141.85(b)(3)(ii). New §290.117(k)(4)(A)(ii) is proposed to contain the requirement that a community system serving a population greater than 100,000 shall post and retain material on a publicly accessible Web site, as required in the federal rules under 40 CFR §141.85(b)(3)(iii). New §290.117(k)(4)(A)(iii) is proposed to ensure that press releases be delivered twice a year, as provided by the federal rule under 40 CFR §141.85(b)(3)(iv).

New §290.117(k)(4)(B) is proposed to contain the required frequency and timing of public education activities for nontransient, noncommunity systems, as required by the federal rule under 40 CFR §141.85(b)(5). New §290.117(k)(4)(C) is proposed to allow a system to delay the start date for public education, as provided in the federal rules under 40 CFR §141.85(b)(5), consistent with the existing Texas rules in §290.117(i)(3)(D). New §290.117(k)(4)(D) is proposed to contain the requirements for discontinuing public education, as contained in the federal rules under 40 CFR §141.85(b)(6), consistent with the existing state rules in §290.117(i)(4).

New §290.117(k)(5) is proposed to contain the requirements for notifying the TCEQ of public education activities, as contained in the federal rules under 40 CFR §141.90(f)(1). New §290.117(k)(5)(A) is proposed to require documentation that the system has delivered public education materials that meet the content requirements, as contained in the federal rules under 40 CFR §141.90(f)(1)(i). New §290.117(k)(5)(B) is proposed to require that systems document notification efforts, as contained in the federal rules under 40 CFR §141.90(f)(1)(ii). New §290.117(k)(5)(C) is proposed to require that systems submit certifications of delivery each time that it distributes materials, as contained in the federal rules under 40 CFR §141.90(f)(2).

New §290.117(l) is proposed to summarize the manner in which the TCEQ shall determine whether a system is in compliance with this section, consistent with the existing rules in §290.117(a)(2), and with the federal rules under 40 CFR §141.80(k). This is proposed to be subsequent to the subsection relating to public education, because the most serious violation identified by the EPA is a failure to perform public education.

New §290.117(l)(1) is proposed to contain the compliance calculations for the lead and copper tap samples, consistent with the existing rule in §290.117(a)(3) and (d), containing the federal requirements of 40 CFR §141.80(c)(3). New §290.117(l)(1)(A) is proposed to contain the calculation methods for determining the 90th percentile, consistent with the existing requirements of §290.117(d) and the federal requirements of 40 CFR §141.80(c)(3). New §290.117(l)(1)(A)(i) is proposed to describe ranking the samples in order of their analytical results, from lowest to highest, as contained in the federal rules under 40 CFR §141.80(c)(3)(i), consistent with the existing rules in §290.117(a)(3). New §290.117(l)(1)(A)(ii) is proposed to contain the requirements of the federal rule under 40 CFR §141.80(c)(3)(ii) and (iii) to multiply the number of samples collected by 0.9 to yield a number corresponding to the order number of samples, and designating that sample's analytical result as the 90th percentile level for systems that serve 100 or more people, consistent with the existing rules in §290.117(a)(3). New §290.117(l)(1)(A)(iii) is proposed to contain the 90th percentile level calculation method for systems serving fewer than 100 people, which collect only five tap samples, as contained in the federal rule under 40 CFR §141.80(c)(3)(iv), consistent with the existing rule under §290.117(a)(3). New §290.117(l)(1)(A)(iv) is proposed to contain the 90th percentile level calculation method for systems that have been allowed to collect fewer than five samples, as contained in the federal rule under 40 CFR §141.80(c)(3)(v). New §290.117(l)(1)(B) is proposed to ensure that invalidated sample results are not included in compliance calculations, as contained in the federal rule under 40 CFR §141.86(f) and consistent with the existing state rule under §290.117(f)(1). New §290.117(l)(1)(C) is proposed to ensure that the results of all valid samples are included in compliance calculations, as contained in the federal rule under 40 CFR §141.86(e), and consistent with the existing state rule under §290.117(c)(4). New §290.117(l)(1)(D) is proposed to provide a specific citation defining the conditions under which a system is in compliance, as contained in the existing rule

under §290.117(a)(3) and in the federal rule under 40 CFR §141.80(c)(1) and (2).

New §290.117(l)(2) is proposed to contain the compliance determination requirements for water quality parameters, as contained in the existing rules under §290.117(h)(1)(K), consistent with the federal rules under 40 CFR §141.82(g). New §290.117(l)(2)(A) is proposed to specify the conditions under which a system is considered to have operated outside its approved optimal water quality parameter ranges as contained in 40 CFR §141.82(g), consistent with the existing rules in §290.117(j)(1). New §290.117(l)(2)(A)(i) is proposed to specify that multiple water quality parameter samples in a single day be averaged for compliance determination, as contained in 40 CFR §141.82(g)(1), consistent with the existing rules in §290.117(j)(1)(A). New §290.117(l)(2)(A)(ii) is proposed to specify that a single daily sample result will be used for compliance as contained in 40 CFR §141.82(g)(2), consistent with the existing rules in §290.117(j)(1)(B). New §290.117(l)(2)(A)(iii) is proposed to specify that on days when no measurement is collected for the water quality parameter at the sampling location, the daily value last calculated on the most recent day shall serve as the daily value, as contained in the federal rule under 40 CFR §141.82(g)(3), consistent with the existing rules in §290.117(j)(1)(C). New §290.117(l)(2)(B) is proposed to contain the timing for compliance determination for water quality parameters, as contained in the federal rule under 40 CFR §141.82(g), consistent with the existing rules in §290.117(j)(1). New §290.117(l)(2)(C) is proposed to ensure that the results of all samples be considered as part of compliance determination, as contained in the federal rule under 40 CFR §141.87(f). New §290.117(l)(2)(D) is proposed to ensure that the results of sampling errors will not be used in compliance calculations, consistent with the federal rules under 40 CFR §141.82(g).

New §290.117(l)(3) is proposed to contain the compliance determination requirements related to installation of source water treatment as contained in the federal rule under 40 CFR §141.83(b)(5) and §141.88(a)(2). New §290.117(l)(4) is proposed to specify that failure to deliver public education materials is a public notification violation, consistent with the federal regulations under 40 CFR §141.85(a)(1) and the existing state rules under §290.117(i), in order to provide a clear citation for referencing any such violation in TCEQ procedures for initiation of any enforcement action. New §290.117(l)(5) is proposed to specify what constitutes monitoring and reporting violations, as contained in the existing regulations under §290.117(a)(2)(B), consistent with the federal rule under 40 CFR §141.80(k).

New §290.117(m) is proposed to adopt the lead service line replacement requirements of 40 CFR §141.84 and §141.90(e) by reference, consistent with the existing rules under §290.117(k). Texas public water systems historically did not use lead pipe in distribution systems. Therefore, in the history of implementing the lead and copper rules in Texas, no public water systems have been required to perform lead service line replacement programs.

New §290.117(n) is proposed to contain the federal requirements of 40 CFR §§141.81(b)(3)(iii), 141.82(a), and 141.86(d)(4)(vii) specifying that the executive director has authority to require additional sampling as needed to determine whether systems are maintaining minimal levels of corrosion in the distribution system.

The commission proposes to amend §290.119, Analytical Procedures. The commission proposes to amend §290.119(a) and (a)(1) to replace the term "certified" laboratory with the term "accredited" laboratory consistent with existing state rule under 30 TAC §25.4(f) and to correct the reference to accurately reflect that analyses performed under other subchapters within this chapter must be analyzed using the methods and at laboratories of the types described herein. Further, the commission proposes to amend §290.119(a)(1) to add microbial contaminants as a type of sample that must be analyzed at an accredited laboratory, consistent with the existing requirement in §290.109(d), to ensure that all applicable samples are listed in this context. The commission proposes to amend §290.119(a)(1)(A), (B), (F), and (G) to spell out terms in their first use in this section. The commission proposes to amend §290.119(a)(2) to spell out the term "maximum residual disinfectant level" in its first use in this section. The commission proposes to amend §290.119(a)(2)(E) to specify that dissolved organic carbon is an analyte for which samples may be analyzed at an approved laboratory to maintain consistency between state and federal regulations. The commission also proposes to amend §290.119(a)(2)(E) and (b)(6) to remove the hyphen in the word "by-product" to be consistent with current federal usage standards. The commission proposes to amend §290.119(b)(8) to add dissolved organic carbon, which identifies acceptable EPA methods for analysis, to maintain consistency between state and federal regulations consistent with the federal rule in 40 CFR §141.131(d)(4)(i).

The commission proposes to amend §290.121, Monitoring Plans. The commission proposes to amend §290.121(b)(1) and (7) to remove the hyphen in the word "by-products" to be consistent with current federal usage standards. The commission proposes to amend §290.121(b)(6) - (8) to correct references to meet agency syntax standards. The commission proposes to amend §290.121(d)(1) to specify the date or conditions which, if not fulfilled, may cause a public water system to have a reporting violation for their monitoring plan. The commission proposes to amend §290.121(e) to correct the reference for conditions triggering notification of a monitoring plan violation consistent with the federal rule in 40 CFR §141.153(f).

The commission proposes to amend §290.122, Public Notification, to better establish public notification requirements for systems to follow when their drinking water fails to meet one of the drinking water standards. The commission proposes to amend §290.122(a), (a)(1), and (1)(G) to recognize that there may be situations defined by rule that require public notice, but that are not defined as violations. Specifically, fecal contamination of a well is not defined as a violation under the Ground Water Rule. The commission proposes to amend §290.122(a)(1)(B)(iv) to replace the word "ready" with the word "reading" in order to correctly specify that the triggering event for public notice in this clause is an analytical reading over 1.0 Nephelometric turbidity units. The commission proposes to amend §290.122(a)(1)(F) and (b)(1)(C) and (D) to correct the rule reference therein to meet agency syntax standards. The commission proposes to amend §290.122(b)(2)(B) to allow non-community water systems other options for delivering non-acute and non-monitoring related public notices, in order to be consistent with the federal rules under 40 CFR §141.203(c)(2). The commission proposes to move the existing requirement for direct delivery or continuous posting from §290.122(b)(2)(B) to newly created §290.122(b)(2)(B)(i). The commission proposes to add §290.122(b)(2)(B)(ii) to encompass other federally-specified delivery methods. The federal rule under 40 CFR §141.203(c)(2)(ii) requires the state to allow alternative methods of public notice delivery such as e-mail. The change is proposed to assure the

state rules are no less stringent than the federal rules. Likewise, the commission proposes to amend §290.122(c)(2)(A) to specify that mail or other direct delivery must be used by community water systems for non-acute violations, consistent with the federal rule under 40 CFR §141.204(c)(1)(i), and that posting, mail, or other direct delivery must be used by noncommunity water systems for non-acute violations, consistent with the federal rule under 40 CFR §141.204(c)(2)(i). The list of other delivery methods in existing rule under §290.122(c)(2)(A) is proposed to be moved to §290.122(c)(2)(B), consistent with the federal rule under 40 CFR §141.204(c)(1)(ii). The commission proposes to amend §290.122(c)(3)(B) to allow noncommunity systems to provide repeat public notices under in §290.122(c) at least every 12 months, consistent with federal rule under 40 CFR §141.204(b)(1). The commission proposes to amend §290.122(d)(1) to include the specifics of the federal requirements under 40 CFR §141.205(c)(1)(iii) that a system must not format their notification in a way that makes it hard to understand or defeats the purpose of the notice. The commission proposes to amend §290.122(d)(6) to specifically add the federal requirement of 40 CFR §141.205(a)(9) that each notice include the name and business address for contacting the water system. The commission proposes to add §290.122(d)(10) to include the consumer notification requirement of the federal LCSTR under 40 CFR §141.80(g) and §141.85(d) and the proposed state rule in §290.117(j). The commission proposes to amend §290.122(e) to include the ongoing notification requirement for noncommunity systems consistent with 40 CFR §141.206(b). The commission proposes to amend §290.122(g) to specify that notification be provided to the owner or operator of a public water system that receives and redistributes water from a system that is required to provide public notice, in accordance with the federal rule in 40 CFR §141.201(c)(1).

Subchapter H: Consumer Confidence Reports

Subchapter H contains the requirements for community water systems to deliver a report of drinking water quality, called a Consumer Confidence Report, to all of their customers annually. The commission proposes to amend Subchapter H, Consumer Confidence Reports, to incorporate provisions of the federal rules. The commission proposes to amend to §290.271, Purposes and Applicability, by adding the definition of "detected" for contaminant groups to §290.271(c), consistent with the federal rule in 40 CFR §141.153(B).

The commission proposes to amend §290.272, Content of the Report. The commission proposes to amend §290.272(c)(1)(A) to add the word "and" and also proposes to amend §290.272(c)(1)(B) to add a period and remove "; and" to comply with agency numbering requirements for rules. Additionally, the commission proposes to amend §290.272(c)(1)(C) to remove a reference to nonexistent federal rules in 40 CFR §141.142 and §141.143. The commission proposes to amend §290.272(c)(3) to remove a reference to a nonexistent federal regulation, specifically the reference to information collection rules under 40 CFR §141.142 and §141.143. The commission proposes to amend §290.272(c)(4)(D)(iii) to include an opening phrase of "In accordance with date requirements included in the table entitled Date to Start Stage 2 Compliance," in order to provide a rule reference to the previous table in accordance with the existing state rule in §290.115(a)(2) and federal DBP2 rules under 40 CFR §141.153(B) and §141.64(b)(2). Additionally, the commission proposes to amend §290.272(e)(7) and (g)(1)(B)(iv) to remove the hyphen in the word "by-products" to be consistent with current federal usage standards.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. The agency will utilize currently available resources to implement the proposed rules. State agencies and local governments that own or operate public water systems may see costs increase for providing notice or educational materials, but any increase is not expected to have a significant fiscal implication for those water systems.

The EPA promulgated the LCSTR rule in 2007. The agency must adopt, implement, and enforce regulations equally as stringent as the National Primary Drinking Water Regulations to maintain primary enforcement authority for the SDWA. EPA promulgated these rules to strengthen and clarify rules regarding lead and copper in the areas of monitoring, reporting, notification, customer awareness, and lead service line replacement. In addition, EPA has recently identified changes that were needed to the Texas requirements for the LT2, DBP2, and GWR rules as part of the Region 6 primacy review. The proposed rules amend Chapter 290 to include requirements of the LCSTR rule, incorporate EPA-required revisions of the LT2, DBP2, and GWR, and make administrative changes to make the rules easier to use and understand.

LCSTR rule

The LCSTR rule affects community public water systems and nontransient, noncommunity public water systems. EPA implemented the LCSTR to clarify lead and copper regulations and improve implementation nationwide. The LCSTR revisions do not affect previously required action levels, treatment techniques, or other provisions that directly determine the degree to which the public water supply is protected from lead and copper contamination.

Current agency rules have been in compliance with the intent of lead and copper federal regulations, including much of the monitoring, reporting, notification, customer awareness, and lead service line replacement requirements that are clarified in the LCSTR rule. However, to make the LCSTR rules easy to understand and use, the proposed rules repeal the current §290.117, and simultaneously propose a new §290.117. This will maintain the agency's primary enforcement authority and ensure that the proposed rules are clear and as stringent as the LCSTR rules without exceeding those requirements.

The proposed rules are not expected to have significant fiscal implications for the agency or the state's public water systems since the current rules were implemented in a manner consistent with EPA's interpretation of the lead and copper rule. The proposed rules clarify the circumstances under which a public water system with less than five taps can request an exemption to eliminate one sample. Sampling costs are estimated to be $30 per sample, and cost savings are not expected to be significant if exemption is requested since preparation and mailing costs of a letter is estimated to be $28. The proposed rules also implement federal requirements by specifying dates for monitoring periods and specifying that treatment changes affecting water corrosivity be approved in writing before the change is implemented. Current rules, while requiring the agency to be notified, allow public water systems to change treatments before receiving an ap-

proval letter. These provisions are not expected to have fiscal implications for the state's public water systems, but treatment changes may take longer to implement.

The proposed rules are as stringent as the LCSTR rule with regards to consumer notification of sampling results and distribution of public education materials. The proposed rules will require that when a community public water system collects samples for lead and copper at a house, the resident must be notified of the results by mail or by a method approved by the executive director. Under current rules, results were only required to be communicated through public notice in a newspaper, a public service announcement, or in the annual Consumer Confidence Report and only if there was a lead exceedance. Agency policy encourages individual notification of residents where sampling takes place, but notification if there are no exceedances is not required. Most community water systems monitor every three years, and increased postage costs are not expected to be significant. Based on EPA estimates, postage costs for community water systems could range from $35 for systems serving less than 3,300 residents to $58 for systems serving between 10,000 to 100,000 people when sampling is done. Nontransient, noncommunity systems, as under the current rules, can post sampling results in a manner that will reach customers, so no increase in notification costs is expected for these systems under the proposed rules.

With regards to public education, the LCSTR rule mandates distribution of educational materials to three additional groups: licensed childcare centers, public and private pre-schools, and obstetricians-gynecologists and midwives. However, the methods of distributing educational materials are expanded to include e-mails, public meetings, and targeted individual contact. The proposed rules incorporate these provisions, which are not expected to have significant fiscal impact since public water systems can choose, in consultation with the executive director, three methods of contact among methods permitted under the current rules (public service announcements, paid advertisements, hand delivery, etc.) and those added by the proposed rules. The proposed rules give public water systems more flexibility in educating the public, and each public water system is expected to choose the most cost-effective methods of communication. The cost of public education will vary among public water systems depending on the size of their customer base and the methods chosen.

An estimated 48 (36 community and 12 nontransient, noncommunity) public water systems are owned or operated by state agencies. The number of public water systems owned or operated by local governments is estimated to be 2,893 (2,758 community and 135 nontransient, noncommunity). State agencies and local governments that own or operate public water systems will be required to comply with the provisions of the LCSTR rule, but the fiscal implications are not expected to be significant. The communication of lead and copper sampling results is estimated to range from $35 for systems serving less than 3,300 residents to $58 for systems serving between 10,000 to 100,000 people for postage once every three years. Notice of sampling results is also required for a nontransient, noncommunity public water system, but costs are expected to be minimal since these systems can post sampling results in a central location. State agencies and governmental entities are expected to choose the most cost-effective methods of communication, and the proposed rules allow more flexibility for communicating information about lead and copper exposures.

LT2, DBP2, and GWR Revisions

The proposed rules incorporate minor revisions requested by EPA as a result of their primacy review of current LT2, DBP2, and GWR rules. These minor revisions do not impose any new procedures or requirements that are not already contained in current agency rules. Incorporation of EPA requested revisions clarify LT2, DBP2, and GWR requirements and implementation protocols for the purpose of avoiding misinterpretation and misapplication of the rules. Therefore, the current proposed rule changes for LT2, DBP2, and GWR have no significant fiscal implications for public water systems in the state, including those owned or operated by governmental entities.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be conformity with federal regulations regarding drinking water, increased understanding of lead and copper rules as well as LT2, DBP2, and GWR rules, and increased public awareness of lead and copper sampling results. The proposed rules are expected to safeguard public health and safety through the provision of safe drinking water.

Individuals are expected to have increased awareness of sampling results for levels of lead and copper in their drinking water as a result of the proposed rules. The proposed rules provide for more flexibility for public water systems to communicate with their customers regarding lead and copper levels and in education efforts. Individuals are not expected to be adversely affected by the proposed rules, which are not expected to have a significant fiscal impact on public water systems.

Large businesses do not typically own or operate public water systems. An estimated 2,541 public water systems are owned or operated by investor owned utilities or privately owned for profit utilities, which typically are classified as small businesses. Large businesses are expected to experience the same notification costs and education costs as those experienced by a small business. The proposed rules are not expected to have a significant fiscal impact on businesses since they afford more flexibility regarding communication methods and education efforts for lead and copper levels found in drinking water. In addition, most public water systems will sample lead and copper levels once every three years.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No significant adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Small businesses own or operate approximately 2,541 public water systems in the state. The proposed rules require increased communication of lead and copper sampling results, but any increase in postage cost to communicate sampling results is not expected to have significant fiscal implications. The communication of lead and copper sampling results is estimated to range from $35 for systems serving less than 3,300 residents to $58 for systems serving between 10,000 to 100,000 people for postage once every three years. Public water systems are required to educate the public about lead and copper in drinking water under the proposed rules. The proposed rules give public water systems more flexibility in educating the public, and each public water system is expected to choose the most cost-effective methods of communication which could result in a decrease in costs. The cost of public

education will vary among public water systems depending on the size of their customer base and the methods chosen.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to protect the environment and comply with federal regulations.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225. A "major environmental rule" means a rule with a specific intent to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

First, the proposed rulemaking does not meet the statutory definition of a "major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to incorporate changes in the federal drinking water regulations in order to maintain the state's primary enforcement responsibility with regard to drinking water. This is accomplished by enacting state rules no less stringent than the federal regulations and adopting adequate procedures for implementation and enforcement of these rules, while providing alternative approaches to compliance based in part on stakeholder input and taking into account special considerations related to the state's particular source water conditions. The federal regulations that would be implemented through the proposed rulemaking are designed to reduce risks to human health from environmental exposure by limiting exposure to lead and copper, microbial pathogens, and disinfection byproducts.

Second, the proposed rulemaking does not meet the statutory definition of a "major environmental rule" because the proposed rules would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed rules will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the preceding four applicability requirements because this rulemaking: does not exceed any standard set by federal law for public water systems and is proposed to be consistent with federal rules; does not exceed any express requirement of state law under Texas Health and Safety Code, Chapter 341, Subchapter C; does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, but rather is proposed to be consistent with applicable federal rules in order to allow the state to maintain its authority to implement the federal SDWA, pursuant to agreements between the commission and the EPA; and is not proposed solely under the general powers of the agency, but specifically under Texas Health and Safety Code, §341.031, which allows the commission to adopt and enforce rules to implement the federal SDWA, as well as the other general powers of the commission.

Written comments on the draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007.

The commission proposes these rules for the specific purpose of maintaining the state's primary enforcement responsibility by incorporating federal drinking water regulations related to: 1) protecting public drinking water consumers from the risks of lead and copper in drinking water in response to the Short Term Regulatory Revisions and Clarifications to the Lead and Copper Rule, published by the EPA in the October 10, 2007, issue of the *Federal Register;* 2) providing increased public health protection from the risks of *Cryptosporidium* and other microbial pathogens in drinking water derived from surface water in response to the LT2 rule published by the EPA in the January 5, 2006, issue of the *Federal Register;* and 3) protecting public drinking water consumers from the risks of disinfectant byproducts in response to the DBP2 rule, published by the EPA in the January 4, 2006, issue of the *Federal Register.* In addition, the proposed rules correct typographical errors, formatting mistakes, incorrect references, and citation changes and make other non-substantive changes.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules based upon exceptions to applicability in §2007.003(b). First, the proposed rulemaking is an action that is reasonably taken to fulfill an obligation mandated by federal law, Texas Government Code, §2007.003(b)(4). In order to maintain primacy over public drinking water, the state must enact rules no less stringent than the federal drinking water regulations as required by 40 CFR §142.10. Second, the proposed rulemaking is an action that is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the public health and safety purpose; and that does not impose a greater burden than is necessary to achieve the public health and safety purpose, Texas Government Code, §2007.003(b)(13). Lead and copper, *Cryptosporidium* and other microbial pathogens, and drinking water disinfection byproducts all constitute a real and substantial threat to public health and safety when present

at certain levels in drinking water, and require appropriate governmental regulation. The proposed rules significantly advance the public health and safety purpose by ensuring appropriate governmental regulation of these items, and do so in a way that does not impose a greater burden than is necessary to achieve the public health and safety purpose.

Further, the commission has determined that promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rule because the proposed rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of these rules. The rules require public water systems to comply with drinking water standards protective of human health and the environment, and the rules bring those standards into concurrence with the corresponding federal regulations. Therefore, the proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action or authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on January 6, 2011, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Duron, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2009-020-290-OW. The comment period closes January 14, 2011. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* For further information, please contact Michael Lentz, Water Supply Division, Public Drinking Water Section, (512) 239-1650.

SUBCHAPTER D. RULES AND REGULATIONS FOR PUBLIC WATER SYSTEMS

30 TAC §§290.38, 290.39, 290.41, 290.42, 290.46, 290.47

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and Texas Health and Safety Code (THSC), §341.031, which allows the commission to adopt rules to implement the federal Safe Drinking Water Act, 42 United States Code, §§300f to 300j-26; and THSC, §341.0315, which requires public water systems to comply with commission rules adopted to ensure the supply of safe drinking water.

The proposed amendments implement TWC, §§5.102, 5.103, and 5.105, and THSC, §341.031 and §341.0315.

§290.38. Definitions.

The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. If a word or term used in this chapter is not contained in the following list, its definition shall be as shown in Title 40 Code of Federal Regulations (CFR) §141.2. Other technical terms used shall have the meanings or definitions listed in the latest edition of *The Drinking Water Dictionary,* prepared by the American Water Works Association.

(1) Affected utility--A retail public utility (§291.3 of this title (relating to Definitions of Terms)), exempt utility (§291.3 of this title), or provider or conveyor of potable or raw water service that furnishes water service to more than one customer:

(A) in a county with a population of 3.3 million or more; or

(B) in a county with a population of 400,000 or more adjacent to a county with a population of 3.3 million or more.

(2) Air gap--The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water to a tank, fixture, receptor, sink, or other assembly and the flood level rim of the receptacle. The vertical, physical separation must be at least twice the diameter of the water supply outlet, but never less than 1.0 inch.

(3) ANSI standards--The standards of the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

(4) Approved laboratory--A laboratory [~~certified and~~] approved by the executive director [~~commission~~] to analyze water samples to determine their compliance with certain maximum or minimum allowable constituent levels.

(5) ASME standards--The standards of the American Society of Mechanical Engineers, 346 East 47th Street, New York, New York 10017.

(6) ASTM International standards--The standards of the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, Pennsylvania, 19428 [~~1916 Race Street, Philadelphia, Pennsylvania 19102~~].

(7) Auxiliary power--Either mechanical power or electric generators which can enable the system to provide water under pressure

to the distribution system in the event of a local power failure. With the approval of the executive director, dual primary electric service may be considered as auxiliary power in areas which are not subject to large scale power outages due to natural disasters.

(8) AWWA standards--The latest edition of the applicable standards as approved and published by the American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235.

(9) Bag Filter--Pressure-driven separation device that removes particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed of a non-rigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to the outside.

(10) Cartridge filter--Pressure-driven separation device that removes particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.

(11) Certified laboratory--A laboratory certified by the commission to analyze water samples to determine their compliance with maximum allowable constituent levels. After June 30, 2008, laboratories must be accredited, not certified, in order to perform sample analyses previously performed by certified laboratories.

(12) Challenge test--A study conducted to determine the removal efficiency (log removal value) of a device for a particular organism, particulate, or surrogate.

(13) Chemical disinfectant--Any oxidant, including but not limited to chlorine, chlorine dioxide, chloramines, and ozone added to the water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.

(14) Community water system--A public water system which has a potential to serve at least 15 residential service connections on a year-round basis or serves at least 25 residents on a year-round basis.

(15) Connection--A single family residential unit or each commercial or industrial establishment to which drinking water is supplied from the system. As an example, the number of service connections in an apartment complex would be equal to the number of individual apartment units. When enough data is not available to accurately determine the number of connections to be served or being served, the population served divided by three will be used as the number of connections for calculating system capacity requirements. Conversely, if only the number of connections is known, the connection total multiplied by three will be the number used for population served. For the purposes of this definition, a dwelling or business which is connected to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection if:

(A) the water is used exclusively for purposes other than those defined as human consumption (see human consumption);

(B) the executive director determines that alternative water to achieve the equivalent level of public health protection provided by the drinking water standards is provided for residential or similar human consumption, including, but not limited to, drinking and cooking; or

(C) the executive director determines that the water provided for residential or similar human consumption is centrally treated or is treated at the point of entry by a provider, a pass through entity, or the user to achieve the equivalent level of protection provided by the drinking water standards.

(16) Contamination--The presence of any foreign substance (organic, inorganic, radiological or biological) in water which tends to degrade its quality so as to constitute a health hazard or impair the usefulness of the water.

(17) Cross-connection--A physical connection between a public water system and either another supply of unknown or questionable quality, any source which may contain contaminating or polluting substances, or any source of water treated to a lesser degree in the treatment process.

(18) Direct integrity test--A physical test applied to a membrane unit in order to identify and isolate integrity breaches/leaks that could result in contamination of the filtrate.

(19) Disinfectant--A chemical or a treatment which is intended to kill or inactivate pathogenic microorganisms in water.

(20) Disinfection--A process which inactivates pathogenic organisms in the water by chemical oxidants or equivalent agents.

(21) Distribution system--A system of pipes that conveys potable water from a treatment plant to the consumers. The term includes pump stations, ground and elevated storage tanks, potable water mains, and potable water service lines and all associated valves, fittings, and meters, but excludes potable water customer service lines.

(22) Drinking water--All water distributed by any agency or individual, public or private, for the purpose of human consumption or which may be used in the preparation of foods or beverages or for the cleaning of any utensil or article used in the course of preparation or consumption of food or beverages for human beings. The term "Drinking Water" shall also include all water supplied for human consumption or used by any institution catering to the public.

(23) Drinking water standards--The commission rules covering drinking water standards in Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems).

(24) Elevated storage capacity--That portion of water which can be stored at least 80 feet above the highest service connection in the pressure plane served by the storage tank.

(25) Emergency operations--The operation of an affected utility during an extended power outage at a minimum water pressure of 35 pounds per square inch.

(26) Emergency power--Either mechanical power or electric generators which can enable the system to provide water under pressure to the distribution system in the event of a local power failure. With the approval of the executive director, dual primary electric service may be considered as emergency power in areas which are not subject to large scale power outages due to natural disasters.

(27) Extended power outage--a power outage lasting for more than 24 hours.

(28) Filtrate--The water produced from a filtration process; typically used to describe the water produced by filter processes such as membranes.

(29) Groundwater--Any water that is located beneath the surface of the ground and is not under the direct influence of surface water.

(30) Groundwater under the direct influence of surface water--Any water beneath the surface of the ground with:

(A) significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia* or *Cryptosporidium;* or

(B) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

(31) Health hazard--A cross-connection, potential contamination hazard, or other situation involving any substance that can cause death, illness, spread of disease, or has a high probability of causing such effects if introduced into the potable drinking water supply.

(32) Human consumption--Uses by humans in which water can be ingested into or absorbed by the human body. Examples of these uses include, but are not limited to drinking, cooking, brushing teeth, bathing, washing hands, washing dishes, and preparing foods.

(33) Indirect integrity monitoring--The monitoring of some aspect of filtrate water quality, such as turbidity, that is indicative of the removal of particulate matter.

(34) Innovative/alternate treatment--Any treatment process that does not have specific design requirements in §290.42(a) - (f) of this title (relating to Water Treatment). For example, the adjustment of fluoride ion content, special treatment for metals, iron, manganese, organic and inorganic contaminant reduction, special methods for taste and odor control, demineralization, corrosion control processes, membrane filtration, bag/cartridge filters, ozone, chlorine dioxide, Ultraviolet (UV) light disinfection, and other treatment processes.

(35) Interconnection--A physical connection between two public water supply systems.

(36) International Fire Code (IFC)--The standards of the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001.

(37) Intruder-resistant fence--A fence six feet or greater in height, constructed of wood, concrete, masonry, or metal with three strands of barbed wire extending outward from the top of the fence at a 45 degree angle with the smooth side of the fence on the outside wall. In lieu of the barbed wire, the fence must be eight feet in height. The fence must be in good repair and close enough to surface grade to prevent intruder passage.

(38) L/d ratio--The dimensionless value that is obtained by dividing the length (depth) of a granular media filter bed by the weighted effective diameter "d" of the filter media. The weighted effective diameter of the media is calculated based on the percentage of the total bed depth contributed by each media layer.

(39) Licensed professional engineer--An engineer who maintains a current license through the Texas Board of Professional Engineers in accordance with its requirements for professional practice.

(40) Log removal value (LRV)--Removal efficiency for a target organism, particulate, or surrogate expressed as $\log_{10}$ (i.e., $\log_{10}$ (feed concentration) - $\log_{10}$ (filtrate concentration)).

(41) Maximum daily demand--In the absence of verified historical data or in cases where a public water system has imposed mandatory water use restrictions within the past 36 months, maximum daily demand means 2.4 times the average daily demand of the system.

(42) Maximum contaminant level (MCL)--The MCL for a specific contaminant is defined in the section relating to that contaminant.

(43) Membrane filtration--A pressure or vacuum driven separation process in which particulate matter larger than one micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test; includes the following common membrane classifications microfiltration (MF), ultrafiltration (UF), nanofiltration (NF), and reverse osmosis (RO), as well as any "membrane cartridge filtration" (MCF) device that satisfies this definition.

(44) Membrane $LRV_{C\text{-}Test}$--The number that reflects the removal efficiency of the membrane filtration process demonstrated during challenge testing. The value is based on the entire set of LRVs obtained during challenge testing, with one representative LRV established per module tested.

(45) Membrane module--The smallest component of a membrane unit in which a specific membrane surface area is housed in a device with a filtrate outlet structure.

(46) Membrane sensitivity--The maximum log removal value (LRV) that can be reliably verified by a direct integrity test.

(47) Membrane unit--A group of membrane modules that share common valving, which allows the unit to be isolated from the rest of the system for the purpose of integrity testing or other maintenance.

(48) Milligrams per liter (mg/L)--A measure of concentration, equivalent to and replacing parts per million in the case of dilute solutions.

(49) Monthly reports of water works operations--The daily record of data relating to the operation of the system facilities compiled in a monthly report.

(50) National Fire Protection Association (NFPA) standards--The standards of the NFPA, 1 Batterymarch Park, Quincy, Massachusetts, 02269-9101.

(51) National Sanitation Foundation (NSF)--The NSF or reference to the listings developed by the foundation, P.O. Box 1468, Ann Arbor, Michigan 48106.

(52) Noncommunity water system--Any public water system which is not a community system.

(53) Nonhealth hazard--A cross-connection, potential contamination hazard, or other situation involving any substance that generally will not be a health hazard, but will constitute a nuisance, or be aesthetically objectionable, if introduced into the public water supply.

(54) Nontransient noncommunity water system--A public water system that is not a community water system and regularly serves at least 25 of the same persons at least six months out of the year.

(55) psi--Pounds per square inch.

(56) Peak hourly demand--In the absence of verified historical data, peak hourly demand means 1.25 times the maximum daily demand (prorated to an hourly rate) if a public water supply meets the commission's minimum requirements for elevated storage capacity and 1.85 times the maximum daily demand (prorated to an hourly rate) if the system uses pressure tanks or fails to meet the commission's minimum elevated storage capacity requirement.

(57) Plumbing inspector--Any person employed by a political subdivision for the purpose of inspecting plumbing work and installations in connection with health and safety laws and ordinances, who has no financial or advisory interest in any plumbing company, and who has successfully fulfilled the examinations and requirements of the Texas State Board of Plumbing Examiners.

(58) Plumbing ordinance--A set of rules governing plumbing practices which is at least as stringent and comprehensive as one of the following nationally recognized codes:

(A) the International Plumbing Code; or

(B) the Uniform Plumbing Code.

(59) Potable water customer service line--The sections of potable water pipe between the customer's meter and the customer's point of use.

(60) Potable water service line--The section of pipe between the potable water main to the customer's side of the water meter. In cases where no customer water meter exists, it is the section of pipe that is under the ownership and control of the public water system.

(61) Potable water main--A pipe or enclosed constructed conveyance operated by a public water system which is used for the transmission or distribution of drinking water to a potable water service line.

(62) Potential contamination hazard--A condition which, by its location, piping or configuration, has a reasonable probability of being used incorrectly, through carelessness, ignorance, or negligence, to create or cause to be created a backflow condition by which contamination can be introduced into the water supply. Examples of potential contamination hazards are:

(A) bypass arrangements;

(B) jumper connections;

(C) removable sections or spools; and

(D) swivel or changeover assemblies.

(63) Process control duties--Activities that directly affect the potability of public drinking water, including: making decisions regarding the day-to-day operations and maintenance of public water system production and distribution; maintaining system pressures; determining the adequacy of disinfection and disinfection procedures; taking routine microbiological samples; taking chlorine residuals and microbiological samples after repairs or installation of lines or appurtenances; and operating chemical feed systems, filtration, disinfection, or pressure maintenance equipment; or performing other duties approved by the executive director.

(64) Public drinking water program--Agency staff designated by the executive director to administer the Safe Drinking Water Act and state statutes related to the regulation of public drinking water. Any report required to be submitted in this chapter to the executive director must be submitted to the Texas Commission on Environmental Quality, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087.

(65) Public health engineering practices--Requirements in this subchapter or guidelines promulgated by the executive director.

(66) Public water system--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. This term includes; any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.

(67) Quality Control Release Value (QCRV)--A minimum quality standard of a non-destructive performance test (NDPT) established by the manufacturer for membrane module production that ensures that the module will attain the targeted log removal value (LRV) demonstrated during challenge testing.

(68) Reactor Validation Testing--A process by which a full-scale UV reactor's disinfection performance is determined relative to operating parameters that can be monitored. These parameters include flow rate, UV intensity as measured by a UV sensor and the UV lamp status.

(69) Resolution--The size of the smallest integrity breach that contributes to a response from a direct integrity test in membranes used to treat surface water or groundwater under the direct influence of surface water.

(70) Sanitary control easement--A legally binding document securing all land, within 150 feet of a public water supply well location, from pollution hazards. This document must fully describe the location of the well and surrounding lands and must be filed in the county records to be legally binding.

(71) Sanitary survey--An onsite review of the water source, facilities, equipment, operation and maintenance of a public water system, for the purpose of evaluating the adequacy for producing and distributing safe drinking water.

(72) Sensitivity--The maximum log removal value (LRV) that can be reliably verified by a direct integrity test in membranes used to treat surface water or groundwater under the direct influence of surface water; also applies to some continuous indirect integrity monitoring methods.

(73) Service line--A pipe connecting the utility service provider's main and the water meter, or for wastewater, connecting the main and the point at which the customer's service line is connected, generally at the customer's property line.

(74) Service pump--Any pump that takes treated water from storage and discharges to the distribution system.

(75) Transfer pump--Any pump which conveys water from one point to another within the treatment process or which conveys water to storage facilities prior to distribution.

(76) Transient noncommunity water system--A public water system that is not a community water system and serves at least 25 persons at least 60 days out of the year, yet by its characteristics, does not meet the definition of a nontransient noncommunity water system.

(77) Wastewater lateral--Any pipe or constructed conveyance carrying wastewater, running laterally down a street, alley, or easement, and receiving flow only from the abutting properties.

(78) Wastewater main--Any pipe or constructed conveyance which receives flow from one or more wastewater laterals.

§290.39. General Provisions.

(a) Authority for requirements. Texas Health and Safety Code (THSC), Chapter 341, Subchapter C prescribes the duties of the commission relating to the regulation and control of public drinking water systems in the state. The statute requires that the commission ensure that public water systems: supply safe drinking water in adequate quantities, are financially stable and technically sound, promote use of regional and area-wide drinking water systems, and review completed

plans and specifications and business plans for all contemplated public water systems not exempted by THSC, §341.035(d). The statute also requires the commission be notified of any subsequent material changes, improvements, additions, or alterations in existing systems and, consider compliance history in approving new or modified public water systems. Texas Water Code (TWC), Chapter 13, Subchapter E, §13.1395, prescribes the duties of the commission relating to standards for emergency operations of affected utilities. The statute requires that the commission ensure that affected utilities provide water service as soon as safe and practicable during an extended power outage following the occurrence of a natural disaster.

(b) Reason for this subchapter and minimum criteria. This subchapter has been adopted to ensure regionalization and area-wide options are fully considered, the inclusion of all data essential for comprehensive consideration of the contemplated project, or improvements, additions, alterations, or changes thereto and to establish minimum standardized public health design criteria in compliance with existing state statutes and in accordance with good public health engineering practices. In addition, minimum acceptable financial, managerial, technical, and operating practices must be specified to ensure that facilities are properly operated to produce and distribute [~~a~~] safe, potable water.

(c) Required actions and approvals prior to construction. A person may not begin construction of a public drinking water supply system unless the executive director determines the following requirements have been satisfied and approves construction of the proposed system.

(1) A person proposing to install a public drinking water system within the extraterritorial jurisdiction of a municipality; or within 1/2-mile of the corporate boundaries of a district, or other political subdivision providing the same service; or within 1/2-mile of a certificated service area boundary of any other water service provider shall provide to the executive director evidence that:

(A) written application for service was made to that provider; and

(B) all application requirements of the service provider were satisfied, including the payment of related fees.

(2) A person may submit a request for an exception to the requirements of paragraph (1) of this subsection if the application fees will create a hardship on the person. The request must be accompanied by evidence documenting the financial hardship.

(3) A person who is not required to complete the steps in paragraph (1) of this subsection, or who completes the steps in paragraph (1) of this subsection and is denied service or determines that the existing provider's cost estimate is not feasible for the development to be served, shall submit to the executive director:

(A) plans and specifications for the system; and

(B) a business plan for the system.

(4) Emergency Preparedness Plan for Public Water Systems that are Affected Utilities.

(A) Each public water system that is also an affected utility, as defined by §290.38(1) of this title (relating to Definitions), is required to submit to the executive director, receive approval for, and adopt an emergency preparedness plan in accordance with §290.45 of this title (relating to Minimum Water System Capacity Requirements) using either the template in Appendix J of §290.47 of this title (relating to Appendices) or another emergency preparedness plan that meets the requirements of this section. Emergency preparedness plans are required to be prepared under the direction of a licensed professional engineer when an affected utility has been granted or is requesting an alternative capacity requirement in accordance with §290.45(g) of this title, or is requesting to meet the requirements of TWC, §13.1395, as an alternative to any rule requiring elevated storage, or as determined by the executive director on a case by case basis.

(B) Each affected utility that supplies, provides, or conveys surface water to wholesale customers shall include in its emergency preparedness plan under subparagraph (A) of this paragraph provision for the actual installation and maintenance of automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers.

(C) The executive director shall review an emergency preparedness plan submitted under subparagraph (A) of this paragraph. If the executive director determines that the plan is not acceptable, the executive director shall recommend changes to the plan. The executive director must make its recommendations on or before the 90th day after the executive director receives the plan. In accordance with commission rules, an emergency preparedness plan must include one of the options listed in §290.45(h)(1)(A) - (H) of this title.

(D) Each affected utility shall install any required equipment to implement the emergency preparedness plan approved by the executive director immediately upon operation.

(E) The executive director may grant a waiver of the requirements for emergency preparedness plans to an affected utility if the executive director determines that compliance with this section will cause a significant financial burden on customers of the affected utility. The affected utility shall submit financial, managerial, and technical information as requested by the executive director to demonstrate the financial burden.

(d) Submission of plans.

(1) Plans, specifications, and related documents will not be considered unless they have been prepared under the direction of a licensed professional engineer. All engineering documents must have engineering seals, signatures, and dates affixed in accordance with the rules of the Texas Board of Professional Engineers.

(2) Detailed plans must be submitted for examination at least 30 days prior to the time that approval, comments or recommendations are desired. From this, it is not to be inferred that final action will be forthcoming within the time mentioned.

(3) The limits of approval are as follows.

(A) The commission's public drinking water program furnishes consultation services as a reviewing body only, and its licensed professional engineers may neither act as design engineers nor furnish detailed estimates.

(B) The commission's public drinking water program does not examine plans and specifications in regard to the structural features of design, such as strength of concrete or adequacy of reinforcing. Only the features covered by this subchapter will be reviewed.

(C) The consulting engineer and/or owner must provide surveillance adequate to assure that facilities will be constructed according to approved plans and must notify the executive director in writing upon completion of all work. Planning materials shall be submitted to the Texas Commission on Environmental Quality, Water Supply Division, MC 153, P.O. Box 13087, Austin, Texas 78711-3087.

(e) Submission of planning material. In general, the planning material submitted shall conform to the following requirements.

(1) Engineering reports are required for new water systems and all surface water treatment plants. Engineering reports are also required when design or capacity deficiencies are identified in an existing system. The engineering report shall include, at least, coverage of the following items:

(A) statement of the problem or problems;

(B) present and future areas to be served, with population data;

(C) the source, with quantity and quality of water available;

(D) present and estimated future maximum and minimum water quantity demands;

(E) description of proposed site and surroundings for the water works facilities;

(F) type of treatment, equipment, and capacity of facilities;

(G) basic design data, including pumping capacities, water storage and flexibility of system operation under normal and emergency conditions; and

(H) the adequacy of the facilities with regard to delivery capacity and pressure throughout the system.

(2) All plans and drawings submitted may be printed on any of the various papers which give distinct lines. All prints must be clear, legible and assembled to facilitate review.

(A) The relative location of all facilities which are pertinent to the specific project shall be shown.

(B) The location of all abandoned or inactive wells within 1/4-mile of a proposed well site shall be shown or reported.

(C) If staged construction is anticipated, the overall plan shall be presented, even though a portion of the construction may be deferred.

(D) A general map or plan of the municipality, water district, or area to be served shall accompany each proposal for a new water supply system.

(3) Specifications for construction of facilities shall accompany all plans. If a process or equipment which may be subject to probationary acceptance because of limited application or use in Texas is proposed, the executive director may give limited approval. In such a case, the owner must be given a bonded guarantee from the manufacturer covering acceptable performance. The specifications shall include a statement that such a bonded guarantee will be provided to the owner and shall also specify those conditions under which the bond will be forfeited. Such a bond will be transferable. The bond shall be retained by the owner and transferred when a change in ownership occurs.

(4) A copy of each fully executed sanitary control easement and any other documentation demonstrating compliance with §290.41(c)(1)(F) of this title (relating to Water Sources) shall be provided to the executive director prior to placing the well into service. Each original easement document, if obtained, must be recorded in the deed records at the county courthouse. Section 290.47(c) of this title includes a suggested form.

(5) Construction features and siting of all facilities for new water systems and for major improvements to existing water systems must be in conformity with applicable commission rules.

(f) Submission of business plans. The prospective owner of the system or the person responsible for managing and operating the system must submit a business plan to the executive director that demonstrates that the owner or operator of the system has available the financial, managerial, and technical capability to ensure future operation of the system in accordance with applicable laws and rules. The executive director may order the prospective owner or operator to demonstrate financial assurance to operate the system in accordance with applicable laws and rules as specified in Chapter 37, Subchapter O of this title (relating to Financial Assurance for Public Drinking Water Systems and Utilities), or as specified by commission rule, unless the executive director finds that the business plan demonstrates adequate financial capability. A business plan shall include the information and be presented in a format prescribed by the executive director. For community water systems, the business plan shall contain, at a minimum, the following elements:

(1) description of areas and population to be served by the potential system;

(2) description of drinking water supply systems within a two-mile radius of the proposed system, copies of written requests seeking to obtain service from each of those drinking water supply systems, and copies of the responses to the written requests;

(3) time line for construction of the system and commencement of operations;

(4) identification of and costs of alternative sources of supply;

(5) selection of the alternative to be used and the basis for that selection;

(6) identification of the person or entity which owns or will own the drinking water system and any identifiable future owners of the drinking water system;

(7) identification of any other businesses and public drinking water system(s) owned or operated by the applicant, owner(s), parent organization, and affiliated organization(s);

(8) an operations and maintenance plan which includes sufficient detail to support the budget estimate for operation and maintenance of the facilities;

(9) assurances that the commitments and resources needed for proper operation and maintenance of the system are, and will continue to be, available, including the qualifications of the organization and each individual associated with the proposed system;

(10) for retail public utilities as defined by TWC, §13.002:

(A) projected rate revenue from residential, commercial, and industrial customers; and

(B) pro forma income, expense, and cash flow statements;

(11) identification of any appropriate financial assurance, including those being offered to capital providers;

(12) a notarized statement signed by the owner or responsible person that the business plan has been prepared under his direction and that he is responsible for the accuracy of the information; and

(13) other information required by the executive director to determine the adequacy of the business plan or financial assurance.

(g) Business plans not required. A person is not required to file a business plan if the person:

(1) is a county;

(2) is a retail public utility as defined by TWC, §13.002, unless that person is a utility as defined by that section;

(3) has executed an agreement with a political subdivision to transfer the ownership and operation of the water supply system to the political subdivision; or

(4) is a noncommunity nontransient water system and the person has demonstrated financial assurance under THSC, Chapter 361 or 382 or TWC, Chapter 26.

(h) Beginning and completion of work.

(1) No person may begin construction on a new public water system before receiving written approval of plans and specifications and, if required, approval of a business plan from the executive director. No person may begin construction of modifications to a public water system without providing notification to the executive director and submitting and receiving approval of plans and specifications if requested in accordance with subsection (j) of this section.

(2) The executive director shall be notified in writing by the design engineer or the owner before construction is started.

(3) Upon completion of the water works project, the engineer or owner shall notify the executive director in writing as to its completion and attest to the fact that the completed work is substantially in accordance with the plans and change orders on file with the commission.

(i) Changes in plans and specifications. Any addenda or change orders which may involve a health hazard or relocation of facilities, such as wells, treatment units, and storage tanks, shall be submitted to the executive director for review and approval.

(j) Changes in existing systems or supplies. Public water systems shall notify the executive director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities. Public water systems shall submit plans and specifications for the proposed changes upon request. Changes to an existing disinfection process at a treatment plant that treats surface water or groundwater that is under the direct influence of surface water shall not be instituted without the prior approval of the executive director. Any long-term change in water treatment that will impact the corrosivity shall not be instituted without the prior approval of the executive director.

(1) The following changes are considered to be significant:

(A) proposed changes to existing systems which result in an increase or decrease in production, treatment, storage, or pressure maintenance capacity;

(B) proposed changes to the disinfection process used at plants that treat surface water or groundwater that is under the direct influence of surface water including changes involving the disinfectants used, the disinfectant application points, or the disinfectant monitoring points;

(C) proposed changes to the type of disinfectant used to maintain a disinfectant residual in the distribution system;

(D) proposed changes in existing distribution systems when the change is greater than 10% of the existing distribution capacity or 250 connections, whichever is smaller, or results in the water system's inability to comply with any of the applicable capacity requirements of §290.45 of this title;

(E) proposed replacement or change of membranes modules; [~~and~~]

(F) any other material changes specified by the executive director; and[~~.~~]

(G) examples of long-term treatment changes that could impact the corrosivity of the water include the addition of a new treatment process or modification of an existing treatment process. Examples of modifications include switching secondary disinfectants, switching coagulants, and switching corrosion inhibitor products. Long-term changes can include dose changes to existing chemicals if the system is planning long-term changes to its finished water pH or residual inhibitor concentration. Long-term treatment changes would not include chemical dose fluctuations associated with daily raw water quality changes. Public water systems must notify the executive director of the addition of any lead-containing or copper containing material, in writing within 60 days of becoming aware of its presence.

(2) The executive director shall determine whether engineering plans and specifications will be required after reviewing the initial notification regarding the nature and extent of the modifications.

(A) Upon request of the executive director, the water system shall submit plans and specifications in accordance with the requirements of subsection (d) of this section.

(B) Unless plans and specifications are required by Chapter 293 of this title (relating to Water Districts), the executive director will not require another state agency or a political subdivision to submit planning material on distribution line improvements if the entity has its own internal review staff and complies with all of the following criteria:

(i) the internal review staff includes one or more licensed professional engineers that are employed by the political subdivision and must be separate from, and not subject to the review or supervision of, the engineering staff or firm charged with the design of the distribution extension under review;

(ii) a licensed professional engineer on the internal review staff determines and certifies in writing that the proposed distribution system changes comply with the requirements of §290.44 of this title (relating to Water Distribution) and will not result in a violation of any provision of §290.45 of this title;

(iii) the state agency or political subdivision includes a copy of the written certification described in this subparagraph with the initial notice that is submitted to the executive director.

(C) Unless plans and specifications are required by Chapter 293 of this title, the executive director will not require planning material on distribution line improvements from any public water system that is required to submit planning material to another state agency or political subdivision that complies with the requirements of subparagraph (B) of this paragraph. The notice to the executive director must include a statement that a state statute or local ordinance requires the planning materials to be submitted to the other state agency or political subdivision and a copy of the written certification that is required in subparagraph (B) of this paragraph.

(3) If a certificate of convenience and necessity (CCN) is required or must be amended, the CCN application must be included with the notice to the executive director.

(k) Planning material acceptance. Planning material for improvements to an existing system which does not meet the requirements of all sections of this subchapter will not be considered unless the necessary modifications for correcting the deficiencies are included in the proposed improvements, or unless the executive director determines that reasonable progress is being made toward correcting the deficiencies and no immediate health hazard will be caused by the delay.

(l) Exceptions. Requests for exceptions to one or more of the requirements in this subchapter shall be considered on an individual basis. Any water system which requests an exception must demonstrate to the satisfaction of the executive director that the exception will not compromise the public health or result in a degradation of service or water quality.

(1) The exception must be requested in writing and must be substantiated by carefully documented data. The request for an exception shall precede the submission of engineering plans and specifications for a proposed project for which an exception is being requested.

(2) Any exception granted by the commission is subject to revocation.

(3) Any request for an exception which is not approved by the commission in writing is denied.

(4) The executive director may establish site specific design, operation, maintenance, and reporting requirements for systems that have been issued an exception to the subchapter.

(m) Notification of system startup or reactivation. The owner or responsible official must provide written notification to the commission of the startup of a new public water supply system or reactivation of an existing public water supply system. This notification must be made immediately upon meeting the definition of a public water system as defined in §290.38 of this title.

(n) The commission may require the owner or operator of a public drinking water supply system that was constructed without the approval required by THSC, §341.035, that has a history of noncompliance with THSC, Chapter 341, Subchapter C or commission rules, or that is subject to a commission enforcement action to take the following action:

(1) provide the executive director with a business plan that demonstrates that the system has available the financial, managerial, and technical resources adequate to ensure future operation of the system in accordance with applicable laws and rules. The business plan must fulfill all the requirements for a business plan as set forth in subsection (f) of this section;

(2) provide adequate financial assurance of the ability to operate the system in accordance with applicable laws and rules. The executive director will set the amount of the financial assurance, after the business plan has been reviewed and approved by the executive director.

(A) The amount of the financial assurance will equal the difference between the amount of projected system revenues and the projected cash needs for the period of time prescribed by the executive director.

(B) The form of the financial assurance will be as specified in Chapter 37, Subchapter O of this title and will be as specified by the executive director.

(C) If the executive director relies on rate increases or customer surcharges as the form of financial assurance, such funds shall be deposited in an escrow account as specified in Chapter 37, Subchapter O of this title and released only with the approval of the executive director.

(o) Emergency Preparedness Plans for Affected Utilities.

(1) Each public water system that is also an affected utility and that exists as of December 1, 2009 is required to adopt and submit to the executive director an emergency preparedness plan in accordance with §290.45 of this title and using the template in Appendix J of §290.47 of this title or another emergency preparedness plan that meets the requirements of this subchapter no later than March 1, 2010. Emergency preparedness plans are required to be prepared under the direction of a licensed professional engineer when an affected utility has been granted or is requesting an alternative capacity requirement in accordance with §290.45(g) of this title, or is requesting to meet the requirements of TWC, §13.1395, as an alternative to any rule requiring elevated storage, or as determined by the executive director on a case by case basis.

(2) Each affected utility that supplies, provides, or conveys surface water to wholesale customers shall include in its emergency preparedness plan under this subsection provisions for the actual installation and maintenance of automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers.

(3) The executive director shall review an emergency preparedness plan submitted under this subsection. If the executive director determines that the plan is not acceptable, the executive director shall recommend changes to the plan. The executive director must make its recommendations on or before the 90th day after the executive director receives the plan. In accordance with the commission rules, an emergency preparedness plan must include one of the options listed in §290.45(h)(1)(A) - (H) of this title.

(4) Not later than July 1, 2010, each affected utility shall implement the emergency preparedness plan approved by the executive director.

(5) An affected utility may file with the executive director a written request for an extension not to exceed 90 days, of the date by which the affected utility is required under this subsection to submit the affected utility's emergency preparedness plan or of the date by which the affected utility is required under this subsection to implement the affected utility's emergency preparedness plan. The executive director may approve the requested extension for good cause shown.

(6) The executive director may grant a waiver of the requirements for emergency preparedness plans to an affected utility if the executive director determines that compliance with this section will cause a significant financial burden on customers of the affected utility. The affected utility shall submit financial, managerial, and technical information as requested by the executive director to demonstrate the financial burden.

§290.41. Water Sources.

(a) Water quality. The quality of water to be supplied must meet the quality criteria prescribed by the commission's drinking water standards contained in Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems).

(b) Water quantity. Sources of supply, both ground and surface, shall have a safe yield capable of supplying the maximum daily demands of the distribution system during extended periods of peak usage and critical hydrologic conditions. The pipelines and pumping capacities to treatment plants or distribution systems shall be adequate for such water delivery. Minimum capacities required are specified in §290.45 of this title (relating to Minimum Water System Capacity Requirements).

(c) Groundwater sources and development.

(1) Groundwater sources shall be located so that there will be no danger of pollution from flooding or from unsanitary surroundings, such as privies, sewage, sewage treatment plants, livestock and animal pens, solid waste disposal sites or underground petroleum and

chemical storage tanks and liquid transmission pipelines, or abandoned and improperly sealed wells.

(A) No well site which is within 50 feet of a tile or concrete sanitary sewer, sewerage appurtenance, septic tank, storm sewer, or cemetery; or which is within 150 feet of a septic tank perforated drainfield, areas irrigated by low dosage, low angle spray on-site sewage facilities, absorption bed, evapotranspiration bed, improperly constructed water well, or underground petroleum and chemical storage tank or liquid transmission pipeline will be acceptable for use as a public drinking water supply. Sanitary or storm sewers constructed of ductile iron or polyvinyl chloride (PVC) pipe meeting American Water Works Association (AWWA) standards, having a minimum working pressure of 150 pounds per square inch (psi) or greater, and equipped with pressure type joints may be located at distances of less than 50 feet from a proposed well site, but in no case shall the distance be less than ten feet.

(B) No well site shall be located within 500 feet of a sewage treatment plant or within 300 feet of a sewage wet well, sewage pumping station, or a drainage ditch which contains industrial waste discharges or the wastes from sewage treatment systems.

(C) No water wells shall be located within 500 feet of animal feed lots, solid waste disposal sites, lands on which sewage plant or septic tank sludge is applied, or lands irrigated by sewage plant effluent.

(D) Livestock in pastures shall not be allowed within 50 feet of water supply wells.

(E) All known abandoned or inoperative wells (unused wells that have not been plugged) within 1/4-mile of a proposed well site shall be reported to the commission along with existing or potential pollution hazards. These reports are required for community and nontransient, noncommunity groundwater sources. Examples of existing or potential pollution hazards which may affect groundwater quality include, but are not limited to: landfill and dump sites, animal feedlots, military facilities, industrial facilities, wood-treatment facilities, liquid petroleum and petrochemical production, storage, and transmission facilities, Class 1, 2, 3, and 4 injection wells, and pesticide storage and mixing facilities. This information must be submitted prior to construction or as required by the executive director.

(F) A sanitary control easement or sanitary control easements covering land within 150 feet of the well, or executive director approval for a substitute authorized by this subsection, shall be obtained.

(i) The sanitary control easement(s) secured shall provide that none of the pollution hazards covered in subparagraphs (A) - (E) of this paragraph, or any facilities that might create a danger of pollution to the water to be produced from the well, will be located thereon.

(ii) For the purpose of a sanitary control easement, an improperly constructed water well is one which fails to meet the surface and subsurface construction standards for public water supply wells. Residential type wells within a sanitary control easement must be constructed to public water well standards.

(iii) A copy of the recorded sanitary control easement(s) shall be included with plans and specifications submitted to the executive director for review.

(iv) With the approval of the executive director, the public water system may submit any of the following as a substitute for obtaining, recording, and submitting a copy of the recorded sanitary control easement(s) covering land within 150 feet of the well:

(I) a copy of the recorded deed and map demonstrating that the public water system owns all real property within 150 feet of the well;

(II) a copy of the recorded deed and map demonstrating that the public water system owns a portion of real property within 150 feet of the well, and a copy of the sanitary control easement(s) that the public water system has obtained, recorded, and submitted to the executive director applicable to the remaining portion of real property within 150 feet of the well not owned by the public water system; or

(III) for a political subdivision, a copy of an ordinance or land use restriction adopted and enforced by the political subdivision which provides an equivalent or higher level of sanitary protection to the well as a sanitary control easement.

(v) If the executive director approves a sanitary control easement substitute identified in clause (iv)(I) or (iv)(II) of this subparagraph for a public water system and the public water system conveys the property it owns within 150 feet of the well to another person or persons, the public water system must at that time obtain, record, and submit to the executive director a copy of the recorded sanitary control easement(s) applicable to the conveyed portion of the property within 150 feet of the well, unless the executive director approves a substitute identified in clause (iv) of this subparagraph.

(2) The premises, materials, tools, and drilling equipment shall be maintained so as to minimize contamination of the groundwater during drilling operation.

(A) Water used in any drilling operation shall be of safe sanitary quality. Water used in the mixing of drilling fluids or mud shall contain a chlorine residual of at least 0.5 milligrams per liter (mg/L).

(B) The slush pit shall be constructed and maintained so as to minimize contamination of the drilling mud.

(C) No temporary toilet facilities shall be maintained within 150 feet of the well being constructed unless they are of a sealed, leakproof type.

(3) The construction, disinfection, protection, and testing of a well to be used as a public water supply source must meet the following conditions.

(A) Before placing the well into service, a public water system shall furnish a copy of the well completion data, which includes the following items: the Driller's Log (geological log and material setting report); a cementing certificate; the results of a 36-hour pump test; the results of the microbiological and chemical analyses required by subparagraphs (F) and (G) of this paragraph; a legible copy of the recorded deed or deeds for all real property within 150 feet of the well; a legible copy of the sanitary control easement(s) or other documentation demonstrating compliance with paragraph (1)(F) of this subsection; an original or legible copy of a United States Geological Survey 7.5-minute topographic quadrangle showing the accurate well location to the executive director; and a map demonstrating the well location in relation to surrounding property boundaries. All the documents listed in this paragraph must be approved by the executive director before final approval is granted for the use of the well.

(B) The casing material used in the construction of wells for public use shall be new carbon steel, high-strength low-alloy steel, stainless steel or plastic. The material shall conform to AWWA standards. The casing shall extend a minimum of 18 inches above the elevation of the finished floor of the pump room or natural ground surface and a minimum of one inch above the sealing block or pump motor foundation block when provided. The casing shall extend at

least to the depth of the shallowest water formation to be developed and deeper, if necessary, in order to eliminate all undesirable water-bearing strata. Well construction materials containing more than 8.0% lead are prohibited.

(C) The space between the casing and drill hole shall be sealed by using enough cement under pressure to completely fill and seal the annular space between the casing and the drill hole. The well casing shall be cemented in this manner from the top of the shallowest formation to be developed to the earth's surface. The driller shall utilize a pressure cementation method in accordance with the AWWA Standard for Water Wells (A100-06), Appendix C: Section C.2 (Positive Displacement Exterior Method); Section C.3 (Interior Method Without Plug); Section C.4 (Positive Placement, Interior Method, Drillable Plug); and Section C.5 (Placement Through Float Shoe Attached to Bottom of Casing). Cementation methods other than those listed in this subparagraph may be used on a site-specific basis with the prior written approval of the executive director. A cement bonding log, as well as any other documentation deemed necessary, may be required by the executive director to assure complete sealing of the annular space.

(D) When a gravel packed well is constructed, all gravel shall be of selected and graded quality and shall be thoroughly disinfected with a 50 mg/L chlorine solution as it is added to the well cavity.

(E) Safeguards shall be taken to prevent possible contamination of the water or damage by trespassers following the completion of the well and prior to installation of permanent pumping equipment.

(F) Upon well completion, or after an existing well has been reworked, the well shall be disinfected in accordance with current AWWA standards for well disinfection except that the disinfectant shall remain in the well for at least six hours.

(i) Before placing the well in service, the water containing the disinfectant shall be flushed from the well and then samples of water shall be collected and submitted for microbiological analysis until three successive daily raw water samples are free of coliform organisms. The analysis of these samples must be conducted by a laboratory accredited by the Texas Commission on Environmental Quality [~~approved by the Department of State Health Services~~].

(ii) Appropriate facilities for treatment of the water shall be provided where a satisfactory microbiological record cannot be established after repeated disinfection. The extent of water treatment required will be determined on the basis of geological data, well construction features, nearby sources of contamination and, perhaps, on the basis of quantitative microbiological analyses.

(G) A complete physical and chemical analysis of the water produced from a new well shall be made after 36 hours of continuous pumping at the design withdrawal rate. Shorter pump test periods can be accepted for large capacity wells producing from areas of known groundwater production and quality so as to prevent wasting of water. Samples must be submitted to an accredited [~~a certified~~] laboratory for chemical analyses. Tentative approval may be given on the basis of tests performed by in-plant or private laboratories, but final acceptance by the commission shall be on the basis of results from the accredited [~~certified~~] laboratory. Appropriate treatment shall be provided if the analyses reveal that the water from the well fails to meet the water quality criteria as prescribed by the drinking water standards. These criteria include turbidity, color and threshold odor limitations, and excessive hydrogen sulfide, carbon dioxide, or other constituents or minerals which make the water undesirable or unsuited for domestic use. Additional chemical and microbiological tests may be required after the executive director conducts a vulnerability assessment of the well.

(H) Below ground-level pump rooms and pump pits will not be allowed in connection with water supply installations.

(I) The well site shall be fine graded so that the site is free from depressions, reverse grades, or areas too rough for proper ground maintenance so as to ensure that surface water will drain away from the well. In all cases, arrangements shall be made to convey well pump drainage, packing gland leakage, and floor drainage away from the wellhead. Suitable drain pipes located at the outer edge of the concrete floor shall be provided to collect this water and prevent its ponding or collecting around the wellhead. This wastewater shall be disposed of in a manner that will not cause any nuisance from mosquito breeding or stagnation. Drains shall not be directly connected to storm or sanitary sewers.

(J) In all cases, a concrete sealing block extending at least three feet from the well casing in all directions, with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inches per foot shall be provided around the wellhead.

(K) Wellheads and pump bases shall be sealed by a gasket or sealing compound and properly vented to prevent the possibility of contaminating the well water. A well casing vent shall be provided with an opening that is covered with 16-mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the well. Wellheads and well vents shall be at least two feet above the highest known watermark or 100-year flood elevation, if available, or adequately protected from possible flood damage by levees.

(L) If a well blow-off line is provided, its discharge shall terminate in a downward direction and at a point which will not be submerged by flood waters.

(M) A suitable sampling cock shall be provided on the discharge pipe of each well pump prior to any treatment.

(N) Flow measuring devices shall be provided for each well to measure production yields and provide for the accumulation of water production data. These devices shall be located to facilitate daily reading.

(O) All completed well units shall be protected by intruder-resistant fences, the gates of which are provided with locks or shall be enclosed in locked, ventilated well houses to exclude possible contamination or damage to the facilities by trespassers. The gates or wellhouses shall be locked during periods of darkness and when the plant is unattended.

(P) An all-weather access road shall be provided to each well site.

(Q) If an air release device is provided on the discharge piping, it shall be installed in such a manner as to preclude the possibility of submergence or possible entrance of contaminants. In this respect, all openings to the atmosphere shall be covered with 16-mesh or finer, corrosion-resistant screening material or an acceptable equivalent.

(4) Pitless units may be desirable in areas subject to vandalism or extended periods of subfreezing weather.

(A) Pitless units shall be shop fabricated from the point of connection with the well casing to the unit cap or cover, be threaded or welded to the well casing, be of watertight construction throughout, and be of materials and weight at least equivalent and compatible to the casing. The units must have a field connection to the lateral discharge from the pitless unit of threaded, flanged, or mechanical joint connection.

(B) The design of the pitless unit shall make provisions for an access to disinfect the well, a properly designed casing vent, a cover at the upper terminal of the well that will prevent the entrance of contamination, a sealed entrance connection for electrical cable, and at least one check valve within the well casing. The unit shall have an inside diameter as great as that of the well casing up to and including casing diameters of 12 inches.

(C) If the connection to the casing is by field weld, the shop-assembled unit must be designed specifically for field welding to the casing. The only field welding permitted will be that needed to connect a pitless unit to the well casing.

(D) With the exception of the fact that the well was constructed using a pitless unit, the well must otherwise meet all of the requirements of paragraph (3) of this subsection.

(d) Springs and other water sources.

(1) Springs and other similar sources of flowing artesian water shall be protected from potential contaminant sources in accordance with the requirements of subsection (c)(1) of this section.

(2) Before placing the spring or similar source into service, completion data similar to that required by subsection (c)(3)(A) of this section must be submitted to the executive director for review and approval to the Texas Commission on Environmental Quality, Water Supply Division, MC 153, P.O. Box 13087, Austin, Texas 78711-3087.

(3) Springs and similar sources shall be constructed in a manner which will preclude the entrance of surface water and debris.

(A) The site shall be fine graded so that it is free from depressions, reverse grades, or areas too rough for proper ground maintenance in order to ensure that surface water will drain away from the source.

(B) The spring or similar source shall be encased in an open-bottomed, watertight basin which intercepts the flowing water below the surface of the ground. The basin shall extend at least 18 inches above ground level. The top of the basin shall also be at least two feet above the highest known watermark or 100-year flood elevation, if available, or adequately protected from possible flood damage by levees.

(C) In all cases, a concrete sealing block shall be provided which extends at least three feet from the encasement in all directions. The sealing block shall be at least six inches thick and be sloped to drain away from the encasement at not less than 0.25 inches per foot.

(D) The top of the encasement shall be provided with a sloped, watertight roof which prevents the ponding of water and precludes the entrance of animals, insects, and other sources of contamination.

(E) The roof of the encasement shall be provided with a hatch that is not less than 30 inches in diameter. The hatch shall have a raised curbing at least four inches in height with a lockable cover that overlaps the curbing at least two inches in a downward direction. Where necessary, a gasket shall be used to make a positive seal when the hatch is closed. All hatches shall remain locked except during inspections and maintenance.

(F) The encasement shall be provided with a gooseneck vent or roof ventilator which is equipped with approved screens to prevent entry of animals, birds, insects, and heavy air contaminants. Screens shall be fabricated of corrosion-resistant material and shall be 16-mesh or finer. Screens shall be securely clamped in place with stainless or galvanized bands or wires.

(G) The encasement shall be provided with an overflow which is designed to prevent the entry of animals, birds, insects, and debris. The discharge opening of the overflow shall be above the surface of the ground and shall not be subject to submergence.

(4) Springs and similar sources must be provided with the appurtenances required by subsection (c)(3)(L) - (Q) of this section.

(5) All systems with new springs or similar sources must monitor microbiological source water quality at the new springs or similar sources in accordance with §290.111 of this title (relating to Surface Water Treatment) on a schedule determined by the executive director. The system must notify the agency of the new spring or similar source prior to construction. The executive director may waive these requirements if the spring or similar source has been determined not to be under the direct influence of surface water.

(e) Surface water sources and development.

(1) To determine the degree of pollution from all sources within the watershed, an evaluation shall be made of the surface water source in the area of diversion and its tributary streams. The area where surface water sources are diverted for drinking water use shall be evaluated and protected from sources of contamination.

(A) Where surface water sources are subject to continuous or intermittent contamination by municipal, agricultural, or industrial wastes and/or treated effluent, the adverse effects of the contamination on the quality of the raw water reaching the treatment plant shall be determined by site evaluations and laboratory procedures.

(B) The disposal of all liquid or solid wastes from any source on the watershed must be in conformity with applicable regulations and state statutes.

(C) Shore installations, marinas, boats and all habitations on the watershed shall be provided with satisfactory sewage disposal facilities. Septic tanks and soil absorption fields, tile or concrete sanitary sewers, sewer manholes, or other approved toilet facilities shall not be located in an area within 75 feet horizontally from the lake water surface at the uncontrolled spillway elevation of the lake or 75 feet horizontally from the 50-year flood elevation, whichever is lower.

(D) Disposal of wastes from boats or any other watercraft shall be in accordance with the Texas Water Code, §§321.1 - 321.18.

(E) Pesticides or herbicides which are used within the watershed shall be applied in strict accordance with the product label restrictions.

(F) Before approval of a new surface water source, the system shall provide the executive director with information regarding specific water quality parameters of the potential source water. These parameters are pH, total coliform, *Escherichia coli*, turbidity, alkalinity, hardness, bromide, total organic carbon, temperature, color, taste and odor, regulated volatile organic compounds, regulated synthetic organic compounds, regulated inorganic compounds, and possible sources of contamination. If data on the incidence of *Giardia* cysts and *Cryptosporidium* oocysts has been collected, the information shall be provided to the executive director. This data shall be provided to the executive director as part of the approval process for a new surface water source.

(G) All systems with new surface water intakes or new bank filtration wells must monitor microbiological source water quality at the new surface water intakes or new bank filtration wells in accordance with §290.111 of this title on a schedule determined by the

executive director. The system must notify the agency of the new surface water intake or bank filtration well prior to construction.

(2) Intakes shall be located and constructed in a manner which will secure raw water of the best quality available from the source.

(A) Intakes shall not be located in areas subject to excessive siltation or in areas subject to receiving immediate runoff from wooded sloughs or swamps.

(B) Raw water intakes shall not be located within 1,000 feet of boat launching ramps, marinas, docks, or floating fishing piers which are accessible by the public.

(C) A restricted zone of 200 feet radius from the raw water intake works shall be established and all recreational activities and trespassing shall be prohibited in this area. Regulations governing this zone shall be in the city ordinances or the rules and regulations promulgated by a water district or similar regulatory agency. The restricted zone shall be designated with signs recounting these restrictions. The signs shall be maintained in plain view of the public and shall be visible from all parts of the restricted area. In addition, special buoys may be required as deemed necessary by the executive director. Provisions shall be made for the strict enforcement of such ordinances or regulations.

(D) Commission staff shall make an on-site evaluation of any proposed raw water intake location. The evaluation must be requested prior to final design and must be supported by preliminary design drawings. Once the final intake location has been selected, the executive director shall be furnished with an original or legible copy of a United States Geological Survey 7.5-minute topographic quadrangle showing the accurate intake location.

(E) Intakes shall be located and constructed in a manner which will allow raw water to be taken from a variety of depths and which will permit withdrawal of water when reservoir levels are very low. Fixed level intakes are acceptable if water quality data is available to establish that the effect on raw water quality will be minimal.

(F) Water intake works shall be provided with screens or grates to minimize the amount of debris entering the plant.

(G) Intakes shall not be located within 500 feet of a sewage treatment plant or lands irrigated with sewage effluent.

(3) The raw water pump station shall be located in a well-drained area and shall be designed to remain in operation during flood events.

(4) An all weather road shall be provided to the raw water pump station.

(5) The raw water pump station and all appurtenances must be installed in a lockable building that is designed to prevent intruder access or enclosed by an intruder-resistant fence with lockable gates.

§290.42. Water Treatment.

(a) Capacity and location.

(1) Based on current acceptable design standards, the total capacity of the public water system's treatment facilities must always be greater than its anticipated maximum daily demand.

(2) The water treatment plant and all pumping units shall be located in well-drained areas not subject to flooding and away from seepage areas or where the groundwater water table is near the surface.

(A) Water treatment plants shall not be located within 500 feet of a sewage treatment plant or lands irrigated with sewage effluent. A minimum distance of 150 feet must be maintained between any septic tank drainfield line and any underground treatment or storage unit. Any sanitary sewers located within 50 feet of any underground treatment or storage unit shall be constructed of ductile iron or polyvinyl chloride (PVC) pipe with a minimum pressure rating of 150 pounds per square inch (psi) and have watertight joints.

(B) Plant site selection shall also take into consideration the need for disposition of all plant wastes in accordance with all applicable regulations and state statutes, including both liquid and solid waste or by-product material from operation and/or maintenance.

(3) Each water treatment plant shall be located at a site that is accessible by an all-weather road.

(b) Groundwater.

(1) Disinfection facilities shall be provided for all groundwater supplies for the purpose of microbiological control and distribution protection and shall be in conformity with applicable disinfection requirements in subsection (e) of this section.

(2) Treatment facilities shall be provided for groundwater if the water does not meet the drinking water standards. The facilities provided shall be in conformance with established and proven methods.

(A) Filters provided for turbidity and microbiological quality control shall be preceded by coagulant addition and shall conform to the requirements of subsection (d)(11) of this section. Filtration rates for iron and manganese removal, regardless of the media or type of filter, shall be based on a maximum rate of five gallons per square foot per minute.

(B) The removal of iron and manganese may not be required if it can be demonstrated that these metals can be sequestered so that the discoloration problems they cause do not exist in the distribution system.

(C) All processes involving exposure of the water to atmospheric contamination shall provide for subsequent disinfection of the water ahead of ground storage tanks. Likewise, all exposure of water to atmospheric contamination shall be accomplished in a manner such that insects, birds, and other foreign materials will be excluded from the water. Aerators and all other such openings shall be screened with 16-mesh or finer corrosion-resistant screen.

(3) Any proposed change in the extent of water treatment required will be determined on the basis of geological data, well construction features, nearby sources of contamination, and on qualitative and quantitative microbiological and chemical analyses.

(4) Appropriate laboratory facilities shall be provided for controls as well as to check the effectiveness of disinfection or any other treatment processes employed.

(5) All plant piping shall be constructed to minimize leakage.

(6) All groundwater systems shall provide sampling taps for raw water, treated water, and at a point representing water entering the distribution system at every entry point.

(7) Air release devices shall be installed in such a manner as to preclude the possibility of submergence or possible entrance of contaminants. In this respect, all openings to the atmosphere shall be covered with 16-mesh or finer corrosion-resistant screening material or an equivalent acceptable to the executive director.

(8) The executive director may require 4-log removal or inactivation of viruses based on raw water sampling results required by §290.116 of this title (relating to Groundwater Corrective Actions and Treatment Techniques).

(c) Springs and other water sources.

(1) Water obtained from springs, infiltration galleries, wells in fissured areas, wells in carbonate rock formations, or wells that do not penetrate an impermeable strata or any other source subject to surface or near surface contamination of recent origin shall be evaluated for the provision of treatment facilities. Minimum treatment shall consist of coagulation with direct filtration and adequate disinfection. In all cases, the treatment process shall be designed to achieve at least a 2-log removal of *Cryptosporidium* oocysts, a 3-log removal or inactivation of *Giardia* cysts, and a 4-log removal or inactivation of viruses before the water is supplied to any consumer. The executive director may require additional levels of treatment in cases of poor source water quality. Based on raw water monitoring results, the executive director may require additional levels of treatment for *Cryptosporidium* treatment as specified in §290.111 of this title (relating to Surface Water Treatment).

(A) Filters provided for turbidity and microbiological quality control shall conform to the requirements of subsection (d)(11) of this section.

(B) All processes involving exposure of the water to atmospheric contamination shall provide for subsequent disinfection of the water ahead of ground storage tanks. Likewise, all exposure of water to atmospheric contamination shall be accomplished in a manner such that insects, birds, and other foreign materials will be excluded from the water. Aerators and all other such openings shall be screened with 16-mesh or finer corrosion-resistant screen.

(2) Any proposed change in the extent of water treatment required will be determined on the basis of geological data, well construction features, nearby sources of contamination, and qualitative and quantitative microbiological and chemical analyses.

(3) Appropriate laboratory facilities shall be provided for controls as well as for checking the effectiveness of disinfection or any other treatment processes employed.

(4) All plant piping shall be constructed to minimize leakage. No cross-connection or interconnection shall be permitted to exist between a conduit carrying potable water and another conduit carrying raw water or water in a prior stage of treatment.

(5) All systems using springs and other water sources shall provide sampling taps for raw water, treated water, and at a point representing water entering the distribution system at every entry point.

(6) Return of the decanted water or sludge to the treatment process shall be adequately controlled so that there will be a minimum of interference with the treatment process and shall conform to the applicable requirements of subsection (d)(3) of this section. Systems that do not comply with the provisions of subsection (d)(3) of this section commit a treatment technique violation and must notify their customers in accordance with the requirements of §290.122(b) of this title (relating to Public Notification [~~Notice~~]).

(7) Air release devices on treated waterlines shall be installed in such a manner as to preclude the possibility of submergence or possible entrance of contaminants. In this respect, all openings to the atmosphere shall be covered with 16-mesh or finer corrosion-resistant screening material or an equivalent acceptable to the executive director.

(d) Surface water.

(1) All water secured from surface sources shall be given complete treatment at a plant which provides facilities for pretreatment disinfection, taste and odor control, continuous coagulation, sedimentation, filtration, covered clearwell storage, and terminal disinfection of the water with chlorine or suitable chlorine compounds. In all cases, the treatment process shall be designed to achieve at least a 2-log removal of *Cryptosporidium* oocysts, a 3-log removal or inactivation of *Giardia* cysts, and a 4-log removal or inactivation of viruses before the water is supplied to any consumer. The executive director may require additional levels of treatment in cases of poor source water quality. Based on raw water monitoring results, the executive director may require additional levels of treatment for *Cryptosporidium* treatment as specified in §290.111 of this title.

(2) All plant piping shall be constructed so as to be thoroughly tight against leakage. No cross-connection or interconnection shall be permitted to exist in a filtration plant between a conduit carrying filtered or post-chlorinated water and another conduit carrying raw water or water in any prior stage of treatment.

(A) Vacuum breakers must be provided on each hose bibb within the plant facility.

(B) No conduit or basin containing raw water or any water in a prior stage of treatment shall be located directly above, or be permitted to have a single common partition wall with another conduit or basin containing finished water.

(C) Make-up water supply lines to chemical feeder solution mixing chambers shall be provided with an air gap or other acceptable backflow prevention device.

(D) Filters shall be located so that common walls will not exist between them and aerators, mixing and sedimentation basins or clearwells. This rule is not strictly applicable, however, to partitions open to view and readily accessible for inspection and repair.

(E) Filter-to-waste connections, if included, shall be provided with an air gap connection to waste.

(F) Air release devices on treated waterlines shall be installed in such a manner as to preclude the possibility of submergence or possible entrance of contaminants. In this respect, all openings to the atmosphere shall be covered with 16-mesh or finer corrosion-resistant screening material or an equivalent acceptable to the executive director.

(3) Return of the decanted water or solids to the treatment process shall be adequately controlled so that there will be a minimum of interference with the treatment process. Systems that do not comply with the provisions of this paragraph commit a treatment technique violation and must notify their customers in accordance with the requirements of §290.122(b) of this title [~~(relating to Public Notice)~~].

(A) Unless the executive director has approved an alternate recycling location, spent backwash water and the liquids from sludge settling lagoons, spent backwash water tanks, sludge thickeners, and similar dewatering facilities shall be returned to the raw waterline upstream of the raw water sample tap and coagulant feed point. The blended recycled liquids shall pass through all of the major unit processes at the plant.

(B) Recycle facilities shall be designed to minimize the magnitude and impact of hydraulic surges that occur during the recycling process.

(C) Solids produced by dewatering facilities such as sludge lagoons, sludge thickeners, centrifuges, mechanical presses, and similar devices shall not be returned to the treatment plant without the prior approval of the executive director.

(4) Reservoirs for pretreatment or selective quality control shall be provided where complete treatment facilities fail to operate satisfactorily at times of maximum turbidities or other abnormal raw

water quality conditions exist. Recreational activities at such reservoirs shall be prohibited.

(5) Flow measuring devices shall be provided to measure the raw water supplied to the plant, the recycled decant water, the treated water used to backwash the filters, and the treated water discharged from the plant. Additional metering devices shall be provided as appropriate to monitor the flow rate through specific treatment processes. Metering devices shall be located to facilitate use and to assist in the determination of chemical dosages, the accumulation of water production data, and the operation of plant facilities.

(6) Chemical storage facilities shall comply with applicable requirements in subsection (f)(1) of this section.

(7) Chemical feed facilities shall comply with the applicable requirements in subsection (f)(2) of this section.

(8) Flash mixing equipment shall be provided.

(A) Plants with a design capacity greater than 3.0 million gallons per day must provide at least one hydraulic mixing unit or at least two sets of mechanical flash mixing equipment designed to operate in parallel. Public water systems with other surface water treatment plants, interconnections with other systems, or wells that can meet the system's average daily demand are exempt from the requirement for redundant mechanical flash mixing equipment.

(B) Flash mixing equipment shall have sufficient flexibility to ensure adequate dispersion and mixing of coagulants and other chemicals under varying raw water characteristics and raw water flow rates.

(9) Flocculation equipment shall be provided.

(A) Plants with a design capacity greater than 3.0 million gallons per day must provide at least two sets of flocculation equipment which are designed to operate in parallel. Public water systems with other surface water treatment plants, interconnections with other systems, or wells that can meet the system's average daily demand are exempt from the requirement for redundant flocculation equipment.

(B) Flocculation facilities shall be designed to provide adequate time and mixing intensity to produce a settleable floc under varying raw water characteristics and raw water flow rates.

(i) Flocculation facilities for straight-flow and up-flow sedimentation basins shall provide a minimum theoretical detention time of at least 20 minutes when operated at their design capacity. Flocculation facilities constructed prior to October 1, 2000 are exempt from this requirement if the settled water turbidity of each sedimentation basin remains below 10.0 nephelometric turbidity unit (NTU) and the treatment plant meets with turbidity requirements of §290.111 of this title [~~(relating to Surface Water Treatment)~~].

(ii) The mixing intensity in multiple-stage flocculators shall decrease as the coagulated water passes from one stage to the next.

(C) Coagulated water or water from flocculators shall flow to sedimentation basins in such a manner as to prevent destruction of floc. Piping, flumes, and troughs shall be designed to provide a flow velocity of 0.5 to 1.5 feet per second. Gates, ports, and valves shall be designed at a maximum flow velocity of 4.0 feet per second in the transfer of water between units.

(10) Clarification facilities shall be provided.

(A) Plants with a design capacity greater than 3.0 million gallons per day must provide at least two sedimentation basins or clarification units which are designed to operate in parallel. Public water systems with other surface water treatment plants, interconnections with other systems, or wells that can meet the system's average daily demand are exempt from the requirement for redundant sedimentation basins or clarification units.

(B) The inlet and outlet of clarification facilities shall be designed to prevent short-circuiting of flow or the destruction of floc.

(C) Clarification facilities shall be designed to remove flocculated particles effectively.

(i) When operated at their design capacity, basins for straight-flow or up-flow sedimentation of coagulated waters shall provide either a theoretical detention time of at least six hours in the flocculation and sedimentation chambers or a maximum surface overflow rate of 0.6 gallons per minute per square foot of surface area in the sedimentation chamber.

(ii) When operated at their design capacity, basins for straight-flow or up-flow sedimentation of softened waters shall provide either a theoretical detention time of at least 4.5 hours in the flocculation and sedimentation chambers or a maximum surface overflow rate of 1.0 gallons per minute per square foot of surface area in the sedimentation chamber.

(iii) When operated at their design capacity, sludge-blanket and solids-recirculation clarifiers shall provide either a theoretical detention time of at least two hours in the flocculation and sedimentation chambers or a maximum surface overflow rate of 1.0 gallons per minute per square foot in the settling chamber.

(iv) A side wall water depth of at least 12 feet shall be provided in clarification basins that are not equipped with mechanical sludge removal facilities.

(v) The effective length of a straight-flow sedimentation basin shall be at least twice its effective width.

(D) Clarification facilities shall be designed to prevent the accumulation of settled solids.

(i) At treatment plants with a single clarification basin, facilities shall be provided to drain the basin within six hours. In the event that the plant site topography is such that gravity draining cannot be realized, a permanently installed electric-powered pump station shall be provided to dewater the basin. Public water systems with other potable water sources that can meet the system's average daily demand are exempt from this requirement.

(ii) Facilities for sludge removal shall be provided by mechanical means or by hopper-bottomed basins with valves capable of complete draining of the units.

(11) Gravity or pressure type filters shall be provided.

(A) The use of pressure filters shall be limited to installations with a treatment capacity of less than 0.50 million gallons per day.

(B) Filtration facilities shall be designed to operate at filtration rates which assure effective filtration at all times.

(i) The design capacity of gravity rapid sand filters shall not exceed a maximum filtration rate of 2.0 gallons per square foot per minute. At the beginning of filter runs for declining rate filters, a maximum filtration rate of 3.0 gallons per square foot per minute is allowed.

(ii) Where high-rate gravity filters are used, the design capacity shall not exceed a maximum filtration rate of 5.0 gallons per square foot per minute. At the beginning of filter runs for declining

rate filters, a maximum filtration rate of 6.5 gallons per square foot per minute is allowed.

(iii) The design capacity of pressure filters shall not exceed a maximum filtration rate of 2.0 gallons per square foot per minute with the largest filter off-line.

(iv) Except as provided in clause (vi) of this subparagraph, any surface water treatment plant that provides, or is being designed to provide, less than 7.5 million gallons per day must be able to meet either the maximum daily demand or the minimum required 0.6 gallons per minute per connection, whichever is larger, with all filters on-line.

(v) Any surface water treatment plant that provides, or is being designed to provide, 7.5 million gallons per day or more must be able to meet either the maximum daily demand or the minimum required 0.6 gallons per minute per connection, whichever is larger, with the largest filter off-line.

(vi) Any surface water treatment plant that uses pressure filters must be able to meet either the maximum daily demand or the minimum required 0.6 gallons per minute per connection, whichever is larger, with the largest filter off-line.

(C) The depth and condition of the media and support material shall be sufficient to provide effective filtration.

(i) The filtering material shall conform to American Water Works Association (AWWA) standards and be free from clay, dirt, organic matter, and other impurities.

(ii) The grain size distribution of the filtering material shall be as prescribed by AWWA standards.

(iii) The depth of filter sand, anthracite, granular activated carbon, or other filtering materials shall be 24 inches or greater and provide an L/d ratio of at least 1,000.

(I) Rapid sand filters typically contain a minimum of eight inches of fine sand with an effective size of 0.35 to 0.45 millimeter (mm), eight inches of medium sand with an effective size of 0.45 to 0.55 mm, and eight inches of coarse sand with an effective size of 0.55 to 0.65 mm. The uniformity coefficient of each size range should not exceed 1.6.

(II) High-rate dual media filters typically contain a minimum of 12 inches of sand with an effective size of 0.45 to 0.55 mm and 24 inches of anthracite with an effective size of 0.9 to 1.1 mm. The uniformity coefficient of each material should not exceed 1.6.

(III) High-rate multi-media filters typically contain a minimum of three inches of garnet media with an effective size of 0.2 to 0.3 mm, nine inches of sand with an effective size of 0.5 to 0.6 mm, and 24 inches of anthracite with an effective size of 0.9 to 1.1 mm. The uniformity coefficient of each size range should not exceed 1.6.

(IV) High-rate mono-media anthracite or granular activated carbon filters typically contain a minimum of 48 inches of anthracite or granular activated carbon with an effective size of 1.0 to 1.2 mm. The uniformity coefficient of each size range should not exceed 1.6.

(iv) Under the filtering material, at least 12 inches of support gravel shall be placed varying in size from 1/16 inch to 2.5 inches. The gravel may be arranged in three to five layers such that each layer contains material about twice the size of the material above it. Other support material may be approved on an individual basis.

(D) The filter shall be provided with facilities to regulate the filtration rate.

(i) With the exception of declining rate filters, each filter unit shall be equipped with a manually adjustable rate-of-flow controller with rate-of-flow indication or flow control valves with indicators.

(ii) Each declining rate filter shall be equipped with a rate-of-flow limiting device or an adjustable flow control valve with a rate-of-flow indicator.

(iii) The effluent line of each filter installed after January 1, 1996, must be equipped with a slow opening valve or another means of automatically preventing flow surges when the filter begins operation.

(E) The filters shall be provided with facilities to monitor the performance of the filter. Monitoring devices shall be designed to provide the ability to measure and record turbidity as required by §290.111 of this title.

(i) Each filter shall be equipped with a sampling tap so that the effluent turbidity of the filter can be individually monitored.

(ii) Each filter operated by a public water system that serves fewer than 10,000 people shall be equipped with an on-line turbidimeter and recorder which will allow the operator to measure and record the turbidity at 15-minute intervals. The executive director may allow combined filter effluent monitoring in lieu of individual filter effluent monitoring under the following conditions:

(I) The public water system has only two filters that were installed prior to October 1, 2000 and were never equipped with individual on-line turbidimeters and recorders; and

(II) The plant is equipped with an on-line turbidimeter and recorder which will allow the operator to measure and record the turbidity level of the combined filter effluent at a location prior to clearwell storage at 15-minute intervals.

(iii) Each filter operated by a public water system that serves at least 10,000 people shall be equipped with an on-line turbidimeter and recorder which will allow the operator to measure and record the turbidity at 15-minute intervals.

(iv) Each filter installed after October 1, 2000 shall be equipped with an on-line turbidimeter and recorder which will allow the operator to determine the turbidity at 15-minute intervals.

(v) Each filter unit that is not equipped with an on-line turbidimeter and recorder shall be equipped with a device to indicate loss of head through the filter. In lieu of loss-of-head indicators, declining rate filter units may be equipped with rate-of-flow indicators.

(F) Filters shall be designed to ensure adequate cleaning during the backwash cycle.

(i) Only filtered water shall be used to backwash the filters. This water may be supplied by elevated wash water tanks, by the effluent of other filters, or by pumps which take suction from the clearwell and are provided for backwashing filters only. For installations having a treatment capacity no greater than 150,000 gallons per day, water for backwashing may be secured directly from the distribution system if proper controls and rate-of-flow limiters are provided.

(ii) The rate of filter backwashing shall be regulated by a rate-of-flow controller or flow control valve.

(iii) The rate of flow of backwash water shall not be less than 20 inches vertical rise per minute (12.5 gallons per minute

per square foot) and usually not more than 35 inches vertical rise per minute (21.8 gallons per minute per square foot).

(iv) The backwash facilities shall be capable of expanding the filtering bed during the backwash cycle.

(I) For facilities equipped with air scour, the backwash facilities shall be capable of expanding the filtering bed at least 15% during the backwash cycle.

(II) For mixed-media filters without air scour, the backwash facilities shall be capable of expanding the filtering bed at least 25% during the backwash cycle.

(III) For mono-media sand filters without air scour, the backwash facilities shall be capable of expanding the filtering bed at least 40% during the backwash cycle.

(v) The filter freeboard in inches shall exceed the wash rate in inches of vertical rise per minute.

(vi) When used, surface filter wash systems shall be installed with an atmospheric vacuum breaker or a reduced pressure principle backflow assembly in the supply line. If an atmospheric vacuum breaker is used it shall be installed in a section of the supply line through which all the water passes and which is located above the overflow level of the filter.

(vii) Gravity filters installed after January 1, 1996 shall be equipped with air scour backwash or surface wash facilities.

(G) Each filter installed after October 1, 2000 shall be equipped with facilities that allow the filter to be completely drained without removing other filters from service.

(12) Pipe galleries shall provide ample working room, good lighting, and good drainage provided by sloping floors, gutters, and sumps. Adequate ventilation to prevent condensation and to provide humidity control is also required.

(13) The identification of influent, effluent, waste backwash, and chemical feed lines shall be accomplished by the use of labels or various colors of paint. Where labels are used, they shall be placed along the pipe at no greater than five-foot intervals. Color coding must be by solid color or banding. If bands are used, they shall be placed along the pipe at no greater than five-foot intervals.

(A) A plant that is built or repainted after October 1, 2000 must use the following color code. The color code to be used in labeling pipes is as follows:
Figure: 30 TAC §290.42(d)(13)(A) (No change.)

(B) A plant that was repainted before October 1, 2000 may use an alternate color code. The alternate color code must provide clear visual distinction between process streams.

(C) The system must maintain clear, current documentation of its color code in a location easily accessed by all personnel.

(14) All surface water treatment plants shall provide sampling taps for raw, settled, individual filter effluent, and clearwell discharge. Additional sampling taps shall be provided as appropriate to monitor specific treatment processes.

(15) An adequately equipped laboratory shall be available locally so that daily microbiological and chemical tests can be conducted.

(A) For plants serving 25,000 persons or more, the local laboratory used to conduct the required daily microbiological analyses must be accredited [~~certified~~] by the executive director to conduct coliform analyses.

(B) For plants serving populations of less than 25,000, the facilities for making microbiological tests may be omitted if the required microbiological samples can be submitted to a laboratory accredited [~~certified~~] by the executive director on a timely basis.

(C) All surface water treatment plants shall be provided with equipment for making at least the following determinations:

(i) pH;

(ii) temperature;

(iii) disinfectant residual;

(iv) alkalinity;

(v) turbidity;

(vi) jar tests for determining the optimum coagulant dose; and

(vii) other tests deemed necessary to monitor specific water quality problems or to evaluate specific water treatment processes.

(D) An amperometric titrator with platinum-platinum electrodes shall be provided at all surface water treatment plants that use chlorine dioxide.

(E) Each surface water treatment plant that uses sludge-blanket clarifiers shall be equipped with facilities to monitor the depth of the sludge blanket.

(F) Each surface water treatment plant that uses solids-recirculation clarifiers shall be equipped with facilities to monitor the solids concentration in the slurry.

(16) Each surface water treatment plant shall be provided with a computer and software for recording performance data, maintaining records, and submitting reports to the executive director. The executive director may allow a water system to locate the computer at a site other than the water treatment plant only if performance data can be reliably transmitted to the remote location on a real-time basis, the plant operator has access to the computer at all times, and performance data is readily accessible to agency staff during routine and special investigations.

(e) Disinfection.

(1) All water obtained from surface sources or groundwater sources that are under the direct influence of surface water must be disinfected in a manner consistent with the requirements of §290.110 of this title (relating to Disinfectant Residuals).

(2) All groundwater must be disinfected prior to distribution. The point of application must be ahead of the water storage tank(s) if storage is provided prior to distribution. Permission to use alternate disinfectant application points must be obtained in writing from the executive director.

(3) Disinfection equipment shall be selected and installed so that continuous and effective disinfection can be secured under all conditions.

(A) Disinfection equipment shall have a capacity at least 50% greater than the highest expected dosage to be applied at any time. It shall be capable of satisfactory operation under every prevailing hydraulic condition.

(B) Automatic proportioning of the disinfectant dosage to the flow rate of the water being treated shall be provided at plants where the treatment rate varies automatically and at all plants where the treatment rate varies more than 50% above or below the average flow.

Manual control shall be permissible at surface water treatment plants or plants treating groundwater under the direct influence of surface water only if an operator is always on hand to make adjustments promptly.

(C) All disinfecting equipment in surface water treatment plants shall include at least one functional standby unit of each capacity for ensuring uninterrupted operation. Common standby units are permissible but, generally, more than one standby unit must be provided because of the differences in feed rates or the physical state in which the disinfectants are being fed (solid, liquid, or gas).

(D) Facilities shall be provided for determining the amount of disinfectant used daily as well as the amount of disinfectant remaining for use.

(E) When used, solutions of calcium hypochlorite shall be prepared in a separate mixing tank and allowed to settle so that only a clear supernatant liquid is transferred to the hypochlorinator container.

(F) Provisions shall be made for both pretreatment disinfection and post-disinfection in all surface water treatment plants. Additional application points shall be installed if they are required to adequately control the quality of the treated water.

(G) The use of disinfectants other than chlorine will be considered on a case-by-case basis under the exception guidelines of §290.39(l) of this title (relating to General Provisions).

(4) Systems that use chlorine gas must ensure that the risks associated with its use are limited as follows.

(A) When chlorine gas is used, a full-face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration (OSHA) standards for construction and operation, and a small bottle of fresh ammonia solution (or approved equal) for testing for chlorine leakage shall be readily accessible outside the chlorinator room and immediately available to the operator in the event of an emergency.

(B) Housing for gas chlorination equipment and cylinders of chlorine shall be in separate buildings or separate rooms with impervious walls or partitions separating all mechanical and electrical equipment from the chlorine facilities. Housing shall be located above ground level as a measure of safety. Equipment and cylinders may be installed on the outside of the buildings when protected from adverse weather conditions and vandalism.

(C) Adequate ventilation, which includes both high level and floor level screened vents, shall be provided for all enclosures in which gas chlorine is being stored or fed. Enclosures containing more than one operating 150-pound cylinder of chlorine shall also provide forced air ventilation which includes: screened and louvered floor level and high level vents; a fan which is located at and draws air in through the top vent and discharges to the outside atmosphere through the floor level vent; and a fan switch located outside the enclosure. Alternately, systems may install negative pressure ventilation as long as the facilities also have gas containment and treatment as prescribed by the current International Fire Code (IFC).

(5) Hypochlorination solution containers and pumps must be housed in a secure enclosure to protect them from adverse weather conditions and vandalism. The solution container top must be completely covered to prevent the entrance of dust, insects, and other contaminants.

(6) Where anhydrous ammonia feed equipment is utilized, it must be housed in a separate enclosure equipped with both high and low level ventilation to the outside atmosphere. The enclosure must be provided with forced air ventilation which includes: screened and louvered floor level and high level vents; a fan which is located at and draws air in through the floor vent and discharges through the top vent; and a fan switch located outside the enclosure. Alternately, systems may install negative pressure ventilation as long as the facilities also have gas containment and treatment as prescribed by the current IFC.

(f) Surface water treatment plant chemical storage and feed facilities.

(1) Chemical storage facilities shall be designed to ensure a reliable supply of chemicals to the feeders, minimize the possibility and impact of accidental spills, and facilitate good housekeeping.

(A) Bulk storage facilities at the plant shall be adequate to store at least a 15-day supply of all chemicals needed to comply with minimum treatment technique and maximum contaminant level (MCL) requirements. The capacity of these bulk storage facilities shall be based on the design capacity of the treatment plant. However, the executive director may require a larger stock of chemicals based on local resupply ability.

(B) Day tanks shall be provided to minimize the possibility of severely overfeeding liquid chemicals. Day tanks will not be required if adequate process control instrumentation and procedures are employed to prevent chemical overfeed incidents.

(C) Every chemical bulk storage facility and day tank shall have a label that identifies the facility's or tank's contents and a device that indicates the amount of chemical remaining in the facility or tank.

(D) Dry chemicals shall be stored off the floor in a dry room that is located above ground and protected against flooding or wetting from floors, walls, and ceilings.

(E) Bulk storage facilities and day tanks must be designed to minimize the possibility of leaks and spills.

(i) The materials used to construct bulk storage and day tanks must be compatible with the chemicals being stored and resistant to corrosion.

(ii) Except as provided in this clause, adequate containment facilities shall be provided for all liquid chemical storage tanks.

(I) Containment facilities for a single container or for multiple interconnected containers must be large enough to hold the maximum amount of chemical that can be stored with a minimum freeboard of six vertical inches or to hold 110% of the total volume of the container(s), whichever is less.

(II) Common containment for multiple containers that are not interconnected must be large enough to hold the volume of the largest container with a minimum freeboard of six vertical inches or to hold 110% of the total volume of the container(s), whichever is less.

(III) The materials used to construct containment structures must be compatible with the chemicals stored in the tanks.

(IV) Incompatible chemicals shall not be stored within the same containment structure.

(V) No containment facilities are required for hypochlorite solution containers that have a capacity of 35 gallons or less.

(VI) On a site-specific basis, the executive director may approve the use of double-walled tanks in lieu of separate containment facilities.

(F) Chemical transfer pumps and control systems must be designed to minimize the possibility of leaks and spills.

(G) Piping, pumps, and valves used for chemical storage and transfer must be compatible with the chemical being fed.

(2) Chemical feed and metering facilities shall be designed so that chemicals shall be applied in a manner which will maximize reliability, facilitate maintenance, and ensure optimal finished water quality.

(A) Each chemical feeder that is needed to comply with a treatment technique or MCL requirement shall have a standby or reserve unit. Common standby feeders are permissible, but generally, more than one standby feeder must be provided due to the incompatibility of chemicals or the state in which they are being fed (solid, liquid, or gas).

(B) Chemical feed equipment shall be sized to provide proper dosage under all operating conditions.

(i) Devices designed for determining the chemical feed rate shall be provided for all chemical feeders.

(ii) The capacity of the chemical feeders shall be such that accurate control of the dosage can be achieved at the full range of feed rates expected to occur at the facility.

(iii) Chemical feeders shall be provided with tanks for chemical dissolution when applicable.

(C) Chemical feeders, valves, and piping must be compatible with the chemical being fed.

(D) Chemical feed systems shall be designed to minimize the possibility of leaks and spills and provide protection against backpressure and siphoning.

(E) If enclosed feed lines are used, they shall be designed and installed so as to prevent clogging and be easily maintained.

(F) Dry chemical feeders shall be located in a separate room that is provided with facilities for dust control.

(G) Coagulant feed systems shall be designed so that coagulants are applied to the water prior to or within the mixing basins or chambers so as to permit their complete mixing with the water.

(i) Coagulant feed points shall be located downstream of the raw water sampling tap.

(ii) Coagulants shall be applied continuously during treatment plant operation.

(H) Chlorine feed units, ammonia feed units, and storage facilities shall be separated by solid, sealed walls.

(I) Chemical application points shall be provided to achieve acceptable finished water quality, adequate taste and odor control, corrosion control, and disinfection

(g) Other treatment processes. Innovative/alternate treatment processes will be considered on an individual basis, in accordance with §290.39(l) of this title. Where innovative/alternate treatment systems are proposed, the licensed professional engineer must provide pilot test data or data collected at similar full-scale operations demonstrating that the system will produce water that meets the requirements of Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems). Pilot test data must be representative of the actual operating conditions which can be expected over the course of the year. The executive director may require a pilot study protocol to be submitted for review and approval prior to conducting a pilot study to verify compliance with the requirements of §290.39(l) of this title and Subchapter F of this chapter [~~(relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems)~~]. The executive director may require proof of a one-year manufacturer's performance warrantee or guarantee assuring that the plant will produce treated water which meets minimum state and federal standards for drinking water quality.

(1) Package-type treatment systems and their components shall be subject to all applicable design criteria in this section.

(2) Bag and cartridge filtration systems or modules installed or replaced after April 1, 2012, and used for microbiological treatment, can receive [~~*Cryptosporidium* and *Giardia* removal credit of~~] up to 3.0-log *Giardia* removal credit, up to 2.0-log *Cryptosporidium* removal credit for individual bag or cartridge filters, and up to 2.5-log *Cryptosporidium* removal credit for bag or cartridge filters operated in series only if the cartridges or bags meet [~~by meeting~~] the criteria in subparagraphs (A) - (C) of this paragraph.

(A) The filter system must treat the entire plant flow.

(B) To be eligible for this credit, systems must receive approval from the executive director based on the results of challenge testing that is conducted according to the criteria established by 40 Code of Federal Regulations (CFR) [~~CFR~~] §141.719 (a) and the executive director.

(i) A factor of safety equal to 1.0-log for individual bag or cartridge filters and 0.5-log for bag or cartridge filters in series must be applied to challenge testing results to determine removal credit.

(ii) Challenge testing must be performed on full-scale bag or cartridge filters, and the associated filter housing or pressure vessel, that are identical in material and construction to the filters and housings the system will use for removal of *Cryptosporidium* and *Giardia.*

(iii) Bag or cartridge filters must be challenge tested in the same configuration that the system will use, either as individual filters or as a series configuration of filters.

(iv) Systems may use results from challenge testing conducted prior to January 5, 2006, if prior testing was consistent with 40 CFR §141.719, submitted by the system's licensed professional engineer, and approved by the executive director.

(v) If a previously tested filter is modified in a manner that could change the removal efficiency of the filter product line, additional challenge testing to demonstrate the removal efficiency of the modified filter must be conducted and results submitted to the executive director for approval.

(C) Pilot studies must be conducted using filters that will meet the requirements of this section.

(3) Membrane filtration systems or modules installed or replaced after April 1, 2012 and used for microbiological treatment, can receive *Cryptosporidium* and *Giardia* removal credit for membrane filtration only if the systems or modules meet the criteria in subparagraphs (A) - (F) of this paragraph.

(A) The membrane module used by the system must undergo challenge testing to evaluate removal efficiency. Challenge testing must be conducted according to the criteria established by 40 CFR §141.719(b)(2) and the executive director.

(i) All membrane module challenge test protocols and results, the protocol for calculating the representative Log Removal Value (LRV) for each membrane module, the removal efficiency, calculated results of $LRV_{C\text{-}Test}$, and the non-destructive performance test with

its Quality Control Release Value (QCRV) must be submitted to the executive director for review and approval prior to beginning a membrane filtration pilot study at a public water system.

(ii) Challenge testing must be conducted on either a full-scale membrane module identical in material and construction to the membrane modules to be used in the system's treatment facility, or a smaller-scale membrane module identical in material and similar in construction to the full-scale module if approved by the executive director.

(iii) Systems may use data from challenge testing conducted prior to January 5, 2006, if prior testing was consistent with 40 CFR §141.719, submitted by the system's licensed professional engineer, and approved by the executive director.

(iv) If a previously tested membrane is modified in a manner that could change the removal efficiency of the membrane product line or the applicability of the non-destructive performance test and associated QCRV, additional challenge testing to demonstrate the removal efficiency of the modified membrane and determine a new QCRV for the modified membrane must be conducted and results submitted to the executive director for approval.

(B) The membrane system must be designed to conduct and record the results of direct integrity testing in a manner that demonstrates a removal efficiency equal to or greater than the removal credit awarded to the membrane filtration system approved by the executive director and meets the requirements in clauses (i) - (ii) of this subparagraph.

(i) The design must provide for direct integrity testing of each membrane unit.

(ii) The design must provide direct integrity testing that has a resolution of 3 micrometers or less.

(iii) The design must provide direct integrity testing with a sensitivity sufficient to verify the log removal credit approved by the executive director. Sensitivity is determined by the criteria in 40 CFR §141.719(b)(3)(iii).

(iv) The executive director may reduce the direct integrity testing requirements for membrane units.

(C) The membrane system must be designed to conduct and record continuous indirect integrity monitoring on each membrane unit. The turbidity of the water produced by each membrane unit must be measured using the Hach FilterTrak Method 10133. The executive director may approve the use of alternative technology to monitor the quality of the water produced by each membrane unit.

(D) The level of removal credit approved by the executive director shall not exceed the lower of:

(i) the removal efficiency demonstrated during challenge testing conducted under the conditions in subparagraph (A) of this paragraph [~~§290.42(g)(3)(A) of this title~~], or

(ii) the maximum removal efficiency that can be verified through direct integrity testing used with the membrane filtration process under the conditions in subparagraph (B) of this paragraph [~~§290.42(g)(3)(B) of this title~~].

(E) Pilot studies must be conducted using membrane modules that will meet the requirements of this section.

(F) Membrane systems must be designed so that membrane units' feed water, filtrate, backwash supply, waste and chemical cleaning piping shall have cross-connection protection to prevent chemicals from all chemical cleaning processes from contaminating other membrane units in other modes of operation. This may be accomplished by the installation of a double block and bleed valving arrangement, a removable spool system or other alternative methods approved by the executive director.

(4) Bag, cartridge or membrane filtration systems or modules installed or replaced before April 1, 2012 and used for microbiological treatment, can receive up to a 2.0-log removal credit for *Cryptosporidium* and up to a 3.0-log removal credit for *Giardia* based on site specific pilot study results, design, operation, and reporting requirements.

(5) Ultraviolet (UV) light reactors used for microbiological inactivation can receive *Cryptosporidium, Giardia* and virus inactivation credit if the reactors meet the criteria in subparagraphs (A) - (C) of this paragraph.

(A) UV light reactors can receive inactivation credit only if they are located after filtration.

(B) In lieu of a pilot study, the UV light reactors must undergo validation testing to determine the operating conditions under which a UV reactor delivers the required UV dose. Validation testing must be conducted according to the criteria established by 40 CFR §141.720(d)(2) and the executive director.

(i) The validation study must include the following factors: UV absorbance of the water; lamp fouling and aging; measurement uncertainty of on-line sensors; UV dose distributions arising from the velocity profiles through the reactor; failure of UV lamps and other critical system components; inlet and outlet piping or channel configuration of the UV reactor; lamp and sensor locations; and other parameters determined by the executive director.

(ii) Validation testing must be conducted on a full-scale reactor that is essentially identical to the UV reactor(s) to be used by the system and using waters that are essentially identical in quality to the water to be treated by the UV reactor.

(C) The UV light reactor systems must be designed to monitor and record parameters to verify the UV reactors operation within the validated conditions approved by the executive director. The UV light reactor must be equipped with facilities to monitor and record UV intensity as measured by a UV sensor, flow rate, lamp status, and other parameters designated by the executive director.

(h) Sanitary facilities for water works installations. Toilet and hand washing facilities provided in accordance with established standards of good public health engineering practices shall be available at all installations requiring frequent visits by operating personnel.

(i) Permits for waste discharges. Any discharge of wastewater and other plant wastes shall be in accordance with all applicable state and federal statutes and regulations. Permits for discharging wastes from water treatment processes shall be obtained from the commission, if necessary.

(j) Treatment chemicals and media. All chemicals and any additional or replacement process media used in treatment of water supplied by public water systems must conform to American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 60 for direct additives and ANSI/NSF Standard 61 for indirect additives. Conformance with these standards must be obtained by certification of the product by an organization accredited by ANSI.

(k) Safety.

(1) Safety equipment for all chemicals used in water treatment shall meet applicable standards established by the OSHA or Texas

Hazard Communication Act, Texas Health and Safety Code, Title 6, Chapter 502.

(2) Systems must comply with United States Environmental Protection Agency (EPA) requirements for Risk Management Plans.

(l) Plant operations manual. A thorough plant operations manual must be compiled and kept up-to-date for operator review and reference. This manual should be of sufficient detail to provide the operator with routine maintenance and repair procedures, with protocols to be utilized in the event of a natural or man-made catastrophe, as well as provide telephone numbers of water system personnel, system officials, and local/state/federal agencies to be contacted in the event of an emergency.

(m) Security. Each water treatment plant and all appurtenances thereof shall be enclosed by an intruder-resistant fence. The gates shall be locked during periods of darkness and when the plant is unattended. A locked building in the fence line may satisfy this requirement or serve as a gate.

(n) Corrosion control treatment. Systems must install any corrosion control or source water treatment required by §290.117(f) and (g) of this title (relating to Regulation of Lead and Copper), respectively. Such treatment must be designed and installed consistent with the requirements of this subchapter. The requirements of 40 CFR §141.82(i) and §141.83(b)(7) relating to EPA involvement in treatment determination are adopted by reference.

§290.46. Minimum Acceptable Operating Practices for Public Drinking Water Systems.

(a) General. When a public drinking water supply system is to be established, plans shall be submitted to the executive director for review and approval prior to the construction of the system. All public water systems are to be constructed in conformance with the requirements of this subchapter and maintained and operated in accordance with the following minimum acceptable operating practices. Owners and operators shall allow entry to members of the commission and employees and agents of the commission onto any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to public water systems in the state. Members, employees, or agents acting under this authority shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials.

(b) Microbiological. Submission of samples for microbiological analysis shall be as required by Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems). Microbiological samples may be required by the executive director for monitoring purposes in addition to the routine samples required by the drinking water standards. These samples shall be submitted to an accredited [~~a certified~~] laboratory. (A list of the accredited [~~certified~~] laboratories can be obtained by contacting the executive director).

(c) Chemical. Samples for chemical analysis shall be submitted as directed by the executive director.

(d) Disinfectant residuals and monitoring. A disinfectant residual must be continuously maintained during the treatment process and throughout the distribution system.

(1) Disinfection equipment shall be operated and monitored in a manner that will assure compliance with the requirements of §290.110 of this title (relating to Disinfectant Residuals).

(2) The disinfection equipment shall be operated to maintain the following minimum disinfectant residuals in each finished water storage tank and throughout the distribution system at all times:

(A) a free chlorine residual of 0.2 milligrams per liter (mg/L); or

(B) a chloramine residual of 0.5 mg/L (measured as total chlorine) for those systems that feed ammonia.

(e) Operation by trained and licensed personnel. Except as provided in paragraph (1) of this subsection, the production, treatment, and distribution facilities at the public water system must be operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the executive director.

(1) Transient noncommunity public water systems are exempt from the requirements of this subsection if they use only groundwater or purchase treated water from another public water system.

(2) All public water systems that are subject to the provisions of this subsection shall meet the following requirements.

(A) Public water systems shall not allow new or repaired production, treatment, storage, pressure maintenance, or distribution facilities to be placed into service without the prior guidance and approval of a licensed water works operator.

(B) Public water systems shall ensure that their operators are trained regarding the use of all chemicals used in the water treatment plant. Training programs shall meet applicable standards established by the Occupational Safety and Health Administration (OSHA) or the Texas Hazard Communications Act, Texas Health and Safety Code, Title 6, Chapter 502.

(C) Public water systems using chlorine dioxide shall place the operation of the chlorine dioxide facilities under the direct supervision of a licensed operator who has a Class "C" or higher license.

(3) Systems that only purchase treated water shall meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Purchased water systems serving no more than 250 connections must employ an operator who holds a Class "D" or higher license.

(B) Purchased water systems serving more than 250 connections, but no more than 1,000 connections, must employ an operator who holds a Class "C" or higher license.

(C) Purchased water systems serving more than 1,000 connections must employ at least two operators who hold a Class "C" or higher license and who each work at least 16 hours per month at the public water system's treatment or distribution facilities.

(4) Systems that treat groundwater and do not treat surface water or groundwater that is under the direct influence of surface water shall meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Groundwater systems serving no more than 250 connections must employ an operator with a Class "D" or higher license.

(B) Groundwater systems serving more than 250 connections, but no more than 1,000 connections, must employ an operator with a Class "C" or higher groundwater license.

(C) Groundwater systems serving more than 1,000 connections must employ at least two operators who hold a Class "C" or

higher groundwater license and who each work at least 16 hours per month at the public water system's production, treatment, or distribution facilities.

(5) Systems that treat groundwater that is under the direct influence of surface water must meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Systems which serve no more than 1,000 connections and utilize cartridge or membrane filters must employ an operator who holds a Class "C" or higher groundwater license and has completed a four-hour training course on monitoring and reporting requirements or who holds a Class "C" or higher surface water license and has completed the Groundwater Production course.

(B) Systems which serve more than 1,000 connections and utilize cartridge or membrane filters must employ at least two operators who meet the requirements of subparagraph (A) of this paragraph and who each work at least 24 hours per month at the public water system's production, treatment, or distribution facilities.

(C) Systems which serve no more than 1,000 connections and utilize coagulant addition and direct filtration must employ an operator who holds a Class "C" or higher surface water license and has completed the Groundwater Production course or who holds a Class "C" or higher groundwater license and has completed a Surface Water Production course. Effective January 1, 2007, the public water system must employ at least one operator who has completed the Surface Water Unit I course and the Surface Water Unit II course.

(D) Systems which serve more than 1,000 connections and utilize coagulant addition and direct filtration must employ at least two operators who meet the requirements of subparagraph (C) of this paragraph and who each work at least 24 hours per month at the public water system's production, treatment, or distribution facilities. Effective January 1, 2007, the public water system must employ at least two operators who have completed the Surface Water Unit I course and the Surface Water Unit II course.

(E) Systems which utilize complete surface water treatment must comply with the requirements of paragraph (6) of this subsection.

(F) Each plant must have at least one Class "C" or higher operator on duty at the plant when it is in operation or the plant must be provided with continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators so as to ensure that the water produced continues to meet the commission's drinking water standards during periods when the plant is not staffed.

(6) Systems that treat surface water must meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Surface water systems that serve no more than 1,000 connections must employ at least one operator who holds a Class "B" or higher surface water license. Part-time operators may be used to meet the requirements of this subparagraph if the operator is completely familiar with the design and operation of the plant and spends at least four consecutive hours at the plant at least once every 14 days and the system also employs an operator who holds a Class "C" or higher surface water license. Effective January 1, 2007, the public water system must employ at least one operator who has completed the Surface Water Unit I course and the Surface Water Unit II course.

(B) Surface water systems that serve more than 1,000 connections must employ at least two operators; one of the required operators must hold a Class "B" or higher surface water license and the other required operator must hold a Class "C" or higher surface water license. Each of the required operators must work at least 32 hours per month at the public water system's production, treatment, or distribution facilities. Effective January 1, 2007, the public water system must employ at least two operators who have completed the Surface Water Unit I course and the Surface Water Unit II course.

(C) Each surface water treatment plant must have at least one Class "C" or higher surface water operator on duty at the plant when it is in operation or the plant must be provided with continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators so as to ensure that the water produced continues to meet the commission's drinking water standards during periods when the plant is not staffed.

(D) Public water systems shall not allow Class "D" operators to adjust or modify the treatment processes at surface water treatment plant unless an operator who holds a Class "C" or higher surface license is present at the plant and has issued specific instructions regarding the proposed adjustment.

(f) Operating records and reports. Water systems must maintain a record of water works operation and maintenance activities and submit periodic operating reports.

(1) The public water system's operating records must be organized, and copies must be kept on file or stored electronically.

(2) The public water system's operating records must be accessible for review during inspections.

(3) All public water systems shall maintain a record of operations.

(A) The following records shall be retained for at least two years:

(i) the amount of chemicals used:

(I) Systems that treat surface water or groundwater under the direct influence of surface water shall maintain a record of the amount of each chemical used each day.

(II) Systems that serve 250 or more connections or serve 750 or more people shall maintain a record of the amount of each chemical used each day.

(III) Systems that serve fewer than 250 connections, serve fewer than 750 people, and use only groundwater or purchased treated water shall maintain a record of the amount of each chemical used each week;

(ii) the volume of water treated:

(I) Systems that treat surface water or groundwater under the direct influence of surface water shall maintain a record of the amount of water treated each day.

(II) Systems that serve 250 or more connections or serve 750 or more people shall maintain a record of the amount of water treated each day.

(III) Systems that serve fewer than 250 connections, serve fewer than 750 people, and use only groundwater or purchase treated water shall maintain a record of the amount of water treated each week;

(iii) the date, location, and nature of water quality, pressure, or outage complaints received by the system and the results of any subsequent complaint investigation;

(iv) the dates that dead-end mains were flushed;

(v) the dates that storage tanks and other facilities were cleaned;

(vi) the maintenance records for water system equipment and facilities; and

(vii) for systems that do not employ full-time operators to meet the requirements of subsection (e) of this section, a daily record or a monthly summary of the work performed and the number of hours worked by each of the part-time operators used to meet the requirements of subsection (e) of this section.

(B) The following records shall be retained for at least three years:

(i) copies of notices of violation and any resulting corrective actions. The records of the actions taken to correct violations of primary drinking water regulations must be retained for at least three years after the last action taken with respect to the particular violation involved;

(ii) copies of any public notice issued by the water system;

(iii) the disinfectant residual monitoring results from the distribution system;

~~*(iv)* the turbidity monitoring results and exception reports for individual filters as required by §290.111 of this title (relating to Surface Water Treatment);~~

(iv) [~~(v)~~] the calibration records for laboratory equipment, flow meters, rate-of-flow controllers, on-line turbidimeters, and on-line disinfectant residual analyzers;

(v) [~~(vi)~~] the records of backflow prevention device programs;

(vi) [~~(vii)~~] the raw surface water monitoring results must be retained for three years after bin classification required by §290.111 of this title (relating to Surface Water Treatment);

(vii) [~~(viii)~~] notification to the executive director that a system will provide 5.5-log *Cryptosporidium* treatment in lieu of raw surface water monitoring; and

(viii) [~~(ix)~~] except for those specified in subparagraph (C)(iv) of this paragraph [~~clause (iv) of this subparagraph~~] and subparagraph (E)(i) of this paragraph, the results of all surface water treatment monitoring that are used to demonstrate log inactivation or removal.

(C) The following records shall be retained for a period of five years after they are no longer in effect:

(i) the records concerning a variance or exemption granted to the system;

(ii) Concentration Time (CT) studies for surface water treatment plants; [~~and~~]

(iii) the Recycling Practices Report form and other records pertaining to site-specific recycle practices for treatment plants that recycle; and[~~.~~]

(iv) the turbidity monitoring results and exception reports for individual filters as required by §290.111 of this title.

(D) The following records shall be retained for at least five years:

(i) the results of microbiological analyses;

(ii) the results of inspections (as required in subsection (m)(1) of this section) for all water storage and pressure maintenance facilities;

(iii) the results of inspections as required by subsection (m)(2) of this section for all pressure filters;

(iv) documentation of compliance with state approved corrective action plan and schedules required to be completed by groundwater systems that must take corrective actions;

(v) documentation of the reason for an invalidated fecal indicator source sample;

(vi) notification to wholesale system(s) of a distribution coliform positive sample for consecutive systems using groundwater; and

(vii) Consumer Confidence Report compliance documentation.

(E) The following records shall be retained for at least ten years:

(i) copies of Monthly Operating Reports and any supporting documentation including turbidity monitoring results of the combined filter effluent;

(ii) the results of chemical analyses;

(iii) any written reports, summaries, or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by the executive director shall be kept for a period not less than ten years after completion of the survey involved;

(iv) copies of the Customer Service Inspection reports required by subsection (j) of this section;

(v) copy of any Initial Distribution System Evaluation (IDSE) plan, report, approval letters, and other compliance documentation required by §290.115 of this title (relating to Stage 2 Disinfection Byproducts [~~By-products~~] (TTHM and HAA5));

(vi) state notification of any modifications to an IDSE report;

(vii) copy of any 40/30 certification required by §290.115 of this title;

(viii) documentation of corrective actions taken by groundwater systems in accordance with §290.116 of this title (relating to Groundwater Corrective Actions and Treatment Techniques); and

(ix) any monitoring plans required by §290.121(b) of this title (relating to Monitoring Plans).

(F) A public water system shall maintain records relating to lead and copper requirements under §290.117 of this title (relating to Regulation of Lead and Copper) for no less than 12 years. Any system subject to the requirements of §290.117 of this title shall retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, executive determinations, and any other information required by the executive director under §290.117 of this title. These records shall be attached to the system's monitoring plan. These records include, but are not limited to, the following items: tap water monitoring results including the location of each site and date of collection; certification of the volume and validity of first-draw-tap sample criteria via a copy of the laboratory analysis request form; where residents collected the sample; certification that the water system informed the resident of proper sampling procedures; the analytical results for lead and copper concentrations at

each tap sample site; and designation of any substitute site not used in previous monitoring periods.

(G) [~~(F)~~] A public water system shall maintain records relating to special studies and pilot projects, special monitoring, and other system-specific matters as directed by the executive director.

(4) Water systems shall submit routine reports and any additional documentation that the executive director may require to determine compliance with the requirements of this chapter.

(A) The reports must be submitted to the Texas Commission on Environmental Quality, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087 by the tenth day of the month following the end of the reporting period.

(B) The reports must contain all the information required by the drinking water standards and the results of any special monitoring tests which have been required.

(C) The reports must be completed in ink, typed, or computer-printed and must be signed by the licensed [~~certified~~] water works operator.

(5) All public water systems that are affected utilities must maintain the following records for as long as they are applicable to the system:

(A) An emergency preparedness plan approved by the executive director and a copy of the approval letter.

(B) All required operating and maintenance records for auxiliary power equipment, including periodic testing of the auxiliary power equipment under load and any associated automatic switch over equipment.

(C) Copies of the manufacturer's specifications for all generators that are part of the approved emergency preparedness plan.

(g) Disinfection of new or repaired facilities. Disinfection by or under the direction of water system personnel must be performed when repairs are made to existing facilities and before new facilities are placed into service. Disinfection must be performed in accordance with American Water Works Association (AWWA) requirements and water samples must be submitted to a laboratory approved by the executive director. The sample results must indicate that the facility is free of microbiological contamination before it is placed into service. When it is necessary to return repaired mains to service as rapidly as possible, doses may be increased to 500 mg/L and the contact time reduced to 1/2 hour.

(h) Calcium hypochlorite. A supply of calcium hypochlorite disinfectant shall be kept on hand for use when making repairs, setting meters, and disinfecting new mains prior to placing them in service.

(i) Plumbing ordinance. Public water systems must adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to insure that neither cross-connections nor other unacceptable plumbing practices are permitted. See §290.47(b) of this title (relating to Appendices). Should sanitary control of the distribution system not reside with the purveyor, the entity retaining sanitary control shall be responsible for establishing and enforcing adequate regulations in this regard. The use of pipes and pipe fittings that contain more than 8.0% lead or solders and flux that contain more than 0.2% lead is prohibited for installation or repair of any public water supply and for installation or repair of any plumbing in a residential or nonresidential facility providing water for human consumption and connected to a public drinking water supply system. This requirement may be waived for lead joints that are necessary for repairs to cast iron pipe.

(j) Customer service inspections. A customer service inspection certificate shall be completed prior to providing continuous water service to new construction, on any existing service either when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards exist, or after any material improvement, correction, or addition to the private water distribution facilities. Any customer service inspection certificate form which varies from the format found in §290.47(d) of this title must be approved by the executive director prior to being placed in use.

(1) Individuals with the following credentials shall be recognized as capable of conducting a customer service inspection certification.

(A) Plumbing Inspectors and Water Supply Protection Specialists licensed by the Texas State Board of Plumbing Examiners (TSBPE).

(B) Customer service inspectors who have completed a commission-approved course, passed an examination administered by the executive director, and hold current professional license as a customer service inspector.

(2) As potential contaminant hazards are discovered, they shall be promptly eliminated to prevent possible contamination of the water supplied by the public water system. The existence of a health hazard, as identified in §290.47(i) of this title, shall be considered sufficient grounds for immediate termination of water service. Service can be restored only when the health hazard no longer exists, or until the health hazard has been isolated from the public water system in accordance with §290.44(h) of this title (relating to Water Distribution).

(3) These customer service inspection requirements are not considered acceptable substitutes for and shall not apply to the sanitary control requirements stated in §290.102(a)(5) of this title (relating to General Applicability).

(4) A customer service inspection is an examination of the private water distribution facilities for the purpose of providing or denying water service. This inspection is limited to the identification and prevention of cross-connections, potential contaminant hazards, and illegal lead materials. The customer service inspector has no authority or obligation beyond the scope of the commission's regulations. A customer service inspection is not a plumbing inspection as defined and regulated by the TSBPE. A customer service inspector is not permitted to perform plumbing inspections. State statutes and TSBPE adopted rules require that TSBPE licensed plumbing inspectors perform plumbing inspections of all new plumbing and alterations or additions to existing plumbing within the municipal limits of all cities, towns, and villages which have passed an ordinance adopting one of the plumbing codes recognized by TSBPE. Such entities may stipulate that the customer service inspection be performed by the plumbing inspector as a part of the more comprehensive plumbing inspection. Where such entities permit customer service inspectors to perform customer service inspections, the customer service inspector shall report any violations immediately to the local entity's plumbing inspection department.

(k) Interconnection. No physical connection between the distribution system of a public drinking water supply and that of any other water supply shall be permitted unless the other water supply is of a safe, sanitary quality and the interconnection is approved by the executive director.

(l) Flushing of mains. All dead-end mains must be flushed at monthly intervals. Dead-end lines and other mains shall be flushed as needed if water quality complaints are received from water customers

or if disinfectant residuals fall below acceptable levels as specified in §290.110 of this title.

(m) Maintenance and housekeeping. The maintenance and housekeeping practices used by a public water system shall ensure the good working condition and general appearance of the system's facilities and equipment. The grounds and facilities shall be maintained in a manner so as to minimize the possibility of the harboring of rodents, insects, and other disease vectors, and in such a way as to prevent other conditions that might cause the contamination of the water.

(1) Each of the system's ground, elevated, and pressure tanks shall be inspected annually by water system personnel or a contracted inspection service.

(A) Ground and elevated storage tank inspections must determine that the vents are in place and properly screened, the roof hatches closed and locked, flap valves and gasketing provide adequate protection against insects, rodents, and other vermin, the interior and exterior coating systems are continuing to provide adequate protection to all metal surfaces, and the tank remains in a watertight condition.

(B) Pressure tank inspections must determine that the pressure release device and pressure gauge are working properly, the air-water ratio is being maintained at the proper level, the exterior coating systems are continuing to provide adequate protection to all metal surfaces, and the tank remains in watertight condition. Pressure tanks provided with an inspection port must have the interior surface inspected every five years.

(C) All tanks shall be inspected annually to determine that instrumentation and controls are working properly.

(2) When pressure filters are used, a visual inspection of the filter media and internal filter surfaces shall be conducted annually to ensure that the filter media is in good condition and the coating materials continue to provide adequate protection to internal surfaces.

(3) When cartridge filters are used, filter cartridges shall be changed at the frequency required by the manufacturer, or more frequently if needed.

(4) All water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances shall be maintained in a watertight condition and be free of excessive solids.

(5) Basins used for water clarification shall be maintained free of excessive solids to prevent possible carryover of sludge and the formation of tastes and odors.

(6) Pumps, motors, valves, and other mechanical devices shall be maintained in good working condition.

(n) Engineering plans and maps. Plans, specifications, maps, and other pertinent information shall be maintained to facilitate the operation and maintenance of the system's facilities and equipment. The following records shall be maintained on file at the public water system and be available to the executive director upon request.

(1) Accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank shall be maintained at the public water system until the facility is decommissioned. As-built plans of individual projects may be used to fulfill this requirement if the plans are maintained in an organized manner.

(2) An accurate and up-to-date map of the distribution system shall be available so that valves and mains can be easily located during emergencies.

(3) Copies of well completion data such as well material setting data, geological log, sealing information (pressure cementing and surface protection), disinfection information, microbiological sample results, and a chemical analysis report of a representative sample of water from the well shall be kept on file for as long as the well remains in service.

(o) Filter backwashing at surface water treatment plants. Filters must be backwashed when a loss of head differential of six to ten feet is experienced between the influent and effluent loss of head gauges or when the turbidity level at the effluent of the filter reaches 1.0 nephelometric turbidity unit (NTU).

(p) Data on water system ownership and management. The agency shall be provided with information regarding water system ownership and management.

(1) When a water system changes ownership, a written notice of the transaction must be provided to the executive director. When applicable, notification shall be in accordance with Chapter 291 of this title (relating to Utility Regulations). Those systems not subject to Chapter 291 of this title shall notify the executive director of changes in ownership by providing the name of the current and prospective owner or responsible official, the proposed date of the transaction, and the address and phone number of the new owner or responsible official. The information listed in this paragraph and the system's public drinking water supply identification number, and any other information necessary to identify the transaction shall be provided to the executive director 120 days before the date of the transaction.

(2) On an annual basis, the owner of a public water system shall provide the executive director with a written list of all the operators and operating companies that the public water system employs. The notice shall contain the name, license number, and license class of each employed operator and the name and registration number of each employed operating company. See §290.47(g) of this title.

(q) Special precautions. Special precautions must be instituted by the water system owner or responsible official in the event of low distribution pressures (below 20 pounds per square inch (psi)), water outages, microbiological samples found to contain E. coli or fecal coliform organisms, failure to maintain adequate chlorine residuals, elevated finished water turbidity levels, or other conditions which indicate that the potability of the drinking water supply has been compromised.

(1) Boil water notifications must be issued to the customers within 24 hours using the prescribed notification format as specified in §290.47(e) of this title. A copy of this notice shall be provided to the executive director. Bilingual notification may be appropriate based upon local demographics. Once the boil water notification is no longer in effect, the customers must be notified in a manner similar to the original notice.

(2) The flowchart found in §290.47(h) of this title shall be used to determine if a boil water notification must be issued in the event of a loss of distribution system pressure. If a boil water notice is issued under this section, it shall remain in effect until water distribution pressures in excess of 20 psi can consistently be maintained, a minimum of 0.2 mg/L free chlorine residual or 0.5 mg/L chloramine residual (measured as total chlorine) is present throughout the system, and water samples collected for microbiological analysis are found negative for coliform organisms.

(3) A boil water notification shall be issued if the turbidity of the finished water produced by a surface water treatment plant exceeds 5.0 NTU. The boil water notice shall remain in effect until the water entering the distribution system has a turbidity level below 1.0 NTU, the distribution system has been thoroughly flushed, a mini-

mum of 0.2 mg/L free chlorine residual or 0.5 mg/L chloramine residual (measured as total chlorine) is present throughout the system, and water samples collected for microbiological analysis are found negative for coliform organisms.

(4) Other protective measures may be required at the discretion of the executive director.

(r) Minimum pressures. All public water systems shall be operated to provide a minimum pressure of 35 psi throughout the distribution system under normal operating conditions. The system shall also be operated to maintain a minimum pressure of 20 psi during emergencies such as fire fighting. As soon as safe and practicable following the occurrence of a natural disaster, a public water system that is an affected utility shall maintain a minimum of 35 psi throughout the distribution system during an extended power outage.

(s) Testing equipment. Accurate testing equipment or some other means of monitoring the effectiveness of any chemical treatment or pathogen inactivation or removal processes must be used by the system.

(1) Flow measuring devices and rate-of-flow controllers that are required by §290.42(d) of this title (relating to Water Treatment) shall be calibrated at least once every 12 months. Well meters required by §290.41(c)(3)(N) of this title (relating to Water Sources) shall be calibrated at least once every three years.

(2) Laboratory equipment used for compliance testing shall be properly calibrated.

(A) pH meters shall be properly calibrated.

(i) Benchtop pH meters shall be calibrated according to manufacturers specifications at least once each day.

(ii) The calibration of benchtop pH meters shall be checked with at least one buffer each time a series of samples is run, and if necessary, recalibrated according to manufacturers specifications.

(iii) On-line pH meters shall be calibrated according to manufacturer specifications at least once every 30 days.

(iv) The calibration of on-line pH meters shall be checked at least once each week with a primary standard or by comparing the results from the on-line unit with the results from a properly calibrated benchtop unit. If necessary, the on-line unit shall be recalibrated with primary standards.

(B) Turbidimeters shall be properly calibrated.

(i) Benchtop turbidimeters shall be calibrated with primary standards at least once every 90 days. Each time the turbidimeter is calibrated with primary standards, the secondary standards shall be restandardized.

(ii) The calibration of benchtop turbidimeters shall be checked with secondary standards each time a series of samples is tested, and if necessary, recalibrated with primary standards.

(iii) On-line turbidimeters shall be calibrated with primary standards at least once every 90 days.

(iv) The calibration of on-line turbidimeters shall be checked at least once each week with a primary standard, a secondary standard, or the manufacturer's proprietary calibration confirmation device or by comparing the results from the on-line unit with the results from a properly calibrated benchtop unit. If necessary, the on-line unit shall be recalibrated with primary standards.

(C) Chemical disinfectant residual analyzers shall be properly calibrated.

(i) The accuracy of manual disinfectant residual analyzers shall be verified at least once every 30 days using chlorine solutions of known concentrations.

(ii) Continuous disinfectant residual analyzers shall be calibrated at least once every 90 days using chlorine solutions of known concentrations.

(iii) The calibration of continuous disinfectant residual analyzers shall be checked at least once each month with a chlorine solution of known concentration or by comparing the results from the on-line analyzer with the result of approved benchtop amperometric, spectrophotometric, or titration method.

(D) Ultraviolet (UV) light disinfection analyzers shall be properly calibrated.

(i) The accuracy of duty UV sensors shall be verified with a reference UV sensor monthly, according to the UV sensor manufacturer.

(ii) The reference UV sensor shall be calibrated by the UV sensor manufacturer on a yearly basis, or sooner if needed.

(iii) If used, the Ultraviolet Transmittance (UVT) analyzer shall be calibrated weekly according to the UVT analyzer manufacturer specifications.

(E) Systems must verify the performance of direct integrity testing equipment in a manner and schedule approved by the executive director.

(t) System ownership. All community water systems shall post a legible sign at each of its production, treatment, and storage facilities. The sign shall be located in plain view of the public and shall provide the name of the water supply and an emergency telephone number where a responsible official can be contacted.

(u) Abandoned wells. Abandoned public water supply wells owned by the system must be plugged with cement according to 16 Texas Administrative Code (TAC) Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers). Wells that are not in use and are non-deteriorated as defined in those rules must be tested every five years or as required by the executive director to prove that they are in a non-deteriorated condition. The test results shall be sent to the executive director for review and approval. Deteriorated wells must be either plugged with cement or repaired to a non-deteriorated condition.

(v) Electrical wiring. All water system electrical wiring must be securely installed in compliance with a local or national electrical code.

(w) Security. All systems shall maintain internal procedures to notify the executive director by a toll-free reporting phone number immediately of the following events, if the event may negatively impact the production or delivery of safe and adequate drinking water:

(1) an unusual or unexplained unauthorized entry at property of the public water system;

(2) an act of terrorism against the public water system;

(3) an unauthorized attempt to probe for or gain access to proprietary information that supports the key activities of the public water system;

(4) a theft of property that supports the key activities of the public water system; or

(5) a natural disaster, accident, or act that results in damage to the public water system.

(x) Public safety standards. This subsection only applies to a municipality with a population of 1,000,000 or more, with a public utility within its corporate limits.

(1) In this subsection:

(A) "Regulatory authority" means, in accordance with the context in which it is found, either the commission or the governing body of a municipality.

(B) "Public utility" means any person, corporation, cooperative corporation, affected county, or any combination of these persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

(C) "Residential area" means:

(i) an area designated as a residential zoning district by a governing ordinance or code or an area in which the principal land use is for private residences;

(ii) a subdivision for which a plat is recorded in the real property records of the county and that contains or is bounded by public streets or parts of public streets that are abutted by residential property occupying at least 75 percent of the front footage along the block face; or

(iii) a subdivision a majority of the lots of which are subject to deed restrictions limiting the lots to residential use.

(2) When the regulatory authority is a municipality, it shall by ordinance adopt standards for installing fire hydrants in residential areas in the municipality. These standards must, at a minimum, follow current AWWA standards pertaining to fire hydrants and the requirements of §290.44(e)(6) of this title.

(3) When the regulatory authority is a municipality, it shall by ordinance adopt standards for maintaining sufficient water pressure for service to fire hydrants adequate to protect public safety in residential areas in the municipality. The standards specified in paragraph (4) of this subsection are the minimum acceptable standards.

(4) A public utility shall deliver water to any fire hydrant connected to the public utility's water system located in a residential area so that the flow at the fire hydrant is at least 250 gallons per minute for a minimum period of two hours while maintaining a minimum pressure of 20 psi throughout the distribution system during emergencies such as fire fighting. That flow is in addition to the public utility's maximum daily demand for purposes other than firefighting.

(5) When the regulatory authority is a municipality, it shall adopt the standards required by this subsection within one year of the effective date of this subsection or within one year of the date this subsection first applies to the municipality, whichever occurs later.

(6) A public utility shall comply with the standards established by a municipality under both paragraphs (2) and (3) of this subsection within one year of the date the standards first apply to the public utility. If a municipality has failed to comply with the deadline required by paragraph (5) of this subsection, then a public utility shall comply with the standards specified in paragraphs (2) and (4) of this subsection within two years of the effective date of this subsection or within one year of the date this subsection first applies to the public utility, whichever occurs later.

§290.47. Appendices.

(a) Appendix A. Recognition as a Superior or Approved Public Water System.
Figure: 30 TAC §290.47(a)
[~~Figure: 30 TAC §290.47(a)~~]

(b) Appendix B. Sample Retail Service Agreement.
Figure: 30 TAC §290.47(b)
[~~Figure: 30 TAC §290.47(b)~~]

(c) Appendix C. Sample Sanitary Control Easement Document for a Public Water Well.
Figure: 30 TAC §290.47(c)
[~~Figure: 30 TAC §290.47(c)~~]

(d) Appendix D. Customer Service Inspection Certification.
Figure: 30 TAC §290.47(d)
[~~Figure: 30 TAC §290.47(d)~~]

(e) Appendix E. Boil Water Notification.
Figure: 30 TAC §290.47(e) (No change.)

(f) Appendix F. Sample Backflow Prevention Assembly Test and Maintenance Report.
Figure: 30 TAC §290.47(f)
[~~Figure: 30 TAC §290.47(f)~~]

(g) Appendix G. Operator and/or Employment Notice.
Figure: 30 TAC §290.47(g) (No change.)

(h) Appendix H. Special Precautions.
Figure: 30 TAC §290.47(h) (No change.)

(i) Appendix I. Assessment of Hazard and Selection of Assemblies.
Figure: 30 TAC §290.47(i) (No change.)

(j) Appendix J. Emergency Preparedness Plan Template.
Figure: 30 TAC §290.47(j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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SUBCHAPTER F. DRINKING WATER STANDARDS GOVERNING DRINKING WATER

QUALITY AND REPORTING REQUIREMENTS FOR PUBLIC WATER SYSTEMS

30 TAC §§290.111 - 290.115, 290.117, 290.119, 290.121, 290.122

STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and Texas Health and Safety Code (THSC), §341.031, which allows the commission to adopt rules to implement the federal Safe Drinking Water Act, 42 United States Code, §§300f to 300j-26; and THSC, §341.0315, which requires public water systems to comply with commission rules adopted to ensure the supply of safe drinking water.

The proposed amendments and new section implement TWC, §§5.102, 5.103, and 5.105, and THSC, §341.031 and §341.0315.

§290.111. Surface Water Treatment.

(a) Applicability. A public water system that treats surface water or groundwater under the direct influence of surface water must comply with the requirements of this section.

(1) A public water system that treats surface water must comply with the requirements of this section beginning on the effective date of the rule.

(2) A public water system that treats groundwater under the direct influence of surface water must comply with the requirements of this section beginning on a date specified by the executive director. This compliance date shall not exceed 18 months from the date that the executive director first notifies the system that the groundwater source is under the direct influence of surface water.

(3) A public water system that treats both surface water and groundwater under the direct influence of surface water must meet the compliance date in paragraph (1) of this subsection at plants that treat any surface water and must meet the compliance date in paragraph (2) of this subsection at plants that treat only groundwater under the direct influence of surface water.

(b) Raw surface water monitoring. A public water system that treats surface water or groundwater under the direct influence of surface water must conduct <u>at least</u> two rounds of special raw surface water monitoring at each surface water intake and at each well producing groundwater under the direct influence of surface water for the purpose of establishing minimum treatment technique requirements for *Cryptosporidium* and other pathogens. The executive director may waive the raw surface water monitoring requirements for an intake or a well if the combination of pathogen removal and disinfection processes used to treat the raw water achieves at least a 5.5-log total removal and inactivation of *Cryptosporidium parvum.*

(1) Raw water monitoring plans. A system must submit a proposed raw surface water monitoring plan when requested by the executive director. The proposed plan must identify all of the system's intakes and wells; provide the location of each raw water sampling point; include the parameters that will be monitored and the frequency and dates that samples will be collected; and specify the laboratories that will perform the analyses. Raw surface water monitoring must be conducted in accordance with a monitoring plan that has been approved by the executive director. The executive director shall not approve a raw surface water monitoring plan unless it indicates that the system will meet the requirements of 40 Code of Federal Regulations (CFR) §§141.701- 141.707.

(2) Sampling location. A system must collect each raw water sample at a location approved by the executive director. Samples must be collected from the raw water line prior to any treatment and before the first point where a recycled stream is returned to the treatment process.

(3) Sampling parameters and frequency. A system must collect raw water samples at a frequency approved by the executive director.

(A) Unless the executive director approves an alternate sampling regimen, a system must monitor turbidity, *E. coli*, and *Cryptosporidium* levels in the raw water at least once each month for a period of not less than 24 consecutive months if the system:

(i) serves at least 10,000 people; or

(ii) is part of combined distribution system in which one or more systems serve at least 10,000 people and the system with the well or intake regularly provides water to another public water supply.

(B) A system that is not required to monitor under subparagraph (A) of this paragraph must either monitor in accordance with the requirements of subparagraph (A) of this paragraph or monitor *E. coli* levels in their raw water at least once every two weeks for a period of not less than 12 consecutive months. A system that does not initially monitor for *Cryptosporidium* and has elevated *E. coli* levels must conduct additional raw water monitoring.

(i) A system must conduct additional monitoring if the average *E. coli* level exceeds 50 colony-forming units per 100 milliliters in the raw water produced by a surface water intake located on a river or flowing stream or the raw water from a well producing groundwater under the direct influence of surface water located closest to a river or flowing stream.

(ii) A system must conduct additional monitoring if the average *E. coli* level exceeds 10 colony-forming units per 100 milliliters in the raw water from a surface water intake not located on a river or flowing stream or the raw water produced by a well producing groundwater under the direct influence of surface water not located on a river or flowing stream.

(iii) A system that must conduct additional monitoring must monitor *Cryptosporidium* levels in the raw water at least twice each month for a period of not less than 12 consecutive months, or at least once each month for a period of not less than 24 consecutive months.

(C) The executive director may approve an alternate sampling frequency for intakes and wells that operate only part of the year.

(4) Sampling schedule and dates. A system must collect raw water samples in accordance with a schedule approved by the executive director.

(A) Except as provided in <u>subparagraph (B) of this paragraph</u> [~~paragraph (B)~~], a system must begin each round of raw source water monitoring no later than the date shown in the following table titled "Raw Source Water Monitoring Schedule."
Figure: 30 TAC §290.111(b)(4)(A) (No change.)

(B) If a system installs a new well or intake after the date the first round of raw source water monitoring must begin, the system must<u>:</u>

(i) submit a proposed monitoring schedule for the first round of special raw surface water monitoring no later than three months after first placing the new source in operation; and[.]

(ii) begin the second round of special raw surface water monitoring no later than six years after initial bin classification.

(C) A system must collect a raw water sample no sooner than two days before the date approved by the executive director and no later than two days after the approved date, unless an extreme condition or situation exists that poses a danger to the sample collector.

(D) A system which is unable to collect a sample within this five-day period must collect the sample as close as possible to the approved date and must notify the executive director in writing why the sample was not collected on the approved date.

(5) Replacement samples. If, for any reason, the laboratory is unable to report a valid analytical result for a scheduled sample, the system must submit a replacement sample on a date approved by the executive director.

(6) Analytical requirements. Raw water samples collected pursuant to this subsection must be analyzed at an approved or accredited [certified] laboratory.

(A) *Cryptosporidium* samples must be analyzed using one of the methods approved in 40 CFR [Title 40 Code of Federal Regulations (CFR)] §141.704(a) and by a laboratory that is approved under United States Environmental Protection Agency's (EPA) Laboratory Quality Assurance Evaluation Program for Analysis of *Cryptosporidium* in Water.

(B) *E. coli* samples must be analyzed using one of the methods approved in 40 CFR §136.3(a) for the enumeration of *E. coli* in source water and by a laboratory that is certified or accredited by the executive director.

(i) Systems must ensure that samples are maintained between 0°C and 10°C during storage and transportation to the laboratory.

(ii) The time between sample collection and the initiation of the analysis may not exceed 30 hours without the prior approval of the executive director.

(iii) The executive director may allow up to 48 hours between sample collection and the initiation of the analysis if the analysis is conducted by the Colilert reagent version of Standard Method 9223B.

(C) Turbidity samples must be analyzed using a method and at a laboratory approved by the executive director.

(7) Reporting requirements for raw surface water sample results. The owner or operator of a public water system must provide to the executive director with a copy of the results of any test, measurement, or analysis required by this subsection.

(A) Results must be submitted using the Raw Surface Water Sampling Report (commission Form 20358) or in another format that is approved by the executive director and contains the information required by 40 CFR §141.706(e).

(i) If the sample was not collected within the five-day [5-day] window described in paragraph (4)(C) [(4)(A)] of this subsection, the result must be accompanied by the information required in paragraph (4)(D) [(4)(B)] of this subsection.

(ii) If the laboratory report indicates that a valid analytical result could not be reported, the laboratory report must be accompanied by a request to collect a replacement sample.

(B) The results must be submitted within ten [10] days of their receipt by the public water system and no later than 10 days after the end of the first month following the month that the sample was collected.

(C) The results and any additional information must be mailed to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

(c) Treatment technique requirements. A system that treats surface water or groundwater under the direct influence of surface water must meet minimum treatment technique requirements before the water reaches the entry point to the distribution system.

(1) The combination of pathogen removal and disinfection processes used by a public water system must achieve at least a 4.0-log removal/inactivation of viruses.

(2) The combination of pathogen removal and disinfection processes used by a public water system must achieve at least a 3.0-log removal/inactivation of *Giardia lamblia.*

(3) A public water system that is required by subsection (b) of this section to conduct raw surface water monitoring must comply with the requirements of this paragraph.

(A) The average *Cryptosporidium* level and Bin Classification shall be determined in accordance with the requirements established by 40 CFR §141.710.

(i) For systems that collect a total of at least 48 *Cryptosporidium* samples, the average concentration is equal to the arithmetic mean of all sample concentrations.

(ii) For systems that collect a total of at least 24 samples, but not more than 47 *Cryptosporidium* samples, the average concentration is equal to the highest arithmetic mean of all sample concentrations in any 12 consecutive months during which *Cryptosporidium* samples were collected.

(iii) For systems that serve fewer than 10,000 people and monitor for *Cryptosporidium* for only one year (i.e., collect 24 samples in 12 months), the average concentration is equal to the arithmetic mean of all sample concentrations.

(iv) For systems with plants operating only part of the year that monitor fewer than 12 months per year under 40 CFR §141.701(e), the bin concentration is equal to the highest arithmetic mean of all sample concentrations during any year of *Cryptosporidium* monitoring.

(v) If the monthly *Cryptosporidium* sampling frequency varies, systems must first calculate a monthly average for each month of monitoring. Systems must then use these monthly average concentrations, rather than individual sample concentrations, in the applicable calculation for bin classification in paragraphs.

(B) Unless otherwise specified in this paragraph, the combination of pathogen removal and disinfection processes must achieve the removal/inactivation of *Cryptosporidium parvum* specified in the following table titled "Treatment Technique Requirements for *Cryptosporidium,"* beginning 36 months after being assigned a Bin Classification by the executive director.

Figure: 30 TAC §290.111(c)(3)(B)

[Figure: 30 TAC §290.111(c)(3)(B)]

(i) A system that conducts the first round of special raw surface water monitoring according to the schedule contained in subsection (b)(4)(A) of this section [§291.114(b)(4)(A) of this title] must comply with the requirements of this paragraph no later than the

date shown in the following table, titled "Compliance Date for Existing Sources."
Figure: 30 TAC §290.111(c)(3)(B)(i) (No change.)

(ii) A system that conducts the first round of special raw surface water monitoring according to the schedule contained in subsection (b)(4)(B)(i) of this section [~~§291.114(b)(4)(B) of this title~~] must comply with the requirements of this paragraph no later than six years after beginning the first round of monitoring on the new source.

(iii) The executive director may allow a system making capital improvements an additional two years to comply with the treatment requirement of this paragraph.

(C) A system that has been assigned to Bin 3 or Bin 4 must achieve at least 1.0-log removal/inactivation of *Cryptosporidium* using one or a combination of the following: bag filters, cartridge filters, chlorine dioxide, membranes, ozone, or ultraviolet light (UV).

(D) Prior to the effective date of subparagraph (B) of this paragraph, the combination of disinfection and filtration processes used by a public water system to treat for *Cryptosporidium* must achieve at least a 2.0-log removal/inactivation of *Cryptosporidium parvum.*

(4) The combination of disinfection and filtration processes at plants that do not monitor each source in accordance with the requirements of subsection (b) of this section must achieve at least a 5.5-log removal/inactivation of *Cryptosporidium parvum.*

(5) The executive director may require additional levels of treatment in cases of poor source water quality.

(6) The executive director may establish minimum design, operational, and reporting requirements for watershed control programs and treatment processes used to meet the treatment technique requirements of this subsection.

(d) Microbial inactivation requirements. A system that treats surface water or groundwater under the direct influence of surface water must meet minimum disinfection requirements before the water is supplied to any consumer.

(1) Inactivation table. The disinfection process must achieve the minimum microbial inactivation levels shown in the following table.
Figure: 30 TAC §290.111(d)(1)
[~~Figure: 30 TAC §290.111(d)(1)~~]

(A) The disinfection process at treatment plants not described in the Microbial Inactivation Requirements table must provide the level of disinfection required by the executive director.

(B) The executive director may require additional levels of treatment in cases of poor source water quality.

(C) The executive director may reduce the inactivation requirement for plants that meet the individual filter effluent performance criteria contained in subsection (g)(1) of this section and have been assigned a Bin 1 classification under the provisions of subsection (c)(3) of this section.

(D) A system that fails to meet the inactivation requirements of this section for a period of longer than four consecutive hours commits a nonacute treatment technique violation. A system that fails to conduct the additional testing required by paragraph (2)(C) of this subsection [~~subsection (d)(2)(C) of this section~~] also commits a nonacute treatment technique violation.

(E) A system that has a plant assigned a Bin 2, 3, or 4 classification under the provisions of subsection (c)(3) of this section and uses UV [~~ultraviolet light (UV)~~] disinfection facilities to meet the treatment technique requirements for *Cryptosporidium* must meet the inactivation requirements of this subsection in at least 95% of the water treated each month.

(2) Monitoring requirements for chemical disinfectants. Public water systems must monitor the performance of the disinfection facilities to ensure that appropriate disinfectant levels are maintained. All monitoring conducted pursuant to the requirements of this subsection must be conducted at sites designated in the public water system's monitoring plan.

(A) The disinfectant residual, pH, temperature, and flow rate of the water in each disinfection zone must be measured at least once each day during a time when peak hourly raw water flow rates are occurring.

(B) Disinfection contact time will be based on tracer study data or a theoretical analysis submitted by the system owner or their designated agent and approved by the executive director and the actual flow rate that is occurring at the time that monitoring occurs.

(C) Treatment plants that fail to demonstrate an appropriate level of treatment must repeat these tests at four-hour or shorter intervals until compliance has been reestablished.

(3) Monitoring requirements for UV disinfection facilities. Public water systems must monitor the performance of the UV disinfection facilities.

(A) A system must continuously monitor and record UV intensity as measured by a UV sensor, lamp status, the flow rate through the unit, and other parameters prescribed by the executive director to ensure that the units are operating within validated conditions.

(B) A system with a plant that has been assigned a Bin 2, 3, or 4 classification under the provisions of subsection (c)(3) of this section must also monitor and record the amount of water treated by each UV unit each month and the amount of water produced each month when the unit was not operating within validated conditions.

(4) Analytical requirements. All monitoring required by this subsection must be conducted at a facility approved by the executive director and using methods that conform to the requirements of §290.119 of this title (relating to Analytical Procedures).

(A) The pH analysis must be conducted using a pH meter with a minimum accuracy of plus or minus 0.1 pH units.

(B) The temperature of the water must be measured using a thermometer or thermocouple with a minimum accuracy of plus or minus 0.5 degrees Celsius.

(C) The free chlorine residual must be measured to a minimum accuracy of plus or minus 0.1 milligrams per liter (mg/L) using one of the following methods:

(i) Amperometric titration;

(ii) DPD Ferrous titration;

(iii) a DPD method that uses a colorimeter or spectrophotometer; or

(iv) Springaldizine (FACTS).

(D) The chloramine residual must be measured to a minimum accuracy of plus or minus 0.1 mg/L using one of the following methods:

(i) Amperometric titration;

(ii) DPD Ferrous titration; or

(iii) a DPD method that uses a colorimeter or spectrophotometer.

(E) The chlorine dioxide residual must be measured to a minimum accuracy of plus or minus 0.05 mg/L using one of the following methods:

(i) Amperometric titrator with platinum-platinum electrodes; or

(ii) Lissamine Green B.

(F) The ozone residual must be measured to a minimum accuracy of plus or minus 0.05 mg/L using the Indigo Method and using a colorimeter or spectrophotometer.

(G) The UV dose must be measured by a calibrated sensor approved by the executive director.

(e) Filtration requirements for conventional filters. A system that uses granular media filters to treat surface water or groundwater under the direct influence of surface water must meet minimum filtration requirements before the water is supplied to any consumer.

(1) Treatment technique requirements for combined filter effluent. Treatment plants using conventional media filtration must meet the following turbidity requirements.

(A) The turbidity level of the combined filter effluent must never exceed 1.0 nephelometric turbidity unit (NTU).

(B) The turbidity level of the combined filter effluent must be 0.3 NTU or less in at least 95% of the samples tested each month.

(2) Performance criteria for individual filter effluent. The filtration techniques must ensure the public water system meets the following performance criteria.

(A) The turbidity from each individual filter effluent should never exceed 1.0 NTU.

(B) At a public water system that serves 10,000 people or more, the turbidity from each individual filter effluent should not exceed 0.5 NTU at four hours after the individual filter is returned to service after backwash or shutdown.

(3) Routine turbidity monitoring requirements. A system must monitor the performance of its filtration facilities.

(A) A system that serves fewer than 500 people and continuously monitors the turbidity level of each individual filter must measure and record the turbidity level of the combined filter effluent at least once each day that the plant is in operation.

(B) A system that serves at least 500 people and continuously monitors the turbidity level of each individual filter must measure and record the turbidity level of the combined filter effluent at least every four hours that the system serves water to the public.

(C) Except as provided in subparagraph (D) of this paragraph, a system must continuously monitor the filtered water turbidity at the effluent of each individual filter and record the turbidity value every 15 minutes.

(D) A system that serves fewer than 10,000 people and monitors combined filter effluent turbidity in lieu of individual filter effluent turbidity under the provisions of §290.42(d)(11)(E)(ii) of this title (relating to Water Treatment) must:

(i) continuously monitor the turbidity of the combined filter effluent and record the turbidity value every 15 minutes; and

(ii) measure and record the turbidity level at the effluent of each filter at least once each day the plant is in operation.

(4) Special investigation requirements. A system which fails to produce water with acceptable turbidity levels must investigate the cause of the problem and take appropriate corrective action. The executive director can waive these special monitoring requirements for systems that have a corrective action schedule approved by the executive director.

(A) A public water system that fails to meet the turbidity criteria specified in paragraph (2) of this subsection [~~subsection (e)(2) of this section~~] must conduct additional monitoring.

(i) Each time a filter exceeds an applicable filtered water turbidity level specified in paragraph (2) of this subsection [~~subsection (e)(2) of this section~~] for two consecutive 15-minute readings, the public water system must either identify the cause of the exceedance or produce a filter profile on the filter within seven days of the exceedance.

(ii) Each time a filter exceeds the filtered turbidity level specified in paragraph (2)(A) of this subsection [~~subsection (e)(2)(A) of this section~~] for two consecutive 15-minute readings on three separate occasions during any consecutive three-month period, the public water system must conduct a filter assessment on the filter within 14 days of the third exceedance.

(iii) Each time the filtered water turbidity level for a specific filter or any combination of individual filters exceeds 2.0 NTU on two consecutive 15-minute readings during two consecutive months, the public water system must participate in a third-party comprehensive performance evaluation (CPE). If the system serves at least 10,000 people, the CPE must be conducted within 90 days of the first exceedance in the second month. If the system serves fewer than 10,000 people, the CPE must be conducted within 120 days of the first exceedance in the second month.

(B) A system that serves fewer than 10,000 people, monitors combined filter effluent turbidity in lieu of individual filter effluent turbidity, and fails to meet the turbidity criteria in paragraph (1)(A) of this subsection [~~subsection (e)(1)(A) of this section~~] must conduct additional monitoring. The executive director may waive these special monitoring requirements for systems that have a corrective action schedule approved by the executive director.

(i) Each time the combined filter effluent turbidity level exceeds 1.0 NTU for two consecutive 15-minute readings, the public water system must either identify the cause of the exceedance or complete a filter profile on the combined filter effluent within seven days of the exceedance.

(ii) Each time the combined filter effluent turbidity level exceeds 1.0 NTU for two consecutive 15-minute readings on three separate occasions during any consecutive three-month period, the public water system must conduct a filter assessment on each filter within 14 days of the third exceedance.

(iii) Each time the combined filter effluent turbidity level exceeds 2.0 NTU on two consecutive 15-minute readings during two consecutive months, the public water system must participate in a third-party comprehensive performance evaluation within 120 days of the first exceedance in the second month.

(5) Analytical requirements for turbidity. All monitoring required by this subsection must be conducted by a facility approved by

the executive director and using methods that conform to the requirements of §290.119 of this title [~~(relating to Analytical Procedures)~~]. Equipment used for compliance measurements must be maintained and calibrated in accordance with §290.46(s) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems).

(A) Turbidity must be measured with turbidimeters that use one of the following methods:

(i) EPA Method 180.1 and Standard Method 2130B;

(ii) Great Lakes Instruments Method 2; or

(iii) Hach FilterTrak Method 10133.

(B) A system monitoring the performance of individual filters with on-line turbidimeters and recorders may monitor combined filter effluent turbidity levels by either continuously monitoring turbidity levels with an on-line turbidimeter or measuring the turbidity level in grab samples with a bench-top turbidimeter.

(C) Continuous turbidity monitoring must be conducted using a continuous, on-line turbidimeter and a device that records the turbidity level reading at least once every 15 minutes.

(i) Turbidity data may be recorded electronically by a supervisory control and data acquisition system (SCADA) or on a strip chart. The recorder must be designed so that the operator can accurately determine the turbidity level readings at 15-minute intervals.

(ii) If there is a failure in the continuous turbidity monitoring equipment at a system serving 10,000 people or more, the system must conduct grab sampling every four hours in lieu of continuous monitoring, but for no more than five working days following the failure of the equipment.

(iii) If the continuous turbidity monitoring equipment at a system serving fewer than 10,000 people malfunctions, the system must conduct grab sampling every four hours in lieu of continuous monitoring, but for no more than 14 working days following the failure of the equipment.

(D) A system that monitors combined filter effluent turbidity in lieu of individual filter effluent turbidity under §290.42(d)(11)(E)(ii) of this title must monitor the performance of individual filters using a bench-top turbidimeter.

(f) Filtration requirements for other filters. A system that uses cartridge filters, membrane filters, or other unconventional filtration systems to treat surface water or groundwater under the direct influence of surface water must meet minimum filtration requirements before the water is supplied to any consumer.

(1) Treatment technique requirements. A system that uses unconventional filtration technologies such as membrane filters or cartridge filters must meet treatment technique requirements prescribed by the executive director.

(A) The filtration facilities must meet <u>combined filter effluent and individual filter effluent</u> turbidity limits established by the executive director.

(B) The filtration facilities must be operated and maintained in accordance with requirements that the executive director determines are needed to demonstrate the amount of *Giardia* and *Cryptosporidium* removal achieved.

(2) Monitoring requirements. A system must monitor the performance of its filtration facilities.

(A) A system that serves fewer than 500 people and continuously monitors the turbidity level of each individual cartridge or membrane unit must measure and record the turbidity level of the combined effluent at least once each day that the plant is in operation.

(B) A system that serves at least 500 people and continuously monitors the turbidity level of each individual cartridge or membrane unit must measure and record the turbidity level of the combined effluent at least every four hours that the system serves water to the public.

(C) A system using membranes must use a method approved by the executive director to continuously monitor the quality of the water produced by each membrane unit and record the monitoring results at least once every five minutes. The executive director may approve monitoring parameters other than turbidity and decrease the frequency to once every 15 minutes if the approved operating parameters will allow consecutive readings to be obtained between backwash or backflush cycles.

(D) A system using membranes must conduct direct integrity testing on each membrane unit using a procedure approved by the executive director.

(i) Direct integrity tests must be conducted in a manner that will detect a membrane defect of 3 microns or smaller and demonstrates a removal efficiency equal to or greater than the removal credit awarded to the membrane filtration process by the executive director.

(ii) Direct integrity test method must calculate the log removal value for a 3-micron size particle and establish an upper control limit which assures that the unit is capable of meeting the removal credit approved by the executive director.

(iii) A system that has been assigned a Bin 1 classification under the provisions of subsection (c)(3)(B) of this section must conduct direct integrity tests at least once every seven days. The executive directed may reduce the testing requirements for other membrane units.

(iv) A system that has been assigned a Bin 2, 3, or 4 classification under the provisions of subsection (c)(3)(B) of this section must conduct direct integrity tests at least once each day that the membrane unit is used for filtration. The executive director may approve less frequent testing, based on demonstrated process reliability, the use of multiple barriers effective for *Cryptosporidium* removal or inactivation, or reliable process safeguards.

(v) A system must immediately conduct a direct integrity test on any membrane unit that produces filtered water with turbidity level above 0.15 NTU on two consecutive readings. The executive director must establish alternate site-specific control limits for systems that use other approved technology in lieu of turbidimeters to continuously monitor the performance of membrane units.

(vi) A system must immediately remove any membrane unit that fails a direct integrity test from service until the membrane modules in that unit are inspected and, if necessary, repaired. A membrane unit that has been removed from service may not be returned to service until it has passed a direct integrity test.

(E) A system that uses cartridge filters must continuously monitor the performance of the filtration process in a manner approved by the executive director.

(3) Analytical requirements. All monitoring required by this subsection must be conducted by a facility approved by the executive director and using methods that conform to the requirements of §290.119 of this title. Equipment used for compliance measurements

must be maintained and calibrated in accordance with §290.46(s) of this title.

(A) Turbidity of the combined effluent must be measured with turbidimeters that meet the requirements of subsection (e)(5)(A) of this section.

(B) The turbidity of the water produced by each membrane unit must be measured using the Hach FilterTrak Method 10133. The executive director may approve the use of alternative technology to monitor the quality of the water produced by each membrane unit.

(C) A system continuously monitoring the performance of individual cartridges or membrane units may monitor combined effluent turbidity levels by either continuously monitoring turbidity levels with an on-line turbidimeter, or by measuring the turbidity level in grab samples with a bench-top turbidimeter.

(D) Data collected from on-line instruments may be recorded electronically by a SCADA system or on a strip chart recorder. The recorder must be designed so that the operator can accurately determine the value of readings at the monitoring interval approved by the executive director.

(i) If there is a failure in the continuous monitoring equipment at a system serving 10,000 people or more, the system must conduct grab sampling every four hours in lieu of continuous monitoring, but for no more than five working days following the failure of the equipment.

(ii) If there is a failure in the continuous monitoring equipment at a system serving fewer than 10,000 people, the system must conduct grab sampling every four hours in lieu of continuous monitoring, but for no more than 14 working days following the failure of the equipment.

(E) A system that uses cartridge filters and does not continuously monitor the turbidity of each filter unit must monitor the performance of individual filters at least once each day using a bench-top turbidimeter.

(g) Other treatment credits for systems in Bins 2 through 4. The executive director may grant additional pathogen removal and inactivation credit to systems that meet enhanced design, operational, maintenance, and reporting requirements.

(1) Individual filter effluent. The executive director may approve an additional 1.0-log removal credit for *Giardia* and *Cryptosporidium* to a treatment plant that uses conventional granular media filters.

(A) The executive director will approve the additional credit for a plant if:

(i) the system continuously monitored the filtered water turbidity at the effluent of each individual filter and recorded the turbidity value every 15 minutes that the filter was sending water to the clearwell;

(ii) the turbidity level at each individual filter effluent is less than or equal to 0.15 NTU in at least 95% of the measurements recorded during the month; and

(iii) no individual filter produced water with turbidity level above 0.3 NTU in two consecutive 15-minute readings.

(B) The executive director may also approve the additional credit for a plant that does not meet the requirements of subparagraph (A) of this paragraph if:

(i) the executive director determines that the failure to meet the requirements of subparagraph (A) of this paragraph could not have been prevented through optimizing plant operations, design, or maintenance; and

(ii) the system has experienced no more than two such failures within the most recent 12 months.

(2) Combined filter effluent. The executive director may approve an additional 0.5-log removal credit for *Cryptosporidium* to a treatment plant that uses conventional granular media filters if:

(A) the system continuously monitored the filtered water turbidity at the effluent of each individual filter and recorded the turbidity value every 15 minutes that the filter was sending water to the clearwell;

(B) the turbidity level at the combined filter effluent is less than or equal to 0.15 NTU in at least 95% of the measurements recorded during the month; and

(C) the plant does not receive additional treatment credit under paragraph (1) of this subsection.

(3) Second stage filtration. The executive director will approve an additional 0.5-log removal credit for *Giardia* and *Cryptosporidium* to a treatment plant that uses a second, separate stage of conventional granular media filters if:

(A) the filters in both stages meet minimum design criteria approved by the executive director;

(B) all of the water produced by the plant passes through both stages of filtration;

(C) the system continuously monitored the filtered water turbidity at the effluent of each individual filter in the first stage of filtration and recorded the turbidity value every 15 minutes that the filter was sending water to the clearwell; and

(D) no individual filter in the first stage of filtration produced water with turbidity level above 1.0 NTU in two consecutive 15-minute readings.

(4) Other pathogen control strategies. The executive director may approve an additional removal or inactivation credit for other pre-filtration, filtration, or post-filtration strategies that can demonstrate effective, consistent levels of enhanced pathogen control.

(A) The alternative strategy must achieve a quantifiable reduction in the risk of waterborne disease in all of the treated water produced by the plant.

(B) The alternative strategy must conform to any applicable requirement of 40 CFR §§141.715 - 141.720.

(C) The executive director may establish minimum site-specific design, operational, maintenance, and reporting requirements for any alternative strategy used to meet minimum treatment technique requirements of subsection (c) of this section.

(D) The executive director may not approve additional removal credit under the provisions of this paragraph to any strategy that includes a treatment process has been assigned additional removal or inactivation credit under any other provision of this subsection.

(h) Reporting requirements. Public water systems must properly complete and submit periodic reports to demonstrate compliance with this section.

(1) A system that has a turbidity level exceeding 1.0 NTU in the combined filter effluent must consult with the executive director within 24 hours.

(2) A system that continuously monitors the performance of individual filters must submit a Surface Water Monthly Operating Report (commission Form 0102C) each month for each plant that treats surface water sources or groundwater sources under the direct influence of surface water.

(3) A system that monitors combined filter effluent turbidity in lieu of individual filter effluent turbidity under §290.42(d)(11)(E)(ii) of this title must submit a Surface Water Monthly Operating Report for 2-Filter Plants (commission Form 0103) each month for each plant that treats surface water or groundwater under the direct influence of surface water.

(4) A system that must complete the additional monitoring required by subsection (e)(4)(A)(i) or [~~(e)(4)~~](B)(i) of this section must submit a Filter Profile Report for Individual Filters (commission Form 10276) with its Surface Water Monthly Operating Report.

(5) A system that must complete the additional monitoring required by subsection (e)(4)(A)(ii) or [~~(e)(4)~~](B)(ii) of this section must submit a Filter Assessment Report for Individual Filters (commission Form 10277) with its Surface Water Monthly Operating Report.

(6) A system that must complete the additional monitoring required by subsection (e)(4)(A)(iii) or [~~(e)(4)~~](B)(iii) of this section must submit a Comprehensive Performance Evaluation Request Form (commission Form 10278) with its Surface Water Monthly Operating Report.

(7) A system that uses membranes must submit a Membrane Monthly Operating Report (commission Form 20356) for each plant that treats surface water or groundwater under the direct influence of surface water. The report must accompany the plant's Surface Water Monthly Operating Report.

(8) A system that uses UV disinfection to meet the minimum treatment technique requirements for surface water or groundwater under the direct influence of surface water must submit a UV Monthly Operating Report (commission Form 20357) with its Surface Water Monthly Operating Report. The report must accompany the plant's Surface Water Monthly Operating Report.

(9) A system must submit any additional reports required by the executive director to verify the level of pathogen removal or inactivation achieved by the system's treatment plants.

(10) A system must submit its *Cryptosporidium* bin classification.

(11) A system must submit reports required by subsection (b)(7) of this section.

(12) [~~(11)~~] Periodic reports required by this section must be submitted to the Water Supply Division, Texas Commission on Environmental Quality, MC 155, P.O. Box 13087, Austin, Texas 78711-3087 by the tenth day of the month following the end of the reporting period.

(i) Compliance determination. Compliance with the requirements of this section must be determined using the criteria of this subsection.

(1) A public water system that fails to complete source water monitoring or conduct the routine monitoring tests and any applicable special investigations required by this section commits a monitoring violation.

(2) A public water system that fails to submit a report required by subsection (h) of this section commits a reporting violation.

(3) A public water system using conventional filters that has a turbidity level exceeding 5.0 NTU in the combined filter effluent commits an acute treatment technique violation.

(4) A public water system using membrane filters that has a turbidity level exceeding 1.0 NTU in the combined filter effluent commits an acute treatment technique violation.

(5) Except as provided in paragraphs (3) and (4) of this subsection, a public water system that violates the requirements of subsections (c), (d)(1), (e)(1), and (f)(1) of this section commits a nonacute treatment technique violation.

(6) A system that fails to request a Bin Classification within six months of completing a round of source water monitoring commits a treatment technique violation.

(7) A system that fails to correct the performance-limiting factors identified in a comprehensive performance evaluation conducted under the requirements of subsection (e)(4)(A)(iii) or [~~(e)(4)~~](B)(iii) of this section commits a violation.

(8) A system that fails to properly issue a public notice required by subsection (j) of this section commits a violation.

(j) Public notification. The owner or operator of a public water system that violates the requirements of this section must notify the executive director and the people served by the system.

(1) A public water system that commits an acute treatment technique violation must notify the executive director and the water system customers of the acute violation within 24 hours in accordance with the requirements of §290.46(q) of this title and §290.122(a) of this title (relating to Public Notification).

(2) A public water system that has a turbidity level exceeding 1.0 NTU in the combined filter effluent must consult with the executive director within 24 hours of the violation.

(A) Based on the results of the consultation, the executive director will determine whether the water system must notify its customers in accordance with the requirements of §290.122(a) or (b) of this title.

(B) A water system that fails to consult with the executive director as required by this paragraph must notify its customers in accordance with the requirements of §290.122(a) of this title.

(3) Except as provided in paragraphs (1) and (2) of this subsection, a public water system that fails to meet the treatment technique requirements of subsections (c), (d)(1), (e)(1), or (f)(1) of this section must notify the executive director by the end of the next business day and the water system customers in accordance with the requirements of §290.122(b) of this title.

(4) A public water system that fails to conduct the monitoring required by this section must notify its customers of the violation in accordance with the requirements of §290.122(c) of this title.

§290.112. Total Organic Carbon (TOC).

(a) Applicability. All community and nontransient, noncommunity public water systems that treat surface water or groundwater under the direct influence of surface water and use sedimentation or clarification facilities as part of the treatment process must meet the provisions of this section.

(b) Treatment technique. Systems must achieve the Step 1 removal requirements in paragraph (1) of this subsection, meet one of the alternative compliance criteria described in paragraph (2) of this subsection, or apply for the alternative Step 2 removal requirements described in paragraph (3) of this subsection.

(1) Systems must determine their ability to meet the Step 1 removal requirements given in the following table. A water treatment plant's Step 1 total organic carbon (TOC) required percent removal is based upon plant's source water TOC and alkalinity. Step 1 TOC percent removal requirements are indicated in the following table. Systems practicing softening are evaluated based on the Step 1 TOC removal in the far-right column (Source water alkalinity >120 milligrams per liter (mg/L)) for the specified source water TOC.
Figure: 30 TAC §290.112(b)(1) (No change.)

(2) Systems may determine their ability to meet one of the eight alternative compliance criteria listed in this paragraph.

(A) A system meets alternative compliance criteria Number 1 if the system's source water TOC level is less than 2.0 mg/L, calculated quarterly as a running annual average.

(B) A system meets alternative compliance criteria Number 2 if the system's treated water TOC level is less than 2.0 mg/L, calculated quarterly as a running annual average.

(C) A system meets alternative compliance criteria Number 3 if: the system's source water TOC level is less than 4.0 mg/L, calculated quarterly as a running annual average; the source water alkalinity is greater than 60 mg/L (as calcium carbonate (CaCO3), calculated quarterly as a running annual average; and the total trihalomethanes (TTHM) and haloacetic acid-group of five (HAA5) running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively.

(D) The system meets alternative compliance criteria Number 4 if the TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively, and the system uses only chlorine for primary disinfection and maintenance of a residual in the distribution system.

(E) The system meets alternative compliance criteria Number 5 if the system's source water specific ultraviolet absorbance (SUVA), prior to any treatment, measured monthly, is less than or equal to 2.0 liters per milligram-meter (L/mg-m), calculated quarterly as a running annual average.

(F) The system meets alternative compliance criteria Number 6 if the system's finished water SUVA, measured monthly at a point prior to any disinfection, is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

(G) The system meets alternative compliance criteria Number 7 if the system practices softening, cannot achieve the Step 1 TOC removals required by paragraph (1) of this subsection, and has treated water alkalinity less than 60 mg/L (as CaCO3) and calculated quarterly as a running annual average.

(H) The system meets alternative compliance criteria Number 8 if the system practices softening, cannot achieve the Step 1 TOC removals required by paragraph (1) of this subsection, and has magnesium hardness removal greater than or equal to 10 mg/L (as CaCO3), measured monthly calculated quarterly as a running annual average.

(3) If a system fails to meet the Step 1 TOC removal requirement required by paragraph (1) of this subsection and does not meet one of eight alternative compliance criteria described in paragraph (2) of this subsection, the system must apply to the executive director for approval of Step 2 removal requirements.

(A) The plant must perform Step 2 jar testing to determine the coagulant dose at which the removal of TOC is less than 0.3 mg/L for an increase in coagulant of 10 mg/L alum or its equivalent. This dose is referred to as the point of diminishing returns (PODR).

(B) The system must submit the results of the Step 2 jar testing to the executive director for approval of the alternative removal requirements at least 15 days before the end of the applicable quarter.

(C) The executive director may approve Step 2 alternative removal requirements.

(i) If approved, the removal achieved at the PODR becomes the alternative full-scale TOC removal requirement for the plant.

(ii) The alternate removal requirements may be applied to the quarter in which the jar test results are received and for the following quarter.

(c) TOC monitoring requirements. Systems must conduct required TOC monitoring during normal operating conditions at sites and at the frequency designated in the system's monitoring plan.

(1) Systems must monitor for TOC and alkalinity in the source water prior to any treatment. Between one and eight hours after taking the source water sample, systems must measure each treatment plant TOC after filtration in the combined filter effluent stream. These samples (source water alkalinity, source water TOC, and treated water TOC) are referred to as a TOC sample set.

(2) Systems must take one TOC sample set monthly (every 30 days) at a time representative of normal operating conditions and influent water quality. With the executive director's approval, a system may reduce monitoring according to subparagraphs (A) - (C) of this paragraph.

(A) Systems with a running annual average treated water TOC of less than 2.0 mg/L for two consecutive years may reduce monitoring to one TOC sample set per plant per quarter (every 90 days). The system must revert to routine monitoring in the month following the quarter when the running annual average treated water TOC is greater than or equal to 2.0 mg/L.

(B) Systems with a running annual average treated water TOC of less than 1.0 mg/L for one year may reduce monitoring to one TOC sample set per plant per quarter (every 90 days). The system must revert to routine monitoring in the month following the quarter when the running annual average treated water TOC is greater than or equal to 2.0 mg/L.

(C) Systems with a running annual average source water TOC at each plant of less than or equal to 4.0 mg/L based on the running annual average of the most recent four quarters of monitoring may reduce source TOC monitoring to one source TOC sample [~~set~~] per quarter (every 90 days) if they also meet criteria for reduced disinfection byproduct [~~by-product~~] monitoring. In order to remain on quarterly source TOC monitoring, the system must also meet the criteria for reduced trihalomethane and haloacetic acid monitoring given in §290.113(c)(4) of this title (relating to Stage 1 Disinfection Byproducts (TTHM and HAA5) [~~By-products (Trihalomethanes and Haloacetic Acids)~~]) until the date shown in table §290.113(a)(2) of this title. After the date shown in §290.115(a)(2) of this title (relating to Stage 2 Disinfection Byproducts (TTHM and HAA5) [~~By-products (Trihalomethanes and Haloacetic Acids)~~]), the system must also meet the criteria for reduced trihalomethane and haloacetic acid monitoring in §290.115(c)(3) of this title in order to remain on quarterly source TOC monitoring. The system must revert to routine monitoring in the first month following the quarter when the running annual average source water TOC is greater than 4.0 mg/L, or the system no longer meets the reduced monitoring criteria for disinfection byproducts [~~by-products~~].

(3) A public water system attempting to meet the treatment technique requirements for TOC using alternative compliance criteria Number 5 (as defined in subsection (b)(2)(E) of this section) must monitor for SUVA in the source water prior to any treatment at least once each month.

(4) A public water system attempting to meet the treatment technique requirements for TOC using alternative compliance criteria Number 7 (as defined in subsection (b)(2)(G) of this section) must monitor for alkalinity in the treated water at any point prior to distribution system at least once each month.

(5) A public water system attempting to meet the treatment technique requirements for TOC using alternative compliance criteria Number 8 (as defined in subsection (b)(2)(H) of this section) must monitor for magnesium in both the source water prior to any treatment at and the treated water at any point prior to the distribution system least once each month.

(d) Analytical requirements for TOC treatment. Analytical procedures required by this section must be conducted at a facility approved by the executive director and using methods that conform to the requirements of §290.119 of this title (relating to Analytical Procedures).

(e) Reporting requirements for TOC. Systems treating surface water or groundwater under the direct influence of surface water shall properly complete and submit periodic reports to demonstrate compliance with this section.

(1) The reports must be submitted to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 by the tenth day of the month following the end of the reporting period.

(2) Public water systems must submit a Monthly Operational Report for Total Organic Carbon (commission Form 0879) each month.

(3) A system that does not meet the Step 1 removal requirements must submit a Request for Alternate TOC Requirements at least 15 days before the end of the quarter.

(A) If the system meets alternative compliance criterion Number 3, subsection (b)(2)(C) of this section, the system must report the running annual average TTHM and HAA5 concentrations as determined under the requirements of §290.113 of this title [~~(relating to Stage 1 Disinfection By-products (TTHM and HAA5)) or §290.115 of this title (relating to Stage 2 Disinfection By-products (TTHM and HAA5))~~].

(B) If the system meets alternative compliance criterion Number 4, subsection (b)(2)(D) of this section, the system must report the running annual average TTHM and HAA5 concentrations as determined under the requirements of §290.113 of this title or §290.115 of this title, and report all disinfectants used by the system during last 12 months.

(C) If the system meets alternative compliance criterion Number 5, subsection (b)(2)(E) of this section, the system must report the average source water SUVA for each of the preceding 12 months.

(D) If the system meets alternative compliance criterion Number 6, subsection (b)(2)(F) of this section, the system must report the average treated water SUVA for each of the preceding 12 months.

(E) If the system practices softening and meets alternative compliance criterion Number 8, subsection (b)(2)(H) of this section, the system must report the source water and treated water magnesium concentrations and the average percent removal of magnesium obtained during each of the preceding 12 months.

(F) A system that does not meet any of the alternative compliance criteria must apply for the Step 2 alternative removal requirements and must submit the results of Step 2 jar testing.

(f) Compliance determination. Compliance with the requirements of this section shall be based on the following criteria:

(1) A system that fails to conduct the monitoring tests required by this section commits a monitoring violation. Failure to monitor will be treated as a violation for the entire period covered by the annual average.

(2) A system that fails to report the results of monitoring tests required by this section commits a reporting violation. Systems may use only data collected under the provisions of this section to qualify for reduced monitoring.

(3) A system that does not meet any of the alternative compliance criteria and does not achieve the required TOC removal commits a treatment technique violation. Compliance shall be determined quarterly by determining an annual average removal ratio using the following method:

(A) The actual monthly TOC percent removal must be determined for each month. The actual removal for a TOC sample set is equal to (1 - treated water TOC/source water TOC). The actual monthly percent removal is calculated by taking average removal for all TOC sample sets collected in the month, and expressing that value as a percent.

(B) The required monthly Step 1 or Step 2 TOC percent removal must be determined as provided in subsection (b) of this section. The executive director will approve or disapprove Step 2 requirements based on jar or pilot data. Until the executive director approves the Step 2 TOC removal requirements, the system must meet the Step 1 TOC removals contained in subsection (b)(1) of this section.

(C) The monthly removal ratio must be determined. The monthly removal ratio is determined by dividing the actual monthly TOC percent removal for each month by the required monthly Step 1 or approved Step 2 TOC percent removal for the month. The alternative compliance criteria may be used on a monthly basis as described in clauses (i) - (iv) of this subparagraph.

(i) If the monthly average source or treated water TOC is less than 2.0 mg/L, a monthly removal ratio value of 1.0 may be assigned (in lieu of the value calculated in subparagraph (C) of this paragraph [~~subsection (f)(3)(C) of this section~~]) when calculating compliance under the provisions of this section.

(ii) If the monthly average water source or treated SUVA level is less than 2.0 L/mg-m, a monthly removal ratio value of 1.0 may be assigned (in lieu of the value calculated in subparagraph (C) of this paragraph [~~subsection (f)(3)(C) of this section~~]) when calculating compliance under the provisions of this section.

(iii) In any month that a softening system lowers alkalinity below 60 mg/L (as CaCO3), a monthly removal ratio value of 1.0 may be assigned (in lieu of the value calculated in subparagraph (C) of this paragraph [~~subsection (f)(3)(C) of this section~~]) when calculating compliance under the provisions of this section.

(iv) In any month that a softening system removes at least 10 mg/L of magnesium hardness (as CaCO3) a monthly value of 1.0 may be assigned (in lieu of the value calculated in subparagraph (C) of this paragraph [~~subsection (f)(3)(C) of this section~~]) when calculating compliance under the provisions of this section.

(D) The yearly removal ratio must be determined. The yearly removal ratio is the running annual average of the quarterly averages of the monthly averages. To determine this value, for each quarter in the compliance year, determine the monthly removal ratio, add the removal ratios and divide by three. Then, add the quarterly removal ratio and divide by four.

(E) If the yearly removal ratio is less than 1.00, the system commits a treatment technique violation.

(4) A public water system that fails to do a required public notice or certify that the public notice has been performed commits a public notice violation.

(g) Public Notification. A public water system that violates the treatment technique requirements of this section must notify the executive director and the system's customers.

(1) A public water system that commits a TOC treatment technique violation shall notify the executive director and the water system customers in accordance with the requirements of §290.122(b) of this title (relating to Public Notification).

(2) A public water system which fails to conduct the monitoring required by this section must notify its customers of the violation in accordance with the requirements of §290.122(c) of this title.

§290.113. Stage 1 Disinfection Byproducts [~~By-products~~] (TTHM and HAA5).

(a) Applicability for total trihalomethanes (TTHM) and haloacetic acids (group of five) (HAA5) [~~TTHM and HAA5~~]. All community and nontransient, noncommunity water systems shall comply with the requirements of this section.

(1) Systems must comply with the Stage 1 requirements in this section until the date shown in the table entitled "Date to Start Stage 2 Compliance."

(2) Until the date shown in the table in paragraph (1) of this subsection, systems must continue to monitor according to this section.
Figure: 30 TAC §290.113(a)(2) (No change.)

(b) Maximum contaminant level (MCL) for TTHM and HAA5. The running annual average concentration of TTHM and HAA5 [~~total trihalomethanes (TTHM) and haloacetic acids (five) (HAA5)~~] shall not exceed the MCLs [~~maximum contaminant levels~~].

(1) The MCL for TTHM is 0.080 milligrams/liter (mg/L).

(2) The MCL for HAA5 is 0.060 mg/L [~~milligrams/liter~~].

(c) Monitoring requirements for TTHM and HAA5. Systems must take all TTHM and HAA5 samples during normal operating conditions. Monitoring shall be performed at locations and frequency specified in the system's monitoring plan.

(1) The minimum number of samples required to be taken shall be based on the number of treatment plants used by the system, except that multiple wells drawing raw water from a single aquifer shall be considered as one treatment plant for determining the minimum number of samples.

(2) All samples taken within one sampling period shall be collected within a 24-hour period.

(3) Systems must routinely sample at the frequency and locations given in the following table entitled "Stage 1 Routine Monitoring Frequency and Locations for TTHM and HAA5."
Figure: 30 TAC §290.113(c)(3) (No change.)

(4) The executive director may reduce the monitoring frequency for TTHM and HAA5 as indicated in the following table entitled "Stage 1 Reduced Monitoring Frequency and Locations for TTHM and HAA5."
Figure: 30 TAC §290.113(c)(4) (No change.)

(A) The executive director may not reduce the routine monitoring requirements for TTHM and HAA5 until a system has completed one year of routine monitoring in accordance with the provisions of paragraph (3) of this subsection.

(B) A system that is on reduced monitoring and collects quarterly samples for TTHM and HAA5 may remain on reduced monitoring as long as the running annual average of quarterly averages for TTHM and HAA5 is no greater than 0.060 mg/L and 0.045 mg/L, respectively.

(C) A system that is on a reduced monitoring and monitors no more frequently than once each year may remain on reduced monitoring as long as TTHM and HAA5 concentrations are no greater than 0.060 mg/L and 0.045 mg/L, respectively.

(D) To remain on reduced TTHM and HAA5 monitoring, systems that treat surface water or groundwater under the direct influence of surface water must also maintain a source water annual average total organic carbon (TOC) level, before any treatment, less than or equal to 4.0 mg/L (based on the most recent four quarters of monitoring) on a continuing basis at each plant.

(5) The executive director may require a system to return to the routine monitoring frequency described in paragraph (3) of this subsection.

(A) A system that does not meet the requirements of paragraph (4)(B), (C) or (D) [~~or (C)~~] of this subsection must return to routine monitoring in the quarter immediately following the quarter in which the results exceed 0.060 mg/L or 0.045 mg/L for TTHMs and HAA5, respectively, or when the source water annual average TOC level, before any treatment, exceeds 4.0 mg/L at any plant.

(B) A system that is on reduced monitoring and makes any significant change to its source of water or treatment program shall return to routine monitoring in the quarter immediately following the quarter when the change was made.

(C) If a system is returned to routine monitoring, routine monitoring shall continue for at least one year before a reduction in monitoring frequency may be considered.

(D) The executive director may return a system on reduced monitoring to routine monitoring at any time.

(6) Systems monitoring no more frequently than once each year must increase their monitoring frequency to quarterly if either the TTHM annual average is >0.080 mg/L or the HAA5 annual average is >0.060 mg/L. The system must begin monitoring quarterly following the monitoring period in which the system exceeds 0.080 mg/L or 0.060 mg/L for TTHMs or HAA5, respectively.

(d) Analytical requirements for TTHM and HAA5. Analytical procedures required by this section shall be performed in accordance with §290.119 of this title (relating to Analytical Procedures). Testing for TTHM and HAA5 shall be performed at a laboratory accredited [~~certified~~] by the executive director.

(e) Reporting requirements for TTHM and HAA5. Upon the request of the executive director, the owner or operator of a public water system must provide the executive director with a copy of the results of any test, measurement, or analysis required by this subsection. The copies must be submitted within ten days of the request or within ten days of their receipt by the public water system, whichever is later. The copies must be mailed to the Water Supply Division, MC 155, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

(f) Compliance determination for TTHM and HAA5. Compliance with the provisions of this section shall be determined as follows.

(1) A system that fails to monitor in accordance with this section commits a monitoring violation. Failure to monitor will be treated as a violation for the entire period covered by the annual average.

(2) A public water system that fails to report the results of the monitoring tests required by subsection (e) of this section commits a reporting violation.

(3) Compliance with the MCLs for TTHM and HAA5 shall be based on the running annual average of all samples collected during the preceding 12 months.

(A) A public water system that samples for TTHM and HAA5 each quarter must calculate the running annual average of the quarterly averages.

(B) A public water system that samples for TTHM and HAA5 no more frequently than once each year must calculate the annual average of all samples collected during the year.

(C) All samples collected at the sampling sites designated in the public water system's monitoring plan shall be used to compute the quarterly and annual averages unless the analytical results are invalidated by the executive director for technical reasons.

(4) A public water system violates the MCL for TTHM if the running annual average for TTHM exceeds the MCL specified in subsection (b)(1) of this section.

(5) A public water system violates the MCL for HAA5 if the running annual average for HAA5 exceeds the MCL specified in subsection (b)(2) of this section.

(6) If a public water system is routinely sampling in accordance with the requirements of subsection (c)(3) of this section and an individual sample or quarterly average will cause the system to exceed the MCL for TTHM or HAA5, the system is in violation of the respective MCL at the end of that quarter.

(7) If a public water system's failure to monitor makes it impossible to determine compliance with the MCL for TTHM or HAA5, the system commits an MCL violation for the entire period covered by the annual average.

(g) Public Notification Requirements for TTHM and HAA5. A public water system that violates the treatment technique requirements of this section must notify the executive director and the system's customers.

(1) A public water system that violates an MCL given in subsection (b)(1) or (2) of this section shall report to the executive director and the water system customers in accordance with the requirements of §290.122(b) of this title (relating to Public Notification).

(2) A public water system which fails to conduct the monitoring required by subsection (c) of this section must notify its customers of the violation in accordance with the requirements of §290.122(c) of this title.

(h) Best available technology for TTHM and HAA5. Best available technology for treatment of violations of MCLs in subsection (b) of this section are listed in 40 Code of Federal Regulations §141.64(b)(1)(ii).

§290.114. Other Disinfection Byproducts [~~By-products~~] (Chlorite and Bromate).

(a) Chlorite. All [~~community and nontransient noncommunity~~] public water systems that use chlorine dioxide must comply with the requirements of this subsection.

(1) Maximum contaminant level (MCL) for chlorite. The chlorite concentration in the water in the distribution system shall not exceed an MCL of 1.0 milligrams per liter (mg/L).

(2) Monitoring requirements for chlorite. Public water systems shall measure the chlorite concentration at locations and intervals specified in the system's monitoring plan. All samples must be collected during normal operating conditions.

(A) Each plant using chlorine dioxide must monitor the chlorite concentration in the water entering the distribution system at least once each day. The monitoring frequency at the entry point to the distribution system may not be reduced.

(B) Each plant using chlorine dioxide must monitor the chlorite concentration in the water within the distribution system at each of the following three locations: at a location near the first customer of a plant using chlorine dioxide; at a location representative of the average residence time in the distribution system; and at a location reflecting maximum residence time in the distribution system. The group of three samples must be collected on the same day and is called a "three-sample set."

(i) Each system must collect at least one three-sample set each month.

(ii) If the chlorite concentration entering the distribution system exceeds 1.0 mg/L, the system must collect a three-sample set within 24 hours.

(iii) The frequency of chlorite monitoring in the distribution system may be reduced to one three-sample set per quarter if none of the entry point or distribution system samples tested during the preceding 12 months contained a chlorite concentration above 1.0 mg/L. A system must revert to the monthly monitoring frequency if the chlorite concentration exceeds 1.0 mg/L in any sample.

(3) Analytical requirements for chlorite. Analytical procedures required by this section shall be performed in accordance with the requirements of §290.119 of this title (relating to Analytical Procedures).

(A) The chlorite concentration of the water entering the distribution system must be analyzed at a facility approved by the executive director. The analysis must have a minimum accuracy of 0.05 mg/L and use one of the following methods:

(i) amperometric titration using a unit with platinum-platinum electrodes; or

(ii) ion chromatography.

(B) The chlorite concentration of the water within the distribution system must be analyzed using ion chromatography at a facility accredited [~~certified~~] by the executive director.

(4) Reporting requirements for chlorite. Public water systems that are subject to the provisions of this subsection must provide the executive director with the results of any test, measurement, or analysis required by this section.

(A) Systems using chlorine dioxide must submit a Chlorine Dioxide Monthly Operating Report (commission Form 0690) by the tenth day of the month following the end of the reporting period.

(B) Upon the request of the executive director, systems shall provide the executive director with a copy of the results of any chlorite test, measurement, or analysis required by paragraph (2)(B) of this subsection [~~subsection (a)(2)(B) of this section~~] within ten days following receipt of the results of such test, measurement, or analysis.

(C) Reports and analytical results must be mailed to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

(5) Compliance determination for chlorite. Compliance with the requirements of this subsection shall be based on the following criteria.

(A) A public water system that fails to conduct the monitoring tests required by this subsection commits a monitoring violation.

(B) A public water system that fails to report the results of the monitoring tests required by this subsection commits a reporting violation.

(C) A public water system commits an MCL violation if the arithmetic average of any three-sample set collected in the distribution system exceeds the MCL for chlorite.

(D) A public water system that fails to do a required public notice or certify that the public notice has been performed commits a public notice violation.

(6) Public notification requirements for chlorite. A public water system that violates the requirements of this subsection must notify the executive director and the system's customers.

(A) A public water system that violates the MCL for chlorite shall notify the executive director by the end of the next business day and the customers in accordance with the requirements of §290.122(b) of this title (relating to Public Notification).

(B) A public water system which fails to conduct the monitoring required by this subsection must notify its customers of the violation in accordance with the requirements of §290.122(c) of this title.

(b) Bromate. Community and nontransient, noncommunity public water systems that use ozone must comply with the requirements of this subsection beginning on January 1, 2002.

(1) MCL [~~Maximum contaminant level~~] for bromate. The concentration of bromate at the entry point to the distribution system shall not exceed an MCL of 0.010 mg/L.

(2) Monitoring requirements for bromate. Each plant using ozone must measure the bromate concentration in the water entering the distribution system at least once each month. The monitoring frequency at the entry point to the distribution system may not be reduced. Samples shall be collected when the ozonation system is operating under normal conditions and at locations and intervals specified in the system's monitoring plan.

(3) Analytical requirements for bromate. Analytical procedures required by this section shall be performed in accordance with §290.119 of this title. Testing for bromate shall be performed at a laboratory certified by the executive director.

(4) Reporting requirements for bromate. Upon the request of the executive director, the owner or operator of a public water system must provide the executive director with a copy of the results of any test, measurement, or analysis required by this subsection. The copies must be submitted within ten days of the request or within ten days of their receipt by the public water system, whichever is later. The copies must be mailed to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

(5) Compliance determination for bromate. Compliance with the requirements of this subsection shall be determined using the following criteria.

(A) A system that fails to monitor in accordance with this section commits a monitoring violation. Failure to monitor will be treated as a violation for the entire period covered by the annual average.

(B) A public water system that fails to report the results of the monitoring tests required by this subsection commits a reporting violation.

(C) A public water system violates the MCL for bromate if, at the end of any quarter, the running annual average of monthly averages, computed quarterly, exceeds the maximum contaminant level specified in paragraph (1) of this subsection.

(D) A public water system that fails to do a required public notice or certify that the public notice has been performed commits a public notice violation.

(E) A public water system that fails to complete 12 consecutive months' monitoring, compliance with the MCL for the last four-quarter compliance period must be based on an average of the available data.

(6) Public notification requirements for bromate. A public water system that violates the requirements of this subsection must notify the water system's customers and the executive director.

(A) A public water system that violates the MCL for bromate shall notify the customers in accordance with the requirements of §290.122(b) of this title.

(B) A public water system which fails to conduct the monitoring required by this subsection must notify its customers of the violation in accordance with the requirements of §290.122(c) of this title.

§290.115. Stage 2 Disinfection Byproducts [~~By-products~~] (TTHM and HAA5).

(a) Applicability for total trihalomethanes (TTHM) and haloacetic acids (group of five) (HAA5) [~~TTHM and HAA5~~]. All community and nontransient, noncommunity water systems shall comply with the requirements of this section for TTHM and HAA5 [~~total trihalomethanes (TTHM) and haloacetic acids (group of five) (HAA5)~~].

(1) Systems must comply with the initial monitoring requirements starting on the dates given in subsection (c) of this section.

(2) Systems must comply with all of the additional requirements in this section starting on the date shown in the table entitled "Date to Start Stage 2 Compliance."
Figure: 30 TAC §290.115(a)(2) (No change.)

(A) Systems required to conduct quarterly monitoring, must begin monitoring in the first full calendar quarter that includes the compliance date in the table titled "Date to Start Stage 2 Compliance."

(B) Systems required to conduct routine monitoring less frequently than quarterly must begin monitoring in the calendar month approved by the executive director in their Initial Distribution System Evaluation (IDSE) [~~IDSE~~] report or revised monitoring plan identifying Stage 2 sample sites.

(b) Maximum contaminant levels (MCL) and operational evaluation levels (OELs) for TTHM and HAA5. Systems shall comply with MCLs and OELs.

(1) The locational running annual average (LRAA) concentration of TTHM and HAA5 shall not exceed the maximum contaminant levels. A public water system that exceeds a MCL shall determine compliance as described in subsection (f) of this section.

(A) The MCL for TTHM is 0.080 milligrams/liter (mg/L).

(B) The MCL for HAA5 is 0.060 mg/L.

(2) The OEL at any monitoring location is the sum of the two previous quarters' results plus twice the current quarter's result, divided by 4 to determine an average. A public water system that exceeds an OEL shall perform operation evaluation monitoring and reporting described in subsection (e) of this section.

(A) The OEL for TTHM is 0.080 mg/L.

(B) The OEL for HAA5 is 0.060 mg/L.

(c) Monitoring requirements for TTHM and HAA5. Monitoring shall be performed at locations and frequency specified in the system's monitoring plan as approved by the executive director.

(1) Monitoring locations. Systems must establish Stage 2 compliance monitoring sites throughout the distribution system at locations with the potential for relatively high disinfection byproduct [~~by-product~~] formation. Systems must determine Stage 2 compliance monitoring locations by the dates shown in the table titled "Date to Establish Stage 2 Sites."
Figure: 30 TAC §290.115(c)(1) (No change.)

(A) Systems that perform IDSE [~~initial distribution system evaluation (IDSE)~~] sampling in accordance with paragraph (5) of this subsection [~~subsection (c)(5) of this section~~] must use the IDSE and Stage 1 results to set Stage 2 compliance monitoring sites.

(B) Systems that do not perform IDSE sampling must set Stage 2 compliance monitoring sites through consultation with the executive director in accordance with this subparagraph.

(i) Systems required to sample at the same number of sites under Stage 1 and Stage 2, can use the Stage 1 sites for Stage 2 compliance monitoring.

(ii) Systems required to sample at more sites under Stage 2 than Stage 1 must identify Stage 2 sites in addition to the existing Stage 1 sites. Systems must identify additional sites representing areas of the distribution system with potentially high TTHM or HAA5 levels and provide the rationale for identifying these locations as having high levels of TTHM or HAA5. The required number of compliance monitoring locations must be identified.

(iii) Systems required to sample at fewer sites under Stage 2 than Stage 1 must identify which locations will be used for Stage 2. Stage 2 sites will be selected by alternating selection of Stage 1 locations representing the highest TTHM levels and highest HAA5 levels until the required number of compliance monitoring locations have been identified.

(C) The protocol given in Title 40 Code of Federal Regulations (40 CFR) §141.605(c) - (e) for selecting Stage 2 sample sites is hereby adopted by reference.

(D) To change monitoring locations, a system must replace existing compliance monitoring locations with the lowest LRAA with new locations that reflect the current distribution system locations with expected high TTHM or HAA5 levels. Changes must be approved by the executive director and included in the monitoring plan.

(2) Monitoring frequency and number of sample sites. Routine sampling frequency and number of sample sites are given in the following table, titled "Routine Stage 2 Monitoring Frequency and Number of Sites." Systems must take all routine compliance TTHM and HAA5 samples during normal operating conditions.
Figure: 30 TAC §290.115(c)(2)
[~~Figure: 30 TAC §290.115(c)(2)~~]

(3) Reduced monitoring for TTHM and HAA5. Monitoring may be reduced when the LRAA is less than or equal to 0.040 mg/L for TTHM and less than or equal to 0.030 mg/L for HAA5 at all Stage 2 compliance monitoring locations. The Stage 2 reduced sampling frequency and number of sample sites are given in the following table, titled "Reduced Stage 2 Monitoring Frequency and Number of Sites."
Figure: 30 TAC §290.115(c)(3) (No change.)

(A) Only data collected under the provisions of §290.113 of this title (relating to Stage 1 Disinfection Byproducts [~~By-products~~] (TTHM and HAA5)) and under this section may be used to qualify for reduced monitoring.

(B) In order to remain on [~~qualify for~~] reduced monitoring, a system must meet the applicable conditions of this subparagraph.

(i) Systems with annual or less frequent reduced [~~routine~~] monitoring qualify to remain on reduced monitoring as long as each TTHM sample is less than or equal to 0.060 mg/L and each HAA5 sample is less than or equal to 0.045 mg/L.

(ii) Systems on quarterly reduced monitoring qualify to remain on reduced monitoring as long as the TTHM LRAA is less than or equal to 0.040 mg/L and the HAA5 LRAA is less than or equal to 0.030 mg/L at each monitoring location.

(iii) To qualify for and remain on reduced monitoring, the source water annual average Total Organic Carbon (TOC) [~~TOC~~] level, before any treatment, must be less than or equal to 4.0 mg/L at each treatment plant treating surface water or groundwater under the direct influence of surface water, based on monitoring conducted under §290.112(c)(2)(C) of this title (relating to Total Organic Carbon (TOC)).

(C) Systems will be returned to routine monitoring:

(i) if the LRAA at any monitoring location exceeds either 0.040 mg/L for TTHM or 0.030 mg/L for HAA5 based on quarterly monitoring, or

(ii) if the annual (or triennial) sample at any location exceeds either 0.060 mg/L for TTHM or 0.045 mg/L for HAA5, or

(iii) if the source water annual average TOC level, before any treatment, exceeds 4.0 mg/L at any treatment plant treating surface water or groundwater under the direct influence of surface water.

(D) The executive director may return a system on reduced monitoring to routine monitoring at any time.

(E) A system that is on reduced Stage 1 monitoring in accordance with §290.113(c)(4) of this title that has monitoring locations for Stage 2 different from those under Stage 1 must initiate routine monitoring in accordance with paragraph (2) of this subsection [~~subsection (c)(2) of this section~~] on the schedule given in subsection (a) of this section.

(F) A system that is on reduced monitoring in accordance with §290.113(c)(4) of this title may remain on reduced moni-

toring after the dates identified in subsection (a)(2) of this section only if the system:

(i) received a very small system (VSS) [~~Initial Distribution System Evaluation (~~]IDSE[~~)~~] waiver under paragraph (5)(A) of this subsection [~~subsection (c)(5)(A) of this section~~] or received a 40/30 IDSE waiver under paragraph (5)(B) of this subsection [~~subsection (c)(5)(B) of this section~~], and

(ii) meets the reduced monitoring criteria in subparagraph (B) of this paragraph [~~(c)(3)(B)~~], and

(iii) is approved to use the same monitoring locations under Stage 1 and Stage 2.

(G) The executive director may choose to perform calculations and determine whether the system is eligible for reduced monitoring in lieu of having the system report that information.

(4) Increased monitoring for TTHM and HAA5. The executive director may increase monitoring in accordance with this paragraph.

(A) A system required to routinely monitor at a particular location annually or less frequently than annually under paragraph (2) of this subsection [~~subsection (c)(2) of this section~~] must increase monitoring to quarterly dual sample sets (every 90 days) at all locations if any TTHM compliance sample is greater than 0.080 mg/L or if any HAA5 compliance sample is greater than 0.060 mg/L at any location.

(B) The executive director may return a system on increased quarterly monitoring to routine monitoring after at least four consecutive quarters if the LRAA for every monitoring location is less than or equal to 0.060 mg/L for TTHM and less than or equal to 0.045 mg/L for HAA5.

(C) A system that is on increased monitoring under §290.113 of this title must remain on increased monitoring until the system qualifies for a return to routine monitoring under subparagraph (B) of this paragraph [~~subsection (c)(4)(B) of this section~~]. The increased monitoring schedule must be conducted at the Stage 2 monitoring locations approved under paragraph (1) of this subsection [~~subsection (c)(1) of this section~~], beginning on the date identified in subsection (a)(2) of this section.

(5) Initial Distribution System Evaluation (IDSE) requirements. All community systems of any size and nontransient noncommunity systems that serve at least 10,000 people must comply with these IDSE [~~Initial Distribution System Evaluation (IDSE)~~] requirements.

(A) The executive director may grant a VSS IDSE monitoring waiver to systems that serve fewer than 500 people. Systems that receive a VSS IDSE monitoring waiver are not required to do IDSE monitoring. Systems must be compliant with all of the Stage 1 monitoring requirements of §290.113 of this title to be eligible for a VSS IDSE waiver.

(B) The executive director may grant a 40/30 IDSE monitoring waiver to IDSE monitoring to systems with levels for TTHM less than 0.040 mg/L and levels for HAA5 less than 0.030 mg/L. Systems that receive a 40/30 IDSE monitoring waiver are not required to do IDSE monitoring. Systems must be compliant with all of the Stage 1 monitoring requirements of §290.113 of this title to be eligible for a 40/30 IDSE waiver. The timing of samples that all need to be less than 0.040 mg/L and 0.030 mg/L respectively for TTHM and HAA5 are given in the following table, titled "Timing of Stage 1 Samples Evaluated for 40/30 Waiver."
Figure: 30 TAC §290.115(c)(5)(B)
[~~Figure: 30 TAC §290.115(c)(5)(B)~~]

(i) To qualify for a 40/30 IDSE waiver a system must certify to the executive director that every individual sample taken under §290.113 of this title were less than 0.040 mg/L for TTHM and less than 0.030 mg/L for HAA5, and must have not had any TTHM or HAA5 monitoring violations during the period specified in subsection (a) of this section.

(ii) To qualify for a 40/30 IDSE waiver, a system must submit compliance monitoring results, distribution system schematics, and recommended Stage 2 compliance monitoring locations to the executive director upon request. The executive director may require a system that fails to submit the requested information to perform IDSE sampling.

(iii) The executive director may still require a system that meets the 40/30 IDSE waiver or VSS IDSE waiver requirements to do IDSE sampling under subparagraph (C) of this paragraph.

(C) Systems that must perform IDSE sampling must submit any needed documentation for waivers, produce an IDSE Plan, do IDSE sampling, and report the IDSE results to the executive director on the schedule in the following table titled "IDSE Schedule."
Figure: 30 TAC §290.115(c)(5)(C)
[~~Figure: 30 TAC §290.115(c)(5)(C)~~]

(i) The IDSE plan has required elements.

(I) The IDSE plan must include a schematic of the distribution system (including distribution system entry points and their sources, and storage facilities), with notes indicating locations and dates of all projected standard monitoring, and also Stage 1 compliance monitoring under §290.113 of this title.

(II) The IDSE plan must include justification of IDSE monitoring location selection and a summary of data used to justify IDSE monitoring location selection.

(III) The IDSE plan must include the system type and population served by the system.

(ii) Systems must do required IDSE sampling in accordance with this clause.

(I) Systems must monitor at the number and type of sites indicated in the following table titled "Number and Type of IDSE Sample Sites":
Figure: 30 TAC §290.115(c)(5)(C)(ii)(I) (No change.)

(II) Systems must collect dual sample sets at each monitoring location. One sample in the dual sample set must be analyzed for TTHM. The other sample in the dual sample set must be analyzed for HAA5.

(III) IDSE sample locations must be different than the existing Stage 1 monitoring locations established under §290.113 of this title.

(IV) IDSE sample locations must be distributed throughout the distribution system.

(V) Systems must monitor at the frequency indicated in the following table titled "Frequency of IDSE Monitoring":
Figure: 30 TAC §290.115(c)(5)(C)(ii)(V)
[~~Figure: 30 TAC §290.115(c)(5)(C)(ii)(V)~~]

(VI) The IDSE monitoring frequency and locations may not be reduced.

(iii) The IDSE report must comply with the elements in this clause.

(I) The IDSE report must include all TTHM and HAA5 analytical results from Stage 1 compliance monitoring under §290.113 of this title and all IDSE sample results and locational running annual averages presented in a tabular or spreadsheet format acceptable as described in TCEQ regulatory guidance number 384: "How to Develop a Monitoring Plan for a Public Water System."

(II) If changed from the IDSE plan submitted under clause (ii) of this subparagraph, the IDSE report must also include an updated distribution system map, documentation verifying the population served, and an updated list of sources including their water type.

(III) The IDSE report must include an explanation of any deviations from the approved IDSE plan.

(IV) The IDSE report must recommend and justify Stage 2 compliance monitoring locations consistent with paragraph (1) of this subsection [~~subsection (c)(1) of this section~~]. The recommended Stage 2 compliance monitoring locations must be listed in a Stage 2 sample plan as part of the system's monitoring plan.

(V) The IDSE report must include recommendations and justification for when Stage 2 samples should be collected.

(iv) The executive director may approve a system specific study that meets the requirements in 40 CFR §141.602 to comply with IDSE sampling requirements. The commission hereby adopts the requirements of 40 CFR §141.602 by reference.

(D) The executive director may require a system to perform IDSE sampling or a system specific study for any reason. The executive director may require a system to perform IDSE sampling or a system specific study even if the system meets the criteria for an IDSE waiver. The executive director may require new systems and systems with a change in population or system type to perform IDSE sampling or a system specific study.

(d) Analytical requirements for TTHM and HAA5. Analytical procedures required by this section shall be performed in accordance with §290.119 of this title (relating to Analytical Procedures). Testing for TTHM and HAA5 shall be performed at a laboratory accredited [~~certified~~] by the executive director.

(e) Reporting requirements for TTHM and HAA5. Public water systems must submit reports related to TTHM and HAA5 to the executive director. Reports must be mailed to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

(1) Upon the request of the executive director, the owner or operator of a public water system must provide the executive director with a copy of the results of any test, measurement, or analysis required by this subsection. The copies must be submitted within ten days of the request or within ten days of their receipt by the public water system, whichever is later.

(A) The owner or operator of a public water system is responsible for reporting the following information for each monitoring location to the executive director within ten days of the end of any quarter in which monitoring is required:

(i) number of samples taken during the last quarter;[~~,~~]

(ii) date and results of each sample taken during the last quarter;[~~,~~]

(iii) arithmetic average of quarterly results for the last four quarters for each monitoring location (LRAA), beginning at the end of the fourth calendar quarter that follows the compliance date and at the end of each subsequent quarter;[~~,~~]

(iv) whether the MCL was violated at any monitoring location;[~~,~~] and

(v) any OELs that were exceeded during the quarter and, if so, the location and date, and the calculated TTHM and HAA5 levels.

(B) If the LRAA based on fewer than four quarters would cause the MCL to be exceeded regardless of the monitoring results of subsequent quarters, the system must report a potential MCL violation as part of the first report due following the compliance date or anytime thereafter that this determination is made. A system required to conduct monitoring at a frequency that is less than quarterly must make compliance calculations beginning with the first compliance sample taken after the compliance date, unless the system is required to conduct increased monitoring under subsection (c)(4) of this section.

(C) A system that treats surface water or groundwater under the direct influence of surface water that seeks to qualify for or remain on reduced TTHM and HAA5 monitoring must measure and report TOC monthly in accordance with §290.112 of this title [~~(relating to Total Organic Carbon)~~] and distribution system disinfection levels in accordance with §290.110 of this title (relating to Disinfectant Residuals [~~Disinfection~~]).

(2) A system that exceeds an OEL described in subsection (b)(2) of this section must conduct an operation evaluation and submit a written operation evaluation report that meets the requirements of this paragraph.

(A) The operation evaluation report must be submitted to the executive director no later than 90 days after being notified of the analytical result that causes the exceedance of the OEL.

(B) The operation evaluation report must document an examination of system treatment and distribution operation practices that may contribute to TTHM and HAA5 formation, including:

(i) storage tank operations;

(ii) excess storage capacity;

(iii) distribution system flushing;

(iv) changes in sources or source water quality;

(v) treatment changes or problems; and

(vi) what steps could be considered to minimize future exceedances.

(C) If the cause of the OEL exceedance is identifiable the scope of the report may be limited with the approval of the executive director. A request to limit the scope of the evaluation does not extend the schedule in subparagraph (A) of this paragraph [~~paragraph (2)(A) of this subsection~~] for submitting the written report. The executive director's approval to limit the scope of the operation evaluation report must be in writing. The system must keep a copy of the executive director's approval with the completed operation evaluation report.

(D) The operation evaluation report must be submitted and approved in writing.

(f) Compliance determination for TTHM and HAA5. Compliance with the provisions of this section shall be determined as follows.

(1) A public water system violates the MCL for TTHM if any locational running annual average for TTHM exceeds an MCL specified in subsection (b)(1)(A) of this section. A public water system violates the MCL for HAA5 if any locational running annual average for HAA5 exceeds the MCL specified in subsection (b)(1)(B) of this section.

(A) Compliance with the MCLs for TTHM and HAA5 shall be based on the LRAA of all samples collected during four consecutive quarters of monitoring. If a single quarterly sample would cause an LRAA exceedance regardless of the results of subsequent quarters, compliance may be based on fewer than four quarters of data. Should a system fail to collect all required samples, compliance will be based on the available data. All samples collected at the sampling sites designated in the public water system's monitoring plan shall be used to compute the quarterly and annual averages unless the analytical results are invalidated by the executive director for technical reasons.

(B) Stage 2 MCL compliance determination with LRAAs will start after Stage 2 samples are collected.

(i) For systems required to conduct routine quarterly monitoring, compliance calculations will be made starting at the end of the fourth calendar quarter that follows the compliance date in subsection (a)(2) of this section and at the end of each subsequent quarter.

(ii) For systems on quarterly monitoring, where the LRAA based on fewer than four quarters would exceed the MCL regardless of the monitoring results of subsequent quarters, compliance will be calculated beginning with the first sample that causes that exceedance.

(iii) For systems that are required to monitor less frequently than quarterly, compliance shall be calculated beginning with the first compliance sample taken after the compliance date.

(iv) For systems monitoring annually or triennially that start monitoring quarterly in the quarter following an LRAA exceedance, compliance shall be calculated based on the results of all available samples.

(C) If a public water system's failure to monitor makes it impossible to determine compliance with the MCL for TTHM or HAA5, the system commits an MCL violation for the entire period covered by the annual average.

(D) The executive director may choose to perform calculations and determine MCL exceedances in lieu of having the system report that information.

(E) IDSE results will not be used for the purpose of determining compliance with MCLs.

(2) A system that fails to monitor in accordance with this section commits a monitoring violation. A system on a quarterly monitoring schedule is in violation of the monitoring requirements for each quarter that it fails to monitor.

(3) A system that fails to perform a required operation evaluation under subsection (e)(2) of this section commits a monitoring violation.

(4) A public water system that fails to report the results of the monitoring tests required by subsection (e) of this section commits a reporting violation.

(5) A system that fails to submit an operation evaluation report as required under subsection (e)(2) of this section commits a reporting violation.

(6) A system that fails to perform a required public notification commits a public notification violation.

(g) Public notification requirements [~~Notification Requirements~~] for TTHM and HAA5. A public water system that violates the treatment technique requirements of this section must notify the executive director and the system's customers.

(1) A public water system that commits an MCL violation described in subsection (f)(1) of this section shall report to the executive director and the water system customers in accordance with the requirements of §290.122(b) of this title (relating to Public Notification).

(2) A public water system which fails to conduct the monitoring required by subsection (c) of this section must notify its customers of the violation in accordance with the requirements of §290.122(c) of this title.

(3) Any IDSE compliance documents required under subsection (c)(5) of this section must be made available to the executive director or the public upon request.

(4) Any operation evaluation report required under subsection (e)(2) of this section must be made available to the executive director or the public upon request.

(h) Best available technology for TTHM and HAA5. Best available technology for treatment of violations of MCLs in subsection (b) of this section are listed in 40 CFR §141.64(b)(2)(ii).

§290.117. Regulation of Lead and Copper.

(a) Applicability. The requirements of this section apply to community and nontransient, noncommunity public water systems. These regulations establish requirements for monitoring, reporting, corrosion control studies and treatment, source water treatment, lead service line replacement, and public education. Public water systems must control the levels of lead and copper in drinking water by controlling the corrosivity of the water. New water systems will be required to meet the requirements of this section when notified by the executive director.

(b) Compliance levels and ranges. Community and nontransient, noncommunity systems must meet designated lead and copper levels and water quality parameter ranges.

(1) Lead and copper action levels. Public water systems must meet action levels for lead and copper in drinking water.

(A) Lead action level. The lead action level is 0.015 milligrams per liter (mg/L). The action level is exceeded if the "90th percentile" lead level exceeds 0.015 mg/L in any monitoring period. The 90th percentile lead level is exceeded when more than 10% of tap water samples have a concentration over the action level.

(B) Copper action level. The copper action level is 1.3 mg/L. The action level is exceeded if the concentration of copper in more than 10% of tap water samples collected during any monitoring period is greater than 1.3 mg/L.

(2) Reduced lead and copper monitoring levels. Systems with levels of lead and copper less than the reduced monitoring levels may be eligible for reduced monitoring under subsections (c) - (e) of this section.

(A) The reduced monitoring level for lead is 0.005 mg/L.

(B) The reduced monitoring level for copper is 0.65 mg/L.

(C) A system with 90th percentile levels of lead and copper less than or equal to the reduced monitoring levels in two consecutive six-month initial or routine tap sampling periods may be eligible for reduced monitoring under subsections (c) - (e) of this section.

(3) Lead and copper Practical Quantitation Levels (PQLs). The PQLs for lead and copper are defined by this paragraph.

(A) The PQL for lead is 0.005 mg/L.

(B) The PQL for copper is 0.050 mg/L.

(4) Optimal water quality parameter (OWQP) ranges. The executive director shall set approved OWQP ranges for systems based on corrosion control studies described in subsection (f)(1) of this section. All systems that exceed an action level for lead or copper based on the 90th percentile are required to have approved OWQP ranges. Systems that serve more than 50,000 people that exceed the PQL for lead based on the 90th percentile are required to have approved OWQP ranges. Systems with approved water quality parameter ranges shall operate within the approved OWQP ranges at all times.

(A) OWQP ranges shall include all elements contained in this subparagraph.

(i) OWQPs shall include a minimum value or a range of values for negative log of hydrogen ion concentration (pH) measured at each entry point to the distribution system.

(ii) OWQPs shall include a minimum pH value, measured in all tap samples. Such value shall be equal to or greater than 7.0, unless the executive director determines that meeting a pH level of 7.0 is not technologically feasible or is not necessary for the system to optimize corrosion control.

(iii) If a corrosion inhibitor is used, OWQPs shall include a minimum concentration or a range of concentrations for the inhibitor, measured at each entry point to the distribution system and in all tap samples, that the executive director determines is necessary to form a passivating film on the interior walls of the pipes of the distribution system.

(iv) If alkalinity is adjusted as part of optimal corrosion control treatment, OWQPs shall include a minimum concentration or a range of concentrations for alkalinity, measured at each entry point and in all distribution samples.

(v) If calcium carbonate stabilization is used as part of corrosion control, OWQPs shall include a minimum concentration or a range of concentrations for calcium, measured in all distribution samples.

(B) Systems that must perform corrosion controls studies under subsection (f) of this section shall submit proposed system-specific OWQP ranges in writing for the executive director's approval.

(C) The executive director shall review and designate OWQPs in writing within six months after receipt of the system's recommended OWQPs.

(5) Deemed to have optimized corrosion control. A system may be considered deemed to have optimized corrosion control if it meets the requirements of this paragraph.

(A) A system that serves 50,000 or fewer people may be deemed to have optimized corrosion control if the system meets the lead and copper action levels in two consecutive initial or routine monitoring periods.

(B) A system that serves more than 50,000 people may be deemed to have optimized corrosion control if the difference between the 90th percentile lead level and the highest entry point lead level is less than the PQL and the system meets the copper action levels in two consecutive initial or routine monitoring periods.

(C) Those systems whose highest source water lead level is below the method detection limit may also be deemed to have optimized corrosion control under this paragraph if the 90th percentile tap water lead level is less than or equal to the PQL for lead for two consecutive six-month monitoring periods.

(D) Any water system may be deemed by the executive director to have optimized corrosion control treatment if the system demonstrates, to the satisfaction of the executive director, that it has conducted activities equivalent to the corrosion control requirements of this section, including all applicable monitoring requirements.

(E) Any system that fails to perform required monitoring or reporting, operates outside any approved OWQP ranges, or exceeds a lead or copper action level shall no longer be deemed to have optimized corrosion control.

(6) Maximum permissible levels (MPLs) for source water lead. The executive director shall designate MPLs for lead and copper at entry points to the distribution system for systems that are required to install source water treatment under subsection (g) of this section. Such MPLs shall reflect the contaminant-removal capability of the source water treatment properly operated and maintained. The executive director shall determine MPLs based on source water samples taken by the water system before and after the system installs the approved source water treatment. The executive director will set MPLs in writing, explaining the basis of that decision, within six months after the system completes follow-up tap sampling for lead and copper after source water treatment installation under subsection (g) of this section.

(c) Lead and copper tap sampling locations and frequency. Community and nontransient, noncommunity public water systems shall sample at sites approved by the executive director and at a frequency set by the executive director. Systems shall conduct initial tap sampling until the system either exceeds the lead or copper action level or becomes eligible for reduced monitoring.

(1) Lead and copper tap sampling locations. Systems shall sample at sites approved by the executive director and documented in the system's monitoring plan required under §290.121 of this title (relating to Monitoring Plans).

(A) Number of tap sample sites. The minimum number of sample sites required for initial, routine, or reduced lead and copper tap sampling are listed in the following table, entitled "Required Number of Lead and Copper Tap Sample Sites":
Figure: 30 TAC §290.117(c)(1)(A)

(B) Suitable sample taps. All sites from which lead and copper tap samples are collected shall be selected from a pool of targeted sampling sites identified through a materials survey of the distribution system. Sample sites shall be selected first at tier 1, then tier 2, then tier 3 locations as defined in subparagraph (D) of this paragraph. Sampling sites may not include faucets that have point-of-use or point-of-entry treatment devices designed to remove inorganic chemicals.

(C) Material survey and sample site selection form. Sample sites shall be representative of the distribution system and specifically represent areas of the system most vulnerable to corrosion of lead and copper into the water. The system must maintain a current copy of their Material Survey Form with the monitoring plan.

(i) Material survey. Systems shall perform a materials survey to select sample appropriate tap sampling sites using the Material Survey Form and Instructions (TCEQ Form Number 20467). The material survey shall be submitted in writing for executive director review and approval. In performing the material survey, the system shall review the sources of information listed in this clause in order to identify sampling sites. In addition, the system shall seek to collect such information where possible in the course of its normal operations (for example, while checking service line materials when reading water meters or performing maintenance activities). Sources of information that must be reviewed include:

(I) All plumbing codes, permits, and records in the files of the building department(s) which indicate the plumbing materials that are installed within publicly and privately owned structures connected to the distribution system; and

(II) All inspections and records of the distribution system that indicate the material composition of the service connections that connect a structure to the distribution system; and

(III) All existing water quality information, which includes the results of all prior analyses of the system or individual structures connected to the system, indicating locations that may be particularly susceptible to high lead or copper concentrations; and

(IV) A water system shall use the information on lead, copper, and galvanized steel that it is required to collect when performing a corrosion control study that is required under subsection (f) of this section.

(ii) Sample site selection form. After completing sample site selection, the system will submit the Lead and Copper Sample Site Selection form (TCEQ Form Number 20467) to the executive director for approval. Systems shall identify routine and reduced monitoring sites on their Lead and Copper Sample Site Selection form.

(I) Selecting tier 1, 2, and 3 sites. Systems shall identify tier 1, tier 2, and tier 3 sites as described in subparagraph (D) of this paragraph.

(II) Sites for community systems with insufficient tier 1, 2, or 3 sites. A community water system with insufficient tier 1, tier 2, and tier 3 sampling sites shall complete its sampling pool with representative sites throughout the distribution system.

(III) Sites for nontransient, noncommunity systems with insufficient tier 1, 2, or 3 sites. A nontransient, noncommunity water system with insufficient tier 1 sites shall complete its sampling pool with sampling sites that contain copper pipes with lead solder installed before 1983. If additional sites are needed to complete the sampling pool, the nontransient, noncommunity water system shall use representative sites throughout the distribution system.

(IV) Sites for systems with lead service lines. Any water system whose distribution system contains lead service lines shall draw 50% of the samples it collects during each monitoring period from sites that contain lead pipes, or copper pipes with lead solder, and 50% of the samples from sites served by a lead service line. A water system that cannot identify a sufficient number of sampling sites served by a lead service line shall collect first-draw samples from all of the sites identified as being served by such lines.

(V) Supplemental information with Site Selection Form. Systems shall submit supplemental explanatory information as part of the sample site selection documentation.

(D) Tier 1, 2, and 3 sites. Tier 1, 2, and 3 sites representing potential for leaching lead or copper under corrosive conditions shall be defined as described in this subparagraph.

(i) Definition of community tier 1. The sampling sites selected for a community water system's sampling pool, called "tier l sampling sites," shall consist of single family structures that:

(I) Contain copper pipes with lead solder installed after 1982 or contain lead pipes; or

(II) Are served by a lead service line. When multiple-family residences comprise at least 20% of the structures served by a water system, the system may include these types of structures in its sampling pool.

(ii) Definition of community tier 2. Any community water system with insufficient tier 1 sampling sites shall complete its sampling pool with "tier 2 sampling sites", consisting of buildings, including multiple-family residences that:

(I) Contain copper pipes with lead solder installed after 1982 or contain lead pipes; or

(II) Are served by a lead service line.

(iii) Definition of community tier 3. Any community water system with insufficient tier 1 and tier 2 sampling sites shall complete its sampling pool with tier 3 sampling sites consisting of single family structures that contain copper pipes with lead solder installed before 1983.

(iv) Definition of community "other representative sites". A representative site is a site in which the plumbing materials used at that site would commonly be found at other sites served by the water system.

(v) Definition of nontransient, noncommunity tier 1 sites. Tier 1 sampling sites selected for a nontransient, noncommunity water system shall consist of buildings that:

(I) Contain copper pipes with lead solder installed after 1982 or contain lead pipes; or

(II) Are served by a lead service line.

(vi) Nontransient, noncommunity representative sites. For the purpose of this paragraph, a representative site is a site in which the plumbing materials used at that site would be commonly found at other sites served by the water system.

(E) Sites for systems missing first-draw sites. A water system may request approval of non-first-draw sample sites if it meets the requirements in this paragraph. The executive director will use all written documentation provided by the system in reviewing the request.

(i) Type of system for non-first-draw sites. In order to request use of non-first-draw sites, the system must be either a nontransient, noncommunity system, or a community system where:

(I) The system is a facility, such as a prison or a hospital, where the population served is not capable of or is prevented from making improvements to plumbing or installing point of use treatment devices; and

(II) The system provides water as part of the cost of services provided and does not separately charge for water consumption.

(ii) The request for approval of non-first-draw sites must provide written documentation identifying standing times and locations for enough non-first-draw samples to make up its sampling pool. A system must update their sample sites when system conditions changes, such as changes in population and destruction of previously used sites.

(F) Sites for systems with less than five taps. A public water system that has fewer than five drinking water taps that can be used for human consumption may request a five-tap waiver to collect samples at fewer than five locations. The executive director may allow these public water systems to collect a number of samples less than the number of sites specified in paragraph (1) of this subsection, provided that all taps that can be used for human consumption are sampled. The system must request this reduction of the minimum number of sample sites in writing based on a request from the system or on-site verification. In no case can the system reduce the number of samples required below the minimum of one sample per available tap.

(G) Use of same taps each round. A water system must collect tap samples from the same sampling sites in each sampling round.

(i) If a water system changes a sampling site for any reason allowed in this section, the water system must provide the executive director with a written explanation showing which sampling site will be abandoned and the sampling site that replaces the abandoned sampling site. The water system's report shall include an explanation as to why a sampling site was changed from the previous round of sampling,

(ii) If a water system cannot collect a sample from a previously used site, the water system shall provide a written explanation to the executive director. The water system must select an alternate sampling site from the system's sampling pool which meets similar criteria and is within reasonable proximity to the original sampling site.

(2) Lead and copper tap sampling frequency. Water systems shall collect at least one sample from the number of sites listed the table in paragraph (1) of this subsection during each monitoring period. Systems shall sample on the schedule determined by the executive director.

(A) Initial and routine tap sampling. New systems, systems that exceed any action level, systems that install corrosion control treatment, systems that exceed a reduced monitoring level, and systems that operate outside an approved OWQP range shall collect tap samples in two consecutive six-month monitoring periods at the initial/routine number of sample sites.

(i) Initial tap sampling. New systems shall collect tap samples in two consecutive six-month monitoring periods at the initial/routine number of sample sites. A new community or nontransient, noncommunity water system begins the first six-month initial monitoring period in the year after it becomes active. Initial tap sampling shall be conducted after the executive director has determined that a system has had sample sites approved based on the materials survey and sample site selection form required by subsection (b)(2) of this section.

(ii) Routine tap sampling. Systems on reduced monitoring may be required to return to routine sampling in two consecutive six-month periods.

(I) Systems that exceed the lead action level during any 4-month monitoring period shall return to routine tap sample monitoring.

(II) Systems required to perform biweekly WQP sampling that have WQP levels that are outside the system's approved OWQP range for more than nine days in any six-month period shall return to routine tap sample monitoring.

(III) Systems that are required to return to routine tap sampling because of an action level, reduced monitoring level, or OWQP range exceedance shall start the two consecutive six-month periods in the next calendar year after the exceedance or event that triggers routine monitoring.

(IV) Within 36 months after the executive director designates optimal corrosion control treatment, systems that serve fewer than 50,000 people shall return to routine tap sampling.

(V) Any system that installs corrosion control treatment shall return to routine tap sampling.

(VI) Any system that installs source treatment shall return to routine tap sampling.

(B) Reduced annual tap sampling. Systems that meet the requirements of this paragraph shall collect tap samples every year. Systems on annual reduced monitoring shall collect tap samples at the number of sites in the table entitled "Required Number of Lead and Copper Tap Sample Sites" in paragraph (1) of this subsection. Systems shall collect samples at sites approved by the executive director and documented in the monitoring plan. Reduced annual monitoring shall be performed during June, July, August, or September. This annual sampling shall begin during the calendar year immediately following the end of the second consecutive six-month monitoring period. The executive director shall notify each water system if it is eligible for reduced annual tap sample monitoring.

(i) Systems serving more than 50,000 people that meet the lead action levels, and operate within any approved OWQP ranges, during two consecutive six-month periods may have their sampling frequency reduced to once a year.

(ii) Systems serving 50,000 or fewer people that meet the lead and copper action levels during two consecutive six-month periods may have their sampling frequency reduced to once a year.

(iii) Systems serving 50,000 or fewer people that meet the lead action level, and operate within any approved OWQP ranges, during two consecutive six-month periods may have their sampling frequency reduced to once a year.

(iv) Systems that meet the action levels, but whose 90th percentile levels exceed 0.005 mg/L for lead or 0.65 for copper during two consecutive six-month initial or routine sampling periods must perform two consecutive years of annual monitoring.

(v) Systems monitoring annually, that have been collecting samples during the months of June through September and that receive approval from the executive director to alter their sample collection period under subparagraph (E) of this paragraph must collect their next round of samples during a time period that ends no later than 21 months after the previous round of sampling.

(vi) Systems with approved OWQP ranges that operate outside those ranges are not eligible for reduced annual monitoring.

(C) Reduced three-year tap sampling. Systems which meet the requirements of this paragraph, shall collect tap samples every three years. Systems on reduced three-year monitoring shall collect tap samples at the reduced number of sites in the table entitled "Required Number of Lead/Copper Tap Sample Sites" in paragraph (1) of this subsection. Systems shall collect samples at the sites approved by the executive director and documented in the monitoring plan. Reduced three-year monitoring shall be performed during June, July, August, or September, unless the executive director has designated a different four-month period under subparagraph (E) of this paragraph.

(i) Any system that demonstrates during two consecutive six-month initial or routine monitoring periods that the 90th percentile lead level is less than or equal to 0.005 mg/L and the 90th percentile copper level is less than or equal to 0.65 mg/L shall have the required frequency of sampling reduced to once every three years.

(ii) A system that serves 50,000 or fewer people that meets the lead and copper action levels during three consecutive years of monitoring may reduce the frequency of monitoring for lead and copper from annually to once every three years.

(iii) A system with approved OWQP ranges must operate within those ranges to remain eligible for reduced three-year monitoring.

(iv) Samples collected once every three years shall be collected no later than every third calendar year.

(v) Systems on reduced three-year monitoring that have been collecting samples during the months of June through September, and receive approval from the executive director to alter the sampling collection period as per subparagraph (E) of this paragraph must collect their next round of samples during a time period that ends no later than 45 months after the previous round of sampling.

(D) Reduced nine-year tap sampling. Systems that meet the requirements of this paragraph and serve 3,300 or fewer people shall be eligible for reduced nine-year tap sampling. Systems on reduced monitoring shall collect tap samples at the number of sites in the table entitled "Required Number of Lead and Copper Tap Sample Sites" in paragraph (1) of this subsection. Systems shall collect samples at the sites approved by the executive director and documented in the monitoring plan. Reduced nine-year monitoring shall be performed during June, July, August, or September, unless the executive director has designated a different four-month period under subparagraph (E) of this paragraph. The executive director shall notify a system that it is eligible for reduced monitoring.

(i) Initiation of nine-year tap sampling. The first round of nine-year reduced tap sampling shall be completed no later than nine years after the last time the system monitored for lead and copper at the tap.

(ii) Materials requirement for nine-year tap sampling. In order to be eligible for reduced nine-year monitoring, a system must provide the executive director with an updated materials survey certifying that the system meets the requirements of this clause.

(I) The water system must demonstrate on the Materials Survey and Lead/Copper Sample Site Selection form (TCEQ Form Number 20467) that its distribution system, service lines, and all drinking water supply plumbing, including plumbing conveying drinking water within all residences and buildings connected to the system, are free of lead-containing materials and/or copper-containing materials to demonstrate the risk from lead and/or copper exposure is negligible throughout the water system.

(II) To qualify for nine-year reduced monitoring, the water system must certify in writing and provide supporting documentation that the system is free of all lead-containing materials. The system must contain no plastic pipes that contain lead plasticizers, or plastic service lines that contain lead plasticizers. The system must be free of lead service lines, lead pipes, lead soldered pipe joints, and leaded brass or bronze alloy fittings and fixtures, unless such fittings and fixtures meet the specifications of any standard established pursuant to 42 United States Code, §300g-6(e) (Safe Drinking Water Act, §1417(e)).

(III) To qualify for nine-year reduced monitoring the water system must provide certification and supporting documentation to the executive director that the system contains no copper pipes or copper service lines.

(IV) The executive director shall not issue any "partial waivers" for lead and copper monitoring.

(iii) Lead and copper levels for nine-year tap sampling eligibility. To qualify for nine-year reduced monitoring, the water system must have completed at least one six-month period of initial tap water monitoring. Also, all of the system's 90th percentile lead and copper levels must have been less than or equal to 0.005 mg/L for lead and 0.65 for copper in all sampling performed by the system.

(iv) Conditions for nine-year tap sampling eligibility. As a condition of the waiver, the executive director may require the system to perform specific activities to avoid the risk of lead or copper concentration of concern in tap water. For example, additional monitoring, periodic outreach to customers to remind them to avoid installation of materials that might void the waiver, or other activities may be required.

(v) Nine-year tap sampling revocation. If a water system with a nine-year tap sampling waiver adds a new source of water, changes any water treatment, or no longer meets the requirements of this subparagraph, the water system must notify the executive director in writing within 60 days of the change as required by §290.39(j) of this title (relating to General Provisions). The executive director has the authority to add or modify the monitoring waiver conditions to address changes.

(vi) Notification of change in lead or copper materials. If a system on nine-year tap sampling becomes aware that the system is no longer free of lead-containing or copper-containing materials, the system shall notify the executive director in writing no later than 60 days after becoming aware of such a change. If the system met both the lead and the copper action levels in all previous lead and copper tap sampling results, the system must return to three-year tap sampling schedule contained in subparagraph (C) of this paragraph.

(vii) Grandfathered nine-year tap sampling. Systems with nine-year tap sampling waivers approved in writing by the executive director prior to January 1, 2002 shall remain in effect if the system continues to meet the requirements of this paragraph.

(viii) Tap sampling frequency sequence. Subsequent rounds of sampling, after a return to routine monitoring, must be collected once a year, every three years, or every nine years, as required by this section.

(E) Alternate months for reduced lead and copper tap sampling. The executive director may approve a different period, other than June through September, for systems conducting reduced lead and copper tap sampling. Such a period shall be no longer than four consecutive months and must represent a time of normal operation where the highest levels of lead are most likely to occur. For a nontransient, noncommunity water system that does not operate during the months of June through September, and for which the period of normal operation where the highest levels of lead are most likely to occur is not known, the executive director shall designate a period that represents a time of normal operation for the system. This sampling shall begin during the period designated by the executive director in the calendar year immediately following the end of the second consecutive six-month monitoring period for systems initiating annual monitoring and during the three-year period following the end of the third consecutive calendar year of annual monitoring for systems initiating three-year reduced monitoring.

(F) Tap sampling monitoring period. For systems on annual or less frequent schedules, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs, or if the executive director has established an alternate monitoring period, the last day of that period.

(G) Return to initial/routine tap sampling frequency. The executive director shall determine whether a system continues to meet the requirements to remain on reduced annual, three-year, or nine-year monitoring. A system on reduced monitoring may be required to return to routine monitoring as described in subparagraph (A)(i) of this paragraph. Systems required to return to routine monitoring shall sample at the number of routine sites listed in the table entitled "Required Number of Lead/Copper Tap Sample Sites" under paragraph (1) of this subsection.

(H) Replacement tap samples. The water system must collect replacement samples for any samples invalidated under subsec-

tion (h) of this section. Any such replacement samples must be collected as soon as possible, but no later than twenty days after receiving notification of sample invalidation approval from the executive director. If a water system discovers that a sample has been collected at an inappropriate sampling site, the water system may request in writing that the sample be invalidated. The replacement samples shall be taken at the same locations as the invalidated samples or, if that is not possible, at locations other than those with valid results for the monitoring period.

(I) Nontransient, noncommunity systems with less than five taps. A nontransient, noncommunity system that has fewer than five drinking water taps meeting the sample site criteria of this paragraph must collect at least one sample from each tap and then must collect additional samples from those same taps on different days during the monitoring period to meet the required number of samples unless the system has received a five-tap waiver from the executive director under paragraph (1)(F) of this subsection.

(3) Consumer sampling for lead action level exceeders. Water systems that exceed the lead action level must arrange to sample the tap water of any customer who requests it. Analytical costs may be borne by the consumer.

(d) Lead and copper entry point sampling. Systems must perform entry point lead and copper sampling after the system exceeds a lead or copper action level, installs source water treatment, or exceeds any MPLs set by the executive director. Systems must routinely monitor lead and copper in conjunction with monitoring for inorganic contaminants other than asbestos or nitrate under section §290.106 of this title (relating to Inorganic Contaminants).

(1) Lead and copper entry point sampling locations. Systems required to perform entry point sampling under this subsection shall sample at every entry point to the distribution system including purchased water entry points. The system shall take each subsequent sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. The system must seek executive director approval to modify an entry point sample location, and must revise its monitoring plan.

(2) Lead and copper entry point sampling frequency. If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions when water is representative of all sources being used.

(A) Entry point lead and copper sampling after an action level exceedance. Any system which exceeds the lead or copper action level shall collect one sample from each entry point no later than 180 days after the end of the monitoring period during which the lead or copper action level was exceeded. For systems on annual or less frequent schedules, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs, or if the executive director has established an alternate monitoring period, the last day of that period.

(B) Entry point lead and copper sampling for systems that meet the action levels. A system is not required to conduct entry point lead and copper sampling if the system meets the lead and copper action levels during the entire entry point sampling period.

(C) Entry point lead and copper monitoring frequency after installing source water treatment. Any system that installs source water lead or copper removal treatment shall collect entry point samples during two consecutive six-month periods within 36 months after source water treatment begins.

(D) Entry point lead and copper sampling frequency after specification of MPLs. A system shall monitor at the frequency specified below.

(i) Starting the year after the executive director specifies MPLs, water systems using any surface water shall collect annual samples once during each calendar year.

(ii) Starting the year after the executive director specifies MPLs, a water system using only groundwater shall collect samples once during the three-year compliance period in effect at that time. Such systems shall collect samples once during each subsequent compliance period. Triennial samples shall be collected every third calendar year.

(iii) A water system using only groundwater may sample entry points every ninth year if the system meets one of the following criteria.

(I) The entry point lead and copper levels are below the lead and copper MPLs during at least three consecutive compliance periods; or

(II) The executive director has determined that source water treatment is not needed and the system demonstrates that, during at least three consecutive annual or three-year compliance periods, the concentration of lead in source water was less than or equal to 0.005 mg/L and the concentration of copper in source water was less than or equal to 0.65 mg/L.

(iv) A water system using surface water (or a combination of surface water and ground water) may reduce the lead and copper entry point monitoring frequency to once during every ninth year if the system meets one of the following criteria:

(I) The entry point lead and copper levels are below the MPLs for lead and copper for at least three consecutive years; or

(II) The executive director has determined that source water treatment is not needed and the concentration of lead at all entry points was less than or equal to 0.005 mg/L and the concentration of copper at all entry points was less than or equal to 0.65 mg/L during at least three consecutive years.

(v) A water system that uses a new source of water is not eligible for reduced entry point monitoring for lead and copper until concentrations in samples collected from the new source during three consecutive monitoring periods are below the lead and copper MPLs.

(vi) Where the results of sampling indicate an exceedance of a lead or copper MPL, one additional sample must be collected within two weeks after the initial sample was taken at the same entry point. Samples will be averaged for compliance determination.

(E) All water systems shall notify the executive director in writing of any proposed change in treatment or the addition or deletion of a source of water. The executive director may require any such system to conduct additional monitoring or to take other action to ensure that the system maintains minimal levels of corrosion in the distribution system.

(e) WQP monitoring requirements. Systems shall monitor WQPs to determine the potential for corrosion. The WQP monitoring requirements are summarized in the table entitled "WQP Entry Point and Distribution Monitoring Summary." All systems that serve more than 50,000 people shall monitor in accordance with this subsection. Systems that serve 50,000 or fewer people that exceed a lead or copper action level shall monitor in accordance with this section, during the

monitoring period in which the system exceeds the action level. Sites shall be submitted to the executive director for approval in conjunction with the system's monitoring plan.

(1) WQP monitoring locations. Systems that are required to monitor WQPs must sample at all entry points and at the number of distribution sites shown in the table entitled "Number of WQP Distribution Sample Sites." Distribution sample sites must represent the entire distribution system. Systems on initial or routine monitoring must sample at the number of sample sites in the column entitled "Initial and Routine WQP Distribution Sites." Systems on reduced monitoring must sample at the number of sites in the column entitled "Reduced WQP Distribution Sites."
Figure: 30 TAC §290.117(e)(1)

(A) Entry point WQP sites. Systems that are required to perform entry point WQP monitoring under this subsection must perform monitoring at every entry point to the distribution system. The executive director may allow systems using only groundwater to forego entry point monitoring, and monitor only at representative distribution system locations according to paragraph (6) of this subsection.

(B) Distribution WQP sites. Sites normally used for bacteriological monitoring or other appropriate sites may be used for WQP sampling. Samples need not be collected inside a customer's home. These sites shall represent water quality throughout the entire distribution system.

(2) Initial and routine WQP monitoring. New systems must perform at least one initial WQP monitoring round in the year following the year that the system is identified as active. Systems that exceed lead or copper action levels shall perform two consecutive six-month periods of routine WQP monitoring. Systems must monitor in accordance with the table entitled "Initial or Routine WQP Entry Point and Distribution Monitoring."
Figure: 30 TAC §290.117(e)(2)

(A) Locations for initial and routine WQP monitoring. Systems must conduct WQP monitoring at all entry points and at the number of distribution sites specified in paragraph (1) of this subsection, entitled "Number of WQP Distribution Sample Locations."

(B) Frequency of initial and routine WQP monitoring. Systems serving 50,000 or fewer people shall measure the WQPs listed in this paragraph during each six-month monitoring period in which the system exceeds the lead or copper action level. Systems serving more than 50,000 people must perform two consecutive six-month periods of sampling.

(3) WQP monitoring after installation of corrosion control treatment. Any system that installs optimal corrosion control treatment as required by subsection (f) of this section shall measure the list of WQPs at the locations and frequencies specified in the table entitled "WQP Entry Point and Distribution Monitoring After Installing Corrosion Control." Any system serving more than 50,000 people that installs optimal corrosion control treatment shall monitor once during each six-month period. Any system serving 50,000 or fewer people that installs corrosion control treatment shall monitor during each six-month monitoring period specified in which the system exceeds the lead or copper action level.
Figure: 30 TAC §290.117(e)(3)

(A) Frequency of WQP monitoring after installation of corrosion control treatment. After a system installs corrosion control treatment, it must collect least one sample every two weeks (biweekly) at every entry point to the distribution system, except as provided under paragraph (6) of this subsection.

(B) Documentation for WQP sample locations after installation of corrosion control treatment. Prior to the starting date of the monitoring period for any monitoring under this paragraph, the system shall provide the executive director with an updated list of entry points and their sources, a list of distribution sites, and information on seasonal variability of water usage to demonstrate that the sites are representative of water quality and treatment conditions throughout the system. The system shall submit this information to the executive director upon request or when circumstances change and retain a copy of the submittal and approval with the system's monitoring plan.

(C) Additional monitoring when determining optimal corrosion control treatment. The executive director may require the system to conduct additional WQP monitoring in to assist in evaluating the system's sample sites.

(4) WQP monitoring after designation of OWQP ranges. After the executive director approves OWQP ranges, systems shall measure the list of WQPs at the frequency and locations in the table entitled "WQP Entry Point and Distribution Monitoring After OWQP Determination."
Figure: 30 TAC §290.117(e)(4)

(A) After the executive director approves OWQP ranges, systems serving more than 50,000 people shall measure the WQPs listed in this paragraph and determine compliance with the OWQP ranges quarterly starting with the first six-month period after the executive director specifies the OWQPs beginning on either January 1 or July 1, whichever comes first.

(B) Any system serving 50,000 or fewer people shall conduct WQP monitoring during each six-month period specified in this paragraph in which the system exceeds the lead or copper action level. If the system is eligible for reduced lead and copper tap sampling, the system shall collect WQPs during the same monitoring periods that it collects lead and copper tap samples.

(C) The system shall complete follow-up sampling within 36 months after the executive director designates optimal corrosion control treatment.

(D) Systems shall measure WQPs at every entry point to the distribution system, except as allowed under paragraph (6) of this subsection.

(5) Reduced WQP monitoring. The executive director may reduce monitoring for systems that demonstrate a low risk of corrosion of lead and copper into the drinking water. Water systems on reduced schedules shall monitor the list of WQPs at the locations and frequency given in the table entitled "Reduced WQP Entry Point and Distribution Monitoring."
Figure: 30 TAC §290.117(e)(5)

(A) Reduced quarterly WQP distribution monitoring. A system that operates within approved OWQP ranges in all samples taken during two consecutive six-month initial or routine monitoring periods under paragraph (2) of this subsection may collect tap samples for applicable WQPs from the reduced number of sites quarterly. A water system sampling quarterly shall collect samples evenly throughout the year so as to reflect seasonal variability.

(B) Reduced annual WQP distribution monitoring. Any water system that operates within approved OWQP ranges during three consecutive years of quarterly monitoring may reduce the frequency with which it collects distribution WQP samples to annually. Annual WQP sampling shall begin during the calendar year immediately following the end of the monitoring period in which the third consecutive year of quarterly monitoring occurs. A water system

sampling annually shall collect samples evenly throughout the year so as to reflect seasonal variability.

(C) Reduced triennial WQP distribution monitoring. The executive director may reduce the WQP monitoring frequency to once every three years if a system meets the criteria of this subparagraph. Triennial monitoring shall be done no later than every third calendar year.

(i) A system that operates within approved OWQP ranges during three consecutive years of annual monitoring is eligible to reduce the frequency of distribution WQP monitoring to once in every third year. This sampling shall begin no later than the third calendar year following the end of the monitoring period in which the third consecutive year of monitoring occurs.

(ii) A system that demonstrates during two consecutive six-month periods that the entry point 90th percentile lead level is less than or equal to the PQL for lead in subsection (b)(3) of this section, and that operates within approved OWQP ranges during that time may reduce the frequency of distribution monitoring to once every third year. This sampling shall begin no later than the third calendar year following the end of the year in which the second consecutive six-month period occurs.

(D) Return to routine WQP monitoring. The executive director may return a system to monitoring at the routine frequency and routine number of sample sites. Any water system on reduced monitoring that fails to operate within the approved OWQP range for more than nine days in any six-month monitoring period shall resume routine WQP distribution system sampling in accordance with the number and frequency requirements in paragraph (2) of this subsection. Any system required to return to routine frequency for lead and copper tap sampling under subsection (c)(2)(A)(ii) of this section shall also return to routine WQP monitoring.

(E) Entry point WQP monitoring. Systems on reduced WQP monitoring shall measure WQPs at every entry point to the distribution system, except as provided under paragraph (6) of this subsection.

(6) Distribution system sampling for systems using only groundwater. The executive director may allow a system using only groundwater to perform WQP sampling required by paragraphs (3), (4), or (5) of this subsection to sample only at representative distribution system sites, and to forego sampling at entry points. Prior to foregoing entry point monitoring, the system shall provide written information identifying the selected entry points and documentation, including information on seasonal variability, sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system to the executive director for approval.

(f) Corrosion control. Systems may be required to perform corrosion control studies to determine whether treatment is necessary to reduce the corrosivity of the water. Systems may be required to install optimal corrosion control treatment in order to control corrosion in the system. The executive director may modify the designated corrosion control treatment or parameters. A system's request for changes and executive director response pursuant to modification shall be in writing.

(1) Corrosion control studies. Systems may be required to perform corrosion control studies to determine whether treatment is necessary to reduce the corrosivity of the water.

(A) Corrosion control studies applicability. Systems that meet the conditions in this subparagraph are required to perform corrosion control studies.

(i) Corrosion control studies for systems serving more than 50,000 people. Systems serving more than 50,000 people are required to conduct corrosion control studies unless the executive director has determined that the system is currently deemed to have optimized corrosion control, as defined in subsection (b)(5) of this section.

(I) Systems serving more than 50,000 people that exceed either the lead or copper action level during any a reduced tap sampling monitoring round must perform a corrosion control study within six months.

(II) Systems serving more than 50,000 people that have not been deemed at any previous time that exceed lead or copper action levels must conduct a demonstration study as described in subparagraph (C) of this paragraph.

(III) The corrosion control study must be conducted and submitted within 12 months after the end of the monitoring period in which the system exceeded the action level.

(ii) Corrosion control studies for systems serving 50,000 or fewer people. Any system serving 50,000 or fewer people that exceeds the lead or copper action level must perform a corrosion control study to identify optimal corrosion control treatment for the system. The system must conduct the study within 12 months after the end of the monitoring period in which the system exceeded the action level.

(B) Scope of corrosion control study. A system required to perform a corrosion control study shall include evaluation of treatment methods and potential constraints to treatment.

(i) Corrosion control treatment methods. Any public water system performing a corrosion control study shall evaluate the effectiveness of each of the following treatments (or combinations of treatments) to identify the optimal control treatment:

(I) Alkalinity and pH adjustment;

(II) Calcium hardness adjustment; and

(III) The addition of a phosphate or silicate based corrosion inhibitor at a concentration sufficient to maintain an effective residual concentration in all test tap samples.

(ii) Potential constraints to corrosion control treatment methods. The system shall identify all chemical or physical constraints that limit or prohibit the use of a particular corrosion control treatment. The system shall evaluate the effect of the chemicals used for corrosion control treatment on other water quality treatment processes. The system shall document treatment considerations with at least one of the following:

(I) Data and documentation showing that a particular corrosion control treatment has adversely affected other water treatment processes when used by another water system with comparable water quality characteristics, or

(II) Data and documentation demonstrating that the water system has previously attempted to evaluate a particular corrosion control treatment and has found that the treatment is ineffective or adversely affects other water quality treatment processes.

(C) Demonstration corrosion control study requirements. The water system shall conduct this evaluation using pipe rig/loop tests, metal coupon tests, or partial systems tests called a demonstration study. The water system shall measure the parameters in this clause in any tests conducted under this subparagraph before and after evaluating the corrosion control treatments listed above:

(i) Lead;

(ii) Copper;

(iii) pH;

(iv) Alkalinity;

(v) Calcium;

(vi) Conductivity;

(vii) Orthophosphate (when an inhibitor containing a phosphate compound is used);

(viii) Silicate (when an inhibitor containing a silicate compound is used);

(ix) Water temperature.

(D) Desk-top corrosion control study requirements. A desk-top corrosion control study shall recommend treatment and OWQPs based on data for treatments in documented analogous systems called a desk-top study. Analogous system means a system of similar size, water chemistry, and distribution system configuration. The water system shall evaluate each of the corrosion control treatments in subparagraph (B)(i) of this paragraph.

(2) Setting approved OWQP ranges based on corrosion control study data. On the basis of the corrosion control study evaluation, the water system shall recommend to the executive director, in writing, an OWQP range based on normal system operating conditions. Systems must recommend OWQPs consistent with subsection (b)(4) of this section. The executive director will review the study and designate OWQPs. The executive director shall designate OWQP ranges based on the results of lead, copper, and WQP monitoring by the system, both before and after the system installs optimal corrosion control treatment. The executive director may designate values for additional water quality control parameters determined to reflect optimal corrosion control for the system. The executive director shall notify the system in writing of these determinations and will provide the basis for the decision.

(3) Optimal corrosion control treatment designation. A system exceeding the action level for lead or copper based on the 90th percentile level shall submit recommendations for optimal corrosion control treatment within six months after the end of the monitoring period during which it exceeds one of the action levels. The executive director shall designate the optimal corrosion control treatment method.

(A) On the basis of the corrosion control study in paragraph (1) of this subsection, lead and copper tap sampling, and WQP sampling the water system shall recommend to the executive director, in writing, the treatment option that constitutes optimum corrosion control. The system shall submit all corrosion control data and shall provide sufficient documentation as required by the executive director to establish the validity of the evaluation procedure.

(B) The executive director shall designate optimal corrosion control treatment. The executive director shall either approve the corrosion control treatment option recommended by the system, or designate alternative corrosion control treatment(s) from among those listed in paragraph (1)(B)(i) of this subsection. When designating optimal treatment the executive director shall consider the effects that additional corrosion control treatment will have on water quality parameters and on other water quality treatment processes. If the executive director requests additional information, the water system shall provide the information.

(C) Upon its own initiative or in response to a request by a water system or other interested party, the executive director may modify the determination of the optimal corrosion control treatment. A request for modification by a system or other interested party shall be in writing, explain why the modification is appropriate, and provide supporting documentation. The executive director may modify the determination when the change is necessary to ensure that the system continues to optimize corrosion control treatment. A revised determination shall be made in writing, set forth the new treatment requirements, explain the basis for the decision, and provide an implementation schedule for completing the treatment modifications.

(D) The executive director shall notify the system of the decision on optimal corrosion control treatment in writing and will provide the basis for this determination. The executive director will review the study and designate optimal corrosion control treatment and water quality parameters.

(i) For systems serving more than 50,000 customers, optimal corrosion control treatment and OWQPs shall be designated within six months of submittal.

(ii) For systems serving 3,300 to 50,000 customers, optimal corrosion control treatment and OWQPs shall be designated within 18 months of submittal.

(iii) For systems serving fewer than 3,300, optimal corrosion control treatment and OWQPs shall be designated within 24 months of submittal.

(4) Installation of optimal corrosion control treatment. A system shall perform corrosion control activities identified in their approved corrosion control study. A system shall install optimal corrosion control treatment within 24 months after the executive director designates optimal corrosion control treatment and notifies the water system. All applicable water systems shall operate optimal corrosion control treatment in a manner that minimizes lead and copper concentrations at users' taps while ensuring that the treatment does not cause the system to violate any other drinking water standard.

(5) Operation of corrosion control treatment. All systems optimizing corrosion control shall continue to operate and maintain optimal corrosion control treatment, including operating within approved OWQP ranges and complying with all other requirements of this section.

(A) The executive director shall evaluate the results of all lead and copper tap samples and WQP samples submitted by the water system to determine whether the corrosion control treatment was properly installed and if the system is properly operating the designated optimal corrosion control treatment.

(B) The system shall operate in such a manner as to meet any requirements that the executive director determines appropriate to ensure optimal corrosion control treatment is maintained.

(6) Small system activities cessation. A system serving 50,000 or fewer people that is required to perform corrosion control activities because of an action level exceedance may cease the corrosion control activities if it conducts two consecutive six-month lead and copper monitoring rounds and meets the lead and copper action levels based on the 90th percentile in both rounds.

(g) Treatment of source water lead and copper. Systems may be required to perform treatment to remove lead or copper from source water. Any system exceeding the lead or copper action level shall implement all applicable source water treatment requirements specified by the executive director under this subsection. The executive director will determine whether such treatment is required.

(1) Determination of need for source water treatment. Any system which exceeds the lead or copper action level shall recommend in writing to the executive director the installation and operation of ion exchange, reverse osmosis, lime softening or coagulation/filtration. The executive director shall evaluate all entry point water sample results, along with the corrosion control study, to determine if source water treatment is necessary. If source water treatment is required by the executive director, the system must install the treatment in accordance with the scheduling requirements specified in this subsection.

(A) The system shall submit the results for all source water samples to aid in the executive director's evaluation of whether source water treatment is necessary.

(B) The executive director may approve the treatment recommended by the system or may require installation and operation of another source water treatment from among the following: ion exchange, reverse osmosis, lime softening or coagulation/filtration.

(C) If the executive director requests additional information to aid in its review, the water system shall provide the information by the date specified by the executive director in the request.

(D) A system may recommend that no treatment be installed based upon a demonstration that source water treatment is not necessary to minimize lead and copper levels at users' taps.

(E) The executive director shall notify the system in writing of the determination and will provide the basis for the decision.

(2) Schedule for installation of treatment of source water lead and copper. If source water treatment is required, the system must install the treatment in accordance with the scheduling requirements specified in this subsection.

(A) A system exceeding the lead or copper action level shall recommend treatment to the executive director no later than 180 days after the end of the monitoring period during which the lead or copper action level was exceeded.

(B) The executive director shall make a determination regarding source water treatment within six months after the system submits the treatment recommendation and supporting data under subparagraph (A) of this paragraph.

(C) The system shall properly install and operate the source water treatment approved by the executive director within 24 months after the executive director's determination under subparagraph (B) of this paragraph.

(D) The system shall complete follow-up tap sampling under subsection (c) of this section and entry point monitoring under subsection (d) of this section within 36 months after the executive director's determination of source water treatment under subparagraph (B) of this paragraph.

(3) Operation of source water lead and copper treatment. If source water treatment is required, the system shall properly operate the treatment in compliance with the specified MPLs for lead and copper and continue entry point monitoring under subsection (d) of this section.

(A) A water system shall operate the source water treatment in a manner that maintains lead and copper levels below the MPLs designated by the executive director at each entry point.

(B) The executive director may review the system's data and determine whether the system has properly installed and operated the source water treatment.

(4) Modification of source water treatment decisions. Upon its own initiative or in response to a request by a water system or other interested party, the executive director may modify the determination of the source water treatment under paragraph (1) of this subsection, or MPLs for lead and copper at entry points under subsection (b)(6) of this section. A request for modification by a system or other interested party shall be in writing, explain why the modification is appropriate, and provide supporting documentation. The executive director may modify the determination when the change is necessary to ensure that the system continues to minimize lead and copper concentrations in water entering the distribution system. A revised determination shall be made in writing, set forth the new treatment requirements, explain the basis for the executive director's decision, and provide an implementation schedule for completing the treatment modifications.

(h) Analytical methods, sample collection, and sample invalidation. All methods used for analysis under this section shall be consistent with 40 Code of Federal Regulations (CFR) Part 141, Subpart I, concerning Lead and Copper.

(1) Lead and copper tap sample collection method. A first draw tap sample means a one liter or one quart sample of tap water collected from a cold water, frequently used interior tap, after the water has been standing in the plumbing for at least six hours without first flushing the tap. The kitchen cold water faucet is the preferred sampling tap at residential sites. It is recommended that the water not be allowed to stand in the plumbing for more than 18 hours prior to a sample collection. A sample collection may be conducted by either water system personnel or the residents. If the resident is allowed to collect samples for lead and copper monitoring, the water system must provide written instructions for sample collection procedures.

(2) Lead and copper tap sample analytical methods. Analysis for lead and copper shall be conducted using methods stated in 40 CFR §141.89, in laboratories accredited by the executive director. Analysis for pH, conductivity, calcium, alkalinity, orthophosphate, silica, and temperature may be conducted in any laboratory approved by the executive director under §290.121 of this title utilizing the United States Environmental Protection Agency (EPA) methods prescribed in 40 CFR §141.89.

(A) The PQLs and the Method Detection Limits (MDLs) must comply with 40 CFR §141.89. The laboratory accredited for the analysis of lead and copper tap samples must achieve the MDL of 0.001 mg/L for lead if composited entry point water samples are analyzed for lead.

(B) The executive director may allow the use of previously collected monitoring data if the data were collected in accordance with 40 CFR §141.89.

(C) All lead levels measured between the PQL and MDL must either be reported as measured or reported as one-half the PQL. All levels below the lead MDLs must be reported as zero.

(D) All copper levels measured between the PQL and the MDL must be either reported as measured or reported as one-half the PQL. All levels below the copper MDL must be reported as zero.

(E) First-draw-tap samples must be received in the laboratory within 14 days after the collection date.

(3) Lead and copper tap sample invalidation. The executive director may invalidate a lead or copper tap sample if one of the conditions in subparagraphs (A) - (D) of this paragraph is met:

(A) The laboratory establishes that improper sample analysis caused erroneous results.

(B) The executive director determines that the sample was taken from an inappropriate site.

(C) The sample was damaged in transit.

(D) The executive director determines that the sample was subject to tampering, as based on substantial documentation.

(E) The executive director shall not invalidate a sample based solely on the fact that a follow-up sample result is higher or lower than the original sample.

(F) The water system must provide written documentation to the executive director for samples the water system believes should be invalidated. The executive director must document any decision to invalidate a sample in writing.

(4) Water quality parameter analytical methods. Water quality parameter testing must be conducted at a laboratory that uses the methods described in 40 CFR §141.89, and it is the responsibility of the water system to collect, submit, and report these values.

(A) Analyses for lead, copper, pH, conductivity, calcium, alkalinity, orthophosphate, silica, and temperature shall be conducted in accordance with 40 CFR §141.23(k)(1).

(B) Analyses for alkalinity, calcium, conductivity, orthophosphate and phosphate compounds, pH, silica, and temperature must be performed by a lab approved by the executive director under the TCEQ Regulatory Guidance 384 "How to Develop a Monitoring Plan for a Public Water System." Analyses under this section for lead and copper shall only be conducted by laboratories that have been accredited by the executive director under 30 TAC Chapter 25, Subchapter B (relating to Environmental Testing Laboratory Accreditation).

(C) The executive director may allow the use of previously collected monitoring data for purposes of monitoring, if the data were collected and analyzed in accordance with the requirements of this section and 40 CFR Part 141, Subpart I.

(i) Reporting. Systems shall report any information required by this section and 40 CFR Part 141, Subpart I to the executive director.

(1) Reporting lead and copper tap sample results. Tap sample results shall be reported within ten days following the end of each monitoring period as specified by the executive director. For systems on annual or less frequent schedules, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs, or if the executive director has established an alternate monitoring period, the last day of that period.

(A) A system shall provide documentation for each tap water lead or copper sample for which the water system requests invalidation.

(B) The system shall provide the following information to the executive director:

(i) The results of all tap samples for lead and copper including the location of each site and the criteria under which the site was selected for the system's sampling pool.

(ii) An identification of sampling sites utilized during the current monitoring period that were not sampled during previous monitoring periods, and an explanation why sampling sites have changed.

(2) Reporting entry point lead and copper sample results. A water system shall report the sampling results for all source water samples collected in accordance with subsection (e) of this section within the first 10 days following the end of each source water monitoring period.

(3) Reporting WQP results. Systems must report all results of WQP analyses including the location/address of each distribution system sampling point. This report must include each WQP specified in subsection (e) of this section, as well as all sample results from entry points to the distribution system. WQP reports should be submitted to the executive director within the first ten days following the end of each applicable monitoring period. For monitoring periods with a duration less than six months, the end of the monitoring period is the last date samples can be collected during that period.

(A) Systems shall report the results of all distribution samples for pH, and where applicable, alkalinity, calcium, conductivity, temperature, and orthophosphate or silica.

(B) Systems shall report the results of all samples collected at the entry point(s) to the distribution system for applicable water quality parameters.

(C) A system using only groundwater that is allowed to limit WQP monitoring to a subset of entry points shall report, by the commencement of such monitoring, written correspondence to the executive director that identifies the sources flowing to each of the system's entry points and report information sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system.

(4) Reporting distribution material and sample site data. New systems shall submit the first material survey by December 31 of the year in which they are assigned a Public Water System Identification Number. The executive director may allow a system to submit the first material survey by December 31 of the year in which the system's status becomes active.

(A) All systems shall submit Materials Survey and Site Selection Forms (TCEQ Form Number 20467) describing the entire system before performing tap sampling.

(B) Any system seeking reduced nine-year tap sampling under subsection (c)(2)(D) of this section shall submit current documentation showing that there are no lead- or copper-containing materials within the distribution system.

(i) Prior to starting nine-year tap sampling, a system shall submit documentation showing that there are no lead- or copper-containing materials within the distribution system and that the system complies with all drinking water standards of this subchapter.

(ii) No later than nine years after the first nine-year tap samples are collected, any system desiring to remain on nine-year tap sampling shall provide updated documentation showing that there are no lead- or copper-containing materials within the distribution system and that the system complies with all drinking water standards of this subchapter.

(iii) No later than 60 days after detecting lead-containing and/or copper-containing material, as appropriate, each system with a nine-year tap sampling waiver shall provide written notification to the executive director, setting forth the circumstances resulting in the lead-containing or copper-containing materials being introduced into the system and what corrective action, if any, the system plans to remove these materials.

(C) Water systems requesting a change to previously approved sample sites shall report supporting information, including an explanation as to why a sampling site was changed from the previous round of sampling, if applicable. If a water system changes a sampling site for any reason allowed in this section, the water system must provide the executive director with a written explanation show-

ing which sampling site will be abandoned and the sampling site that replaces the abandoned sampling site.

(5) Reporting public education. A system that is required to perform public education must provide copies of public education materials and certification that distribution of said materials is being conducted in accordance with this subsection to the executive director within ten days after the delivery of the materials to the public.

(6) Reporting consumer notification. No later than three months following the end of the monitoring period, each system must mail a sample copy of the consumer notification of tap results to the executive director along with a certification that the notification has been distributed in a manner consistent with the requirements of subsection (j) of this section.

(7) Corrosion control reporting. Systems that are required to perform corrosion control studies and install corrosion control treatment shall report all information required under subsection (f) of this section. Corrosion control treatment data shall be reported as required by the executive director. Systems shall report the following information listed in this paragraph.

(A) Systems demonstrating that they have already optimized corrosion control, must provide all information required in subsection (f) of this section.

(B) Systems that are recommending optimal corrosion control treatment must provide all supporting documentation for their recommendation regarding optimal corrosion control treatment under 40 CFR §141.82(a).

(C) Systems that are required to evaluate the effectiveness of corrosion control treatments under subsection (f) of this section, must submit the information required by that section.

(D) Systems required to install optimal corrosion control designated by the executive director under 40 CFR §141.82(d), must submit a letter certifying that the system has completed installing that treatment.

(8) Reporting source treatment. A system that is required to install source water lead or copper removal treatment must certify in writing that the system has completed installing the approved treatment within 24 months after the executive director approved that treatment.

(9) Reporting system conditions and facility changes. Systems must report changes of system conditions and facilities that may impact corrosion to the executive director.

(A) The water system must inform the executive director of the identity of treated and non-treated entry points and their seasonal use, if any, and demonstrate that the WQPs represent water quality and treatment conditions throughout the system.

(B) At a time specified by the executive director, or if no specific time is designated by the executive director, then as early as possible prior to the addition of a new source or any long-term change in water treatment, a water system deemed to have optimized corrosion control or subject to reduced tap sampling shall submit written documentation to the executive director describing the change or addition. The water system may not implement the addition of a new source or long-term change in treatment until notified in writing that the change is approved by the executive director. Examples of long-term treatment changes include the addition of a new treatment process or modification of an existing treatment process. Examples of modifications include switching secondary disinfectants, switching coagulants (for example, alum to ferric chloride), and switching corrosion inhibitor products (for example, orthophosphate to blended phosphate). Long-term changes can include dose changes to existing chemicals if the system is planning long-term changes to its finished water pH or residual inhibitor concentration. Long-term treatment changes would not include chemical dose fluctuations associated with daily raw water quality changes.

(10) Other reporting. Any system which collects sampling data in addition to that required by this section shall report the results to the executive director within the first ten days following the end of the applicable monitoring period during which the samples are collected.

(11) Reporting lead service line replacement. A water system that is replacing lead service lines must certify that lead service lines have been replaced in accordance with directives of the executive director.

(j) Consumer notification. All water systems must provide a consumer notice of lead tap water monitoring results to persons served at the sites (taps) that are tested.

(1) Timing of consumer notification. A water system must provide the consumer notice as soon as practical, but no later than 30 days after the system receives the tap sampling results.

(2) Content of consumer notification. The consumer notice must include the results of lead tap sampling for the tap that was tested, an explanation of the health effects of lead, list steps consumers can take to reduce exposure to lead in drinking water, and contact information for the water utility. The notice must also provide the maximum contaminant level goal and the action level for lead and the definitions for these two terms from 40 CFR §141.153(c).

(3) Delivery of consumer notification. The consumer notice must be provided to persons served at the tap that was tested, either by mail or by another method approved by the executive director. Upon approval by the executive director, a nontransient noncommunity water system may post the results on a bulletin board in the facility to allow users to review the information. The system must provide the notice to customers at sample taps tested, including consumers who do not receive water bills.

(k) Public education. A water system that exceeds the lead action level based on tap water samples collected in accordance with subsection (c) of this section shall deliver the public education materials in accordance with the requirements of this subsection.

(1) Content of public education materials. Water systems must include the elements in this paragraph in their printed materials in the same order as listed. Language in subparagraphs (A), (B), and (F) of this paragraph must be included in the materials, exactly as written, except for the text in brackets for which the water system must include system-specific information. Any additional information presented by a water system must be consistent with the information below and be in plain language that can be understood by the general public. Water systems must submit all written public education materials to the executive director prior to delivery. Public education materials must be approved by the executive director prior to delivery.

(A) "IMPORTANT INFORMATION ABOUT LEAD IN YOUR DRINKING WATER. {INSERT NAME OF WATER SYSTEM} found elevated levels of lead in drinking water in some homes/buildings. Lead can cause serious health problems, especially for pregnant women and young children. Please read this information closely to see what you can do to reduce lead in your drinking water."

(B) *"Health effects of lead.* Lead can cause serious health problems if too much enters your body from drinking water or other sources. It can cause damage to the brain and kidneys, and can interfere with the production of red blood cells that carry oxygen to all parts of your body. The greatest risk of lead exposure is to infants, young children, and pregnant women. Scientists have linked the

effects of lead on the brain with lowered IQ in children. Adults with kidney problems and high blood pressure can be affected by low levels of lead more than healthy adults. Lead is stored in the bones, and it can be released later in life. During pregnancy, the child receives lead from the mother's bones, which may affect brain development."

(C) Sources of lead.

(i) Explain what lead is.

(ii) Explain possible sources of lead in drinking water and how lead enters drinking water. Include information on home and building plumbing materials and service lines that may contain lead.

(iii) Discuss other important sources of lead exposure in addition to drinking water such as lead-based paint or lead-contaminated soils.

(D) Discuss the steps the consumer can take to reduce their exposure to lead in drinking water.

(i) Encourage running the water to flush out the lead.

(ii) Explain concerns with using hot water from the tap and specifically caution against the use of hot water for preparing baby formula.

(iii) Explain that boiling water does not reduce lead levels.

(iv) Discuss other options consumers can take to reduce exposure to lead in drinking water, such as alternative sources or treatment of water.

(v) Suggest that parents have their child's blood tested for lead.

(E) Explain why there are elevated levels of lead in the system's drinking water (if known) and what the water system is doing to reduce the lead levels in homes and buildings in this area.

(F) "For more information, call us at {INSERT YOUR SYSTEM's PHONE NUMBER} if applicable) or visit our Web site at {INSERT YOUR WEB SITE HERE}. For more information on reducing lead exposure around your home or building and the health effects of lead, visit EPA's Web site at *www.epa.gov/lead* or contact your health care provider."

(G) In addition to including the elements specified in subparagraphs (A) - (F) of this paragraph, community water systems must:

(i) Tell consumers how to get their water tested, and

(ii) Discuss lead in plumbing components and the difference between low lead and lead free.

(H) For public water systems serving a large proportion of non-English speaking consumers, as determined by the executive director, the public education materials must contain information in the appropriate language(s) regarding the importance of the notice or contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the public education materials or to request assistance in the appropriate language.

(2) Delivery of public education materials by community systems. Systems must provide public education materials meeting the criteria of paragraph (1) of this subsection to the public in accordance with this paragraph.

(A) A community system must directly deliver printed public education materials to all bill paying customers.

(i) The community system must deliver public education materials to local public health agencies even if they are not located within the water system's service area, along with an informational notice that encourages distribution to all the organization's potentially affected customers or community water system's users. The system must contact the local public health agencies directly by phone or in person. The local public health agencies may provide a specific list of additional community based organizations serving target populations, which may include organizations outside the service area of the water system. If such lists are provided, systems must deliver public education materials to all organizations on the provided lists.

(ii) The community system must contact customers who are most at risk by delivering public education materials to the organizations listed in this clause that are located within the water system's service area, along with an informational notice that encourages distribution to all the organization's potentially affected customers or community water system's users.

(I) Public and private schools or school boards;

(II) Women, Infants and Children (WIC) and Head Start programs;

(III) Public and private hospitals and medical clinics;

(IV) Pediatricians;

(V) Family planning clinics; and

(VI) Local welfare agencies.

(iii) The community system must make a good faith effort to locate organizations of the types listed in this clause within the service area and deliver public education materials to them, along with an informational notice that encourages distribution to all potentially affected customers or users. The good faith effort to contact at-risk customers may include requesting a specific contact list of these organizations from the local public health agencies, even if the agencies are not located within the water system's service area.

(I) Licensed childcare centers;

(II) Public and private preschools; and

(III) Obstetricians-Gynecologists and Midwives.

(iv) The community system must implement at least three activities from one or more categories listed in this clause. The educational content and selection of these activities must be determined in consultation with the executive director.

(I) Public service announcements;

(II) Paid advertisements;

(III) Public area information displays;

(IV) E-mails to customers;

(V) Public meetings;

(VI) Household deliveries;

(VII) Targeted Individual Customer Contact;

(VIII) Direct material distribution to all multi-family homes and institutions; or

(IX) Other methods approved by the executive director.

(v) At least quarterly, the community system must provide information on or in each water bill as long as the system ex-

ceeds the action level for lead. The message on the water bill must include the following statement exactly as written except for the text in brackets for which the water system must include system-specific information: "{INSERT NAME OF WATER SYSTEM} found high levels of lead in drinking water in some homes. Lead can cause serious health problems. For more information please call {INSERT NAME OF WATER SYSTEM}" Upon written request, the executive director may allow a separate mailing of public education materials to customers if the water system cannot place the information on water bills.

(vi) A community system serving more than 100,000 people must post public education materials on the water system's Web site.

(vii) The community system must submit a press release to newspaper, television and radio stations.

(B) With executive director approval, a community water system serving 3,300 or fewer people may limit certain aspects of their public education programs.

(i) The system may be allowed to deliver public education materials to only those potentially affected customers listed in subparagraph (A)(ii) of this paragraph served by the system that are most likely to be visited regularly by pregnant women and children.

(ii) The executive director may waive the requirement of subparagraph (A)(vi) of this paragraph to submit press releases to the media as long as system distributes notices to every household served by the system.

(iii) The system may be allowed to perform only one of the additional activities in subparagraph (A)(vii) of this paragraph instead of three activities.

(C) A community water system may apply to the executive director, in writing, to use only the text specified in paragraph (1)(A) - (F) of this subsection, omitting the text specified in paragraph (1)(G) of this subsection, and to post public education materials as described in paragraph (3) of this subsection, omitting the tasks in subparagraph (A) of this paragraph if:

(i) The system is a facility, such as a prison or a hospital, where the population served is not capable of or is prevented from making improvements to plumbing or installing point of use treatment devices; and

(ii) The system provides water as part of the cost of services provided and does not separately charge for water consumption.

(3) Delivery of public education materials by nontransient, noncommunity systems. Systems must provide public education materials meeting the criteria of paragraph (1) of this subsection to the public in accordance with this paragraph.

(A) The system must post informational posters on lead in drinking water in a public place or common area in each of the buildings served by the system.

(B) The system must distribute informational brochures on lead in drinking water to each person served by the nontransient noncommunity water system. The executive director may allow the system to utilize electronic transmission in lieu of or combined with printed materials as long as it achieves at least the same coverage.

(4) Frequency and timing of public education. A system that exceeds the lead action level must provide educational materials meeting the content requirements of paragraph (1) of this subsection to the public within 60 days after the end of the monitoring period in which the exceedance occurred. For systems that are required to conduct monitoring annually or less frequently, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs, or, if the executive director has established an alternate monitoring period, the last day of that period.

(A) Frequency and timing of public education activities for community systems. As long as a community water system exceeds the action level, it must repeat the activities of this paragraph at the frequency contained in this paragraph.

(i) A community system shall repeat tasks contained in paragraph (2)(A)(v) of this subsection every billing cycle.

(ii) A community system serving a population greater than 100,000 shall post and retain material on a publicly accessible Web site.

(iii) The community system shall repeat the press release task in paragraph (2)(A)(vii) of this subsection twice every 12 months on a schedule agreed upon with the executive director.

(B) Frequency and timing of public education activities for nontransient, noncommunity systems. A nontransient, noncommunity water system shall maintain the posting required by repeat the tasks contained in paragraph (3) of this subsection at least once during each calendar year in which the system exceeds the lead action level. Posted materials must remain posted until the system no longer exceeds the lead action level, and the executive director informs the system that the posting may be discontinued.

(C) Extension to public education start date. A nontransient, noncommunity system may request, and the executive director can approve, an extension for starting public education beyond the 60-day requirement on a case-by-case basis. The request and approval must be made in writing prior to the 60-day deadline.

(D) Discontinuing public education. A system may discontinue delivery of public education materials if the system has met the lead action level during the most recent six-month monitoring period conducted pursuant to subsection (c) of this section. Such a system shall recommence public education in accordance with this section if it subsequently exceeds the lead action level during any monitoring period.

(5) Notifying the executive director of public education activities. Any water system that is subject to the public education requirements of this subsection shall, within ten days after the end of each period in which the system is required to perform public education, send written documentation to the executive director containing all the elements in this paragraph.

(A) The system must provide documentation that the system has delivered the public education materials that meet the content requirements in paragraph (1) of this subsection and the delivery requirements in paragraph (2) or (3) of this subsection.

(B) The system must provide a list of all the newspapers, radio stations, television stations, and facilities and organizations to which the system delivered public education materials during the period in which the system was required to perform public education tasks.

(C) The system must resubmit certification of delivery of public education materials every time it distributes materials. Unless required by the executive director, a system that previously has submitted the information required by subparagraphs (A) and (B) of this paragraph need not resubmit the information as long as there have been no changes in the distribution list.

(l) Compliance determination. All applicable water systems shall determine compliance based on monitoring and reporting requirements established in this section or contained in 40 CFR Part 141, Subpart I.

(1) Compliance determination with action levels of subsection (b) of this section for lead and copper shall be based on the 90th percentile as described in this paragraph.

(A) The 90th percentile lead and copper levels shall be computed as provided in this subparagraph:

(i) Determination of 90th percentile levels shall be obtained by ranking the results of lead and copper samples collected during a monitoring period in ascending order (lowest concentration is sample Number 1; highest concentration are samples Numbers 10, 20, 30, 40, 50, and so on), up to the total number of samples collected.

(ii) The number of samples collected during the monitoring period shall be multiplied by 0.9. The concentration of lead and copper in sample with the number yielded by this calculation is the 90th percentile level, for systems serving 100 or more people.

(iii) For water systems serving fewer than 100 people, the 90th percentile level is computed by taking the average of the highest two sample results.

(iv) For a public water system that has been allowed by the executive director to collect fewer than five samples in accordance with subsection (c)(1)(F) of this section, the sample result with the highest concentration is considered the 90th percentile value.

(B) A sample invalidated under this section does not count toward determining lead or copper 90th percentile levels or toward meeting the minimum number of tap sample requirements.

(C) Monitoring approved by the executive director and conducted by systems in addition to the minimum requirements of this section shall be considered by the executive director in making any determination of compliance.

(D) The system is in compliance with the lead or copper action levels if the 90th percentile level of lead or copper, respectively, is equal to or less than the action levels specified in subsection (b)(1) of this section.

(2) Compliance determination for water quality parameters. If a water system fails to meet the OWQP values or ranges approved by the executive director, it is out of compliance with this section. WQP confirmation sample results will be included in compliance determination.

(A) A OWQP-range excursion occurs whenever the daily value for one or more WQPs measured at a sampling location is below a minimum value or outside a range approved by the executive director. The executive director has the discretion to delete results of obvious sampling errors from this calculation. Daily values are calculated as follows.

(i) Water systems that collect more than one WQP measurement in one day must record the daily value as an average of all WQP values collected during the day regardless of whether the measurements are collected through continuous monitoring, grab sampling, or a combination of both.

(ii) On days when only one measurement for the WQP is collected at the sampling location, the daily value shall be the result of that measurement.

(iii) On days when no measurement is collected for the WQP at the sampling location, the daily value last calculated on the most recent day shall serve as the daily value.

(B) Compliance periods for this paragraph are two six-month periods, January 1 to June 30, and July 1 to December 31. A water system is out of compliance with this subsection for a six-month period if the water system has OWQP excursions for any approved range for more than nine days during that period.

(C) The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the system and the executive director in making any determinations under this section.

(D) The executive director may delete results of obvious sampling errors from this calculation.

(3) Compliance determination for source water treatment. A system required to install and operate source water treatment for lead or copper under subsection (g) of this section is out of compliance if the level of lead or copper in any sample collected under subsection (d)(2)(D)(v) of this section is greater than the MPL designated by the executive director. The initial and confirmation sample shall be averaged in determining compliance. Any sample value below the method detection limit shall be considered to be zero. Any value above the method detection limit but below the PQL shall either be considered as the measured value or be considered one-half the PQL.

(4) Compliance determination for public education. Failure to deliver public education materials required under subsection (k) of this section to customers is a public notification violation. Failure to certify delivery of public education materials to the executive director is a reporting violation.

(5) Failure to conduct or report any requirements of this section shall constitute a monitoring, reporting or treatment technique violation and shall be a violation of these standards.

(m) Lead service line replacement. The provisions of 40 CFR §141.84 and §141.90(e) relating to lead service line replacement are adopted by reference. Any system exceeding the lead action level after implementation of applicable corrosion control and source water treatment requirements shall complete the lead service line replacement requirements contained in 40 CFR §141.84. Any such water system shall submit reports required under 40 CFR §141.90(e).

(n) Additional sampling. The executive director may require systems to sample at additional times or locations in order to ensure that systems maintain minimal levels of corrosion in the distribution system.

§290.119. Analytical Procedures.

(a) Acceptable laboratories. Samples collected to determine compliance with the requirements of this chapter [~~subchapter~~] shall be analyzed at accredited [~~certified~~] or approved laboratories.

(1) Samples used to determine compliance with the maximum contaminant levels, samples used to determine compliance with [~~and~~] action level requirements of this subchapter, and samples for microbial contaminants must be analyzed by a laboratory accredited [~~certified~~] by the executive director in accordance with Chapter 25 of this title (relating to Environmental Testing Laboratory Accreditation and Certification). These samples include:

(A) compliance samples for synthetic organic chemicals [~~SOCs~~];

(B) compliance samples for volatile organic chemicals [~~VOCs~~];

(C) compliance samples for inorganic contaminants;

(D) compliance samples for radiological contaminants;

(E) compliance samples for microbial contaminants;

(F) compliance samples for total trihalomethanes (TTHM);

(G) compliance samples for haloacetic acid-group of five (HAA5);

(H) compliance samples for chlorite;

(I) compliance samples for bromate; and

(J) compliance samples for lead and copper.

(2) Samples used to determine compliance with the treatment technique requirements and maximum residual disinfectant levels (MRDLs) of this subchapter must be analyzed by a laboratory approved by the executive director. These samples include:

(A) compliance samples for turbidity treatment technique requirements;

(B) compliance samples for the chlorine MRDL;

(C) compliance samples for the chlorine dioxide MRDL;

(D) compliance samples for the combined chlorine (chloramine) MRDL;

(E) compliance samples for the disinfection byproduct [~~by-product~~] precursor treatment technique requirements, including alkalinity, total organic carbon, dissolved organic carbon analyses, and specific ultraviolet absorbance;

(F) samples used to monitor chlorite levels at the point of entry to the distribution system; and

(G) samples used to determine pH.

(3) Non-compliance tests, such as control tests taken to operate the system, may be run in the plant or at a laboratory of the system's choice.

(b) Acceptable analytical methods. Methods of analysis shall be as specified in 40 Code of Federal Regulations (CFR) or by any alternative analytical technique as specified by the executive director and approved by the Administrator under 40 CFR §141.27. Copies are available for review in the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. The following National Primary Drinking Water Regulations set forth in Title 40 CFR are adopted by reference:

(1) section 141.21(f) for microbiological analyses;

(2) section 141.74(a)(1) for turbidity analyses;

(3) section 141.23(k) for inorganic analyses;

(4) section 141.24(e), (f), and (g) for organic analyses;

(5) section 141.25 for radionuclide analyses;

(6) section 141.131(a) and 141.131(b) for disinfection byproduct [~~by-product~~] methods and analyses;

(7) section 141.131(c) for disinfectant analyses other than ozone, and 141.74(b) for ozone disinfectant;

(8) section 141.131(d) for alkalinity analyses, bromide and magnesium, total organic carbon analyses, dissolved organic carbon analyses, specific ultraviolet absorbance analyses, and pH analyses; and

(9) section 141.89 for lead and copper analyses and for water quality parameter analyses that are performed as part of the requirements for lead and copper.

(c) The definition of detection contained in 40 CFR §141.151(d) is adopted by reference.

§290.121. Monitoring Plans.

(a) Applicability. All public water systems shall maintain an up-to-date chemical and microbiological monitoring plan. Monitoring plans are subject to the review and approval of the executive director. A copy of the monitoring plan must be maintained at each water treatment plant and at a central location.

(b) Monitoring plan requirements. The monitoring plan shall identify all sampling locations, describe the sampling frequency, and specify the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements of this subchapter.

(1) The monitoring plan shall include information on the location of all required sampling points in the system. Required sampling locations for regulated chemicals are provided in §290.106 of this title (relating to Inorganic Contaminants), §290.107 of this title (relating to Organic Contaminants), §290.108 of this title (relating to Radionuclides Other than Radon), §290.109 of this title (relating to Microbial Contaminants), §290.110 of this title (relating to Disinfectant Residuals), §290.111 of this title (relating to Surface Water Treatment), §290.112 of this title (relating to Total Organic Carbon (TOC)), §290.113 of this title (relating to Stage 1 Disinfection Byproducts [~~By-products~~] (TTHM and HAA5)), §290.114 of this title (relating to Other Disinfection Byproducts [~~By-products~~] (Chlorite and Bromate)), §290.115 of this title (relating to Stage 2 Disinfection Byproducts [~~By-products~~] (TTHM and HAA5)), §290.116 of this title (Relating to Groundwater Corrective Actions and Treatment Techniques), §290.117 of this title (relating to Regulation of Lead and Copper), and §290.118 of this title (relating to Secondary Constituent Levels).

(A) The location of each sampling site at a treatment plant or pump station must be designated on a plant schematic. The plant schematic must show all water pumps, flow meters, unit processes, chemical feed points, and chemical monitoring points. The plant schematic must also show the origin of any flow stream that is recycled at the treatment plant, any pretreatment that occurs before the recycle stream is returned to the primary treatment process, and the location where the recycle stream is reintroduced to the primary treatment process.

(B) Each entry point to the distribution system shall be identified in the monitoring plan as follows:

(i) a written description of the physical location of each entry point to the distribution system shall be provided; or

(ii) the location of each entry point shall be indicated clearly on a distribution system or treatment plant schematic.

(C) The address of each sampling site in the distribution system shall be included in the monitoring plan or the location of each distribution system sampling site shall be designated on a distribution system schematic. The distribution system schematic shall clearly indicate the following:

(i) the location of all pump stations in the distribution system;

(ii) the location of all ground and elevated storage tanks in the distribution system; and

(iii) the location of all chemical feed points in the distribution system.

(D) The system must revise its monitoring plan if changes to a plant or distribution system require changes to the sampling locations.

(2) The monitoring plan must include a written description of sampling frequency and schedule.

(A) The monitoring plan must include a list of all routine samples required on a daily, weekly, monthly, quarterly, annual, or less frequent basis and identify the sampling location where the samples will be collected.

(B) The system must maintain a current record of the sampling schedule.

(3) The monitoring plan must identify the analytical procedures that will be used to perform each of the required analyses.

(4) The monitoring plan must identify all laboratory facilities that may be used to analyze samples required by this chapter.

(5) The monitoring plan shall include a written description of the methods used to calculate compliance with all maximum contaminant levels, maximum residual disinfectant levels, and treatment techniques that apply to the system.

(6) The monitoring plan shall include any groundwater source water monitoring plan developed under §290.109(c)(4) of this title [~~(relating to Microbial Contaminants)~~] to specify well sampling for triggered coliform monitoring.

(7) The monitoring plan shall include any initial distribution system evaluation compliance documentation required by §290.115(c)(5) of this title [~~(relating to Stage 2 Disinfection By-products (TTHM and HAA5))~~]. The monitoring plan must be revised to show Stage 2 sample sites by the date shown in Figure: 30 TAC §290.115(a)(2) titled "Date to Start Stage 2 Compliance."

(8) The monitoring plan shall include any raw surface water monitoring plan required under §290.111 of this title [~~(relating to Surface Water Treatment)~~].

(c) Reporting requirements. All public water systems shall maintain a copy of the current monitoring plan at each treatment plant and at a central location. The water system must update the monitoring plan when the water system's sampling requirements or protocols change.

(1) Public water systems that treat surface water or groundwater under the direct influence of surface water must submit a copy of the monitoring plan to the executive director upon development and revision.

(2) Public water systems that treat groundwater that is not under the direct influence of surface water or purchase treated water from a wholesaler must develop a monitoring plan and submit a copy of the monitoring plan to the executive director upon request.

(3) All water systems must provide the executive director with any revisions to the plan upon request.

(d) Compliance determination. Compliance with the requirements of this section shall be determined using the following criteria.

(1) A public water system that fails to submit an administratively complete monitoring plan by the required date documented in a request from the executive director or fails to submit updates to a plan when changes are made to a system's surface water treatment [~~required~~] commits a reporting violation.

(2) A public water system that fails to maintain an up-to-date monitoring plan commits a monitoring violation.

(e) Public notification. A community system that commits a violation described in subsection (d) of this section [~~§290.122(d) of this title (relating to Public Notification)~~] shall notify its customers of the violation in the next consumer confidence report that is issued by the system.

§290.122. Public Notification.

(a) Public notification requirements for acute violations. The owner or operator of a public water system must notify persons served by their system of any maximum contaminant limit (MCL), maximum residual disinfectant level (MRDL), [~~or~~] treatment technique violation, or other situation that poses an acute threat to public health. Each notice required by this section must meet the requirements of subsection (d) of this section.

(1) Situations [~~Violations~~] that pose an acute threat to public health include:

(A) a violation of the acute MCL for microbial contaminants as defined in §290.109(f)(1) of this title (relating to Microbial Contaminants);

(B) an acute turbidity issue at a treatment plant that is treating surface water or groundwater under the direct influence of surface water, specifically:

(i) a combined filter effluent turbidity level above 5.0 nephelometric turbidity units (NTU);

(ii) a combined filter effluent turbidity level above 1.0 NTU at a treatment plant using membrane filters; or

(iii) a combined filter effluent turbidity level above 1.0 NTU at a plant using other than membrane filters at the discretion of the executive director after consultation with the system; or

(iv) failure of a system with treatment other than membrane filters to consult with the executive director within 24 hours after a combined filter effluent reading [~~ready~~] of 1.0 NTU;

(C) a violation of the MCL for nitrate or nitrite as defined in §290.106(f)(2) of this title (relating to Inorganic Contaminants);

(D) a violation of the acute MRDL for chlorine dioxide as defined in §290.110(f)(5)(A) or (B) of this title (relating to Disinfectant Residuals);

(E) occurrence of a waterborne disease outbreak;

(F) Detection of *E. coli* or other fecal indicators in source water samples as specified in §290.109(b)(2) of this title [~~(relating to Microbial Contaminants)~~]; and

(G) other situations [~~violations~~] deemed by the executive director to pose an acute risk to human health.

(2) The initial acute public notice and boil water notice required by this subsection shall be issued as soon as possible, but in no case later than 24 hours after the violation is identified. The initial public notice for an acute violation shall be issued in the following manner.

(A) The owner or operator of a water system with an acute microbiological or turbidity violation as described in paragraph (1)(A) or (B) of this subsection shall include a boil water notice issued in accordance with the requirements of §290.46(q) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems).

(B) The owner or operator of a community water system shall furnish a copy of the notice to the radio and television stations serving the area served by the public water system.

(C) The owner or operator of a community water system shall publish the notice in a daily newspaper of general circulation in the area served by the system. If the area is not served by a daily newspaper of general circulation, notice shall instead be issued by direct delivery or by continuous posting in conspicuous places within the area served by the system.

(D) The owner or operator of a noncommunity water system shall issue the notice violation by direct delivery or by continuously posting the notice in conspicuous places within the area served by the water system.

(E) If notice is provided by posting, the posting must remain in place for as long as the violation exists or seven days, whichever is longer.

(3) The owner or operator of a water system required to issue an initial notice for an acute MCL or treatment technique violation shall issue additional notices. The additional public notices for acute violations shall be issued in the following manner.

(A) Not later than 45 days after the violation, the owner or operator of a community water system shall notify persons served by the system using mail (by direct mail or with the water bill) or hand delivery. The executive director may waive mail or hand delivery if it is determined that the violation was corrected within the 45-day period. The executive director must make the waiver in writing and within the 45-day period.

(B) The owner or operator of a community water system must issue a notice at least once every three months by mail delivery (by direct mail or with the water bill) or by hand delivery, for as long as the violation exists.

(C) If the owner or operator of a noncommunity water system issued the initial notice by continuous posting, posting must continue for as long as the violation exists and in no case less than seven days. If the owner or operator of a noncommunity water system issued the initial notice by direct delivery, notice by direct delivery must be repeated at least every three months for as long as the violation exists.

(4) The owner or operator of the public water system must issue a notice when the public water system has corrected the acute violation. This notice must be issued in the same manner as the original notice was issued.

(5) Copies of all notifications required under this subsection must be submitted to the executive director within ten days of its distribution.

(b) Public notification requirements for other MCL, MRDL, or treatment technique violations and for variance and exemption violations. The owner or operator of a public water system must notify persons served by their system of any MCL, MRDL, or treatment technique violation other than those described in subsection (a)(1) of this section and of any violation involving a variance or exemption requirement. Each notice required by this section must meet the requirements of subsection (d) of this section.

(1) Violations that require notification under this subsection include:

(A) any violation of an MCL, MRDL, or treatment technique not listed under subsection (a) of this section;

(B) failure to comply with the requirements of any variance or exemption granted under §290.102(d) of this title (relating to General Applicability);

(C) failure for a groundwater system to take corrective action or failure to maintain at least 4-log treatment of viruses (using inactivation, removal, or a combination of 4-log virus inactivation and removal approved by the executive director) before or at the first customer under §290.116 of this title (relating to Groundwater Corrective Actions and Treatment Techniques); or

(D) failure to perform any 3 months of raw surface water monitoring as required by §290.111(b) of this title (relating to Surface Water Treatment) or request bin classification from the executive director under §290.111(c)(3)(A) of this title; or

(E) other violations deemed appropriate by the executive director that pose a non-acute risk to human health.

(2) The initial public notice for any violation identified in this subsection must be issued as soon as possible, but in no case later than 30 days after the violation is identified. The initial public notice shall be issued in the following manner.

(A) The owner or operator of a community water system shall issue the notice by:

(i) mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and

(ii) any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in clause (i) of this subparagraph. Such persons may include those who do not pay water bills or do not have service connection addresses (e.g., house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.) Other methods may include: publication in a local newspaper; delivery of multiple copies for distribution by customers that provide drinking water to others (e.g., apartment building owners or large private employers); continuous posting in conspicuous public places within the area served by the system or on the Internet; or delivery to community organizations.

(B) The owner or operator of a noncommunity water system shall issue the notice by: [~~direct delivery or by continuously posting the notice in conspicuous places within the area served by the system.~~]

(i) posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection (where known); and

(ii) any other method reasonably calculated to reach other persons served by the system if they would not normally be reached by the notice. Such persons may include those served who may not see a posted notice because the posted notice is not in a location they routinely pass by. Other methods may include: publication in a local newspaper or newsletter distributed to customers; use of e-mail to notify employees or students; or, delivery of multiple copies in central locations (e.g., community centers).

(C) If notice is provided by posting, the posting must remain in place for as long as the violation exists or seven days, whichever is longer.

(3) The owner or operator of a system required to issue an initial violation notice shall issue additional notices. The additional notices shall be issued in the following manner.

(A) The owner or operator of a community water system must issue a notice at least once every three months by mail delivery (by direct mail or with the water bill) or by direct delivery, for as long as the violation exists.

(B) If the owner or operator of a noncommunity water system issued the initial notice by continuously posting the notice, the posting must continue for as long as the violation exists, and in no case less than seven days. If the owner or operator of a noncommunity water system issued the initial notice by direct delivery, notice by direct delivery must be repeated at least every three months for as long as the violation exists.

(4) The owner or operator of the public water system must issue a notice when the public water system has corrected the violation. This notice must be issued in the same manner as the original notice was issued.

(c) Public notification requirements for other violations, variances, exemptions. The owner or operator of a public water system who fails to perform monitoring required by this chapter, fails to comply with a testing procedure established by this chapter, or is subject to a variance or exemption granted under §290.102(b) of this title shall notify persons served by the system. Each notice required by this section must meet the requirements of subsection (d) of this section.

(1) Violations that require notification as described in this section include:

(A) exceedance of the secondary constituent levels (SCL) for fluoride;

(B) failure to perform monitoring or reporting required by this subchapter;

(C) failure to comply with the analytical requirements or testing procedures required by this subchapter;

(D) operating under a variance or exemption granted under §290.102(b) of this title; and

(E) failure to maintain records on recycle practices as required by §290.46(f)(3)(C)(iii) of this title.

(2) The initial public notice issued pursuant to this section shall be issued within three months of the violation or the granting of a variance or exemption. The initial public notice shall be issued in the following manner.

(A) The owner or operator of a community water system shall issue the notice by mail or other direct delivery to each customer receiving a bill and to other service connections. The owner or operator of a noncommunity water system shall issue the notice by either posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection. [~~The owner or operator of a community water system shall publish the notice in a daily newspaper of general circulation in the area served by the system. If the area served by the public water system is not served by a daily newspaper of general circulation, the notice shall instead be published in a weekly newspaper of general circulation serving the area. If the area is not served by a either a daily or weekly newspaper of general circulation, notice shall instead be given by direct delivery or by continuous posting in conspicuous places within the area served by the system.~~]

(B) The owner or operator of any public water system shall also notify the public using another method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in subparagraph (A) of this paragraph. Such persons may include people who do not pay water bills or do not have service connection addresses (e.g., house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.). These other methods may include publication in a local newspaper; delivery of multiple copies for distribution by customers that provide their drinking water to others (e.g., apartment building owners or large private employers); posting in public places or on the Internet; or delivery to community organizations. [~~The owner or operator of a noncommunity water system shall issue the notice by direct delivery or by continuously posting the notice in conspicuous places within the area served by the system.~~]

(C) If notice is provided by posting, the posting must remain in place for as long as the violation exists or seven days, whichever is longer.

(3) The owner or operator of a system required to issue an initial violation notice shall issue additional notices. The additional notices shall be issued in the following manner.

(A) The owner or operator of a community water system shall issue repeat notices at least once every 12 months by mail delivery (by direct mail or with the water bill) or by hand delivery, for as long as the violation exists or variance or exemption remains in effect. Repeat public notice may be included as part of the Consumer Confidence Report.

(B) If the owner or operator of a noncommunity water system issued the initial notice by continuously posting the notice, the posting must continue for as long as the violation exists, and in no case less than seven days. If the owner or operator of a noncommunity water system issued the initial notice by direct delivery, notice by direct delivery must be repeated at least every 12 [~~three~~] months for as long as the violation exists.

(4) The owner or operator of the public water system must issue a notice when the public water system has corrected the violation. This notice must be issued in the same manner as the original notice was issued.

(d) Each public notice must conform to the following general requirements.

(1) The notice must contain a clear and readily understandable explanation of the violation or situation that lead to the notification. The notice must not contain very small print, unduly technical language, formatting, or other items that frustrate or defeat the purpose of the notice.

(2) If the notice is required for a specific event, it must state when the event occurred.

(3) For notices required under subsections (a), (b), or (c)(1)(A) of this section, the notice must describe potential adverse health effects.

(A) For MCL, MRDL, or treatment technique violations, the notice must contain the mandatory federal contaminant-specific language contained in 40 Code of Federal Regulations (CFR) Subpart Q, Appendix B, in addition to any language required by the executive director.

(B) For fluoride SCL violations, the notice must contain the mandatory federal contaminant-specific language contained in 40 CFR §141.208, in addition to any language required by the executive director.

(C) For failure to perform any 3 months of raw surface water monitoring or request bin classification from the executive director, the notice must contain the mandatory federal contaminant

specific language contained in 40 CFR §141.211(d)(1) and 40 CFR §141.211(d)(2), respectively, in addition to any language required by the executive director.

(D) The notice must describe the population at risk, especially subpopulations particularly vulnerable if exposed to the given contaminant.

(4) The notice must state what actions the water system is taking to correct the violation or situation, and when the water system expects to return to compliance.

(5) The notice must state whether alternative drinking water sources should be used, and what other actions consumers should take, including when they should seek medical help, if known.

(6) Each notice must contain the name, business address and telephone number at which consumers may contact the owner, operator, or designee of the public water system for additional information concerning the notice.

(7) Where appropriate, the notice must be multilingual.

(8) The notice shall include a statement to encourage the notice recipient to distribute the public notice to the other persons served.

(9) Systems with variances or exemptions must notify in accordance with 40 CFR §141.205(b).

(10) Systems must notify customers at sampled taps of the results of any required lead or copper analyses and certify completion of the notification to the executive director.

(e) Notice to new billing units. The owner or operator of a community water system must give a copy of the most recent public notice for any outstanding violation of any MCL, or any treatment technique requirement, or any variance or exemption schedule to all new billing units or new hookups prior to or at the time service begins. The owner or operator of a noncommunity water system must continuously post the public notice in conspicuous locations in order to inform new consumers of any continuing violation, variance or exemption, or other situation requiring a public notice for as long as the violation, variance, exemption, or other situation persists.

(f) Proof of public notification. A copy of any public notice required under this section must be submitted to the executive director within ten days of its distribution as proof of public notification. The copies must be mailed to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. Each proof of public notification must be accompanied with a signed Certificate of Delivery.

(g) Notice to consecutive systems. A public water system that is required to notify its customers must also provide a copy of the notification to the owner or operator of any public water systems that purchase or otherwise receive water from it in the same manner in which they inform their customers. Each public water system that is affected by the subject of the notification is responsible for notification to its own customers.

(h) Notices given by the executive director. The executive director may give the notice required by this section on behalf of the owner and operator of the public water system following the requirements of this section. The owner or operator of the public water system remains responsible for ensuring that the requirements of this section are met.

(i) If a public water system has a violation in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, the executive director may allow the system to limit distribution of the public notice to only persons served by that portion of the system which is out of compliance. Permission by the executive director for limiting distribution of the notice must be granted in writing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 23, 2010.

TRD-201006721
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 9, 2011
For further information, please call: (512) 239-6087

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30 TAC §290.117

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

This repeal is proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and Texas Health and Safety Code (THSC), §341.031, which allows the commission to adopt rules to implement the federal Safe Drinking Water Act, 42 United States Code, §§300f to 300j-26; and THSC, §341.0315, which requires public water systems to comply with commission rules adopted to ensure the supply of safe drinking water.

The proposed repeal implements TWC, §§5.102, 5.103, and 5.105, and THSC, §341.031 and §341.0315.

§290.117. Regulation of Lead and Copper.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 23, 2010.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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SUBCHAPTER H. CONSUMER CONFIDENCE REPORTS

30 TAC §290.271, §290.272

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and Texas Health and Safety Code (THSC), §341.031, which allows the commission to adopt rules to implement the federal Safe Drinking Water Act, 42 United States Code, §§300f to 300j-26; and THSC, §341.0315, which requires public water systems to comply with commission rules adopted to ensure the supply of safe drinking water.

The proposed amendments implement TWC, §§5.102, 5.103, and 5.105, and THSC, §341.031 and §341.0315.

§290.271. Purpose and Applicability.

(a) The purpose of the sections in this subchapter is to establish the minimum requirements for the content of annual reports that community water systems must deliver to their customers. These reports must contain information on the quality of the water delivered by the systems and characterize any risk from exposure to contaminants detected in the drinking water in an accurate and understandable manner. This subchapter applies only to community water systems.

(b) Each community water system must provide to its customers an annual report that contains the information specified in this subchapter.

(c) For the purposes of this section, the term "detected" shall mean the detection of a chemical at any level greater than the minimum detection level.

§290.272. Content of the Report.

(a) Information on the source of the water delivered must be included in the report.

(1) Each report must identify the source(s) of the water delivered by the community water system by providing information on the type of the water (such as surface water or groundwater) and any commonly used name and location of the body(ies) of water.

(2) If a source water assessment has been completed, the report must notify consumers of the availability of this information and the means to obtain it. In the reports, systems should highlight significant sources of contamination in the source water area if they have readily available information.

(3) If a system has received a source water assessment from the executive director, the report must include a brief summary of the system's susceptibility to potential sources of contamination using language provided by the executive director or written by a water system official and approved by the executive director.

(b) The following explanations must be included in the annual report.

(1) Each report must contain the following definitions.

(A) Maximum contaminant level goal (MCLG)--The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

(B) Maximum contaminant level (MCL)--The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to maximum contaminant level goals as feasible using the best available treatment technology.

(C) Maximum residual disinfectant level goal (MRDLG)--The level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.

(D) Maximum residual disinfectant level (MRDL)--The highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

(2) The following terms and their descriptions must be included when they appear in the report:

(A) MFL--million fibers per liter (a measure of asbestos);

(B) mrem/year--millirems per year (a measure of radiation absorbed by the body);

(C) NTU--nephelometric turbidity units (a measure of turbidity);

(D) pCi/L--picocuries per liter (a measure of radioactivity);

(E) ppb--parts per billion, or micrograms per liter (µ/L);

(F) ppm--parts per million, or milligrams per liter (mg/L);

(G) ppt--parts per trillion, or nanograms per liter (ng/L); and

(H) ppq--parts per quadrillion, or picograms per liter (pg/L).

(3) A report for a community water system operating under a variance or an exemption of the Safe Drinking Water Act must include a description of the variance or the exemption granted under §290.102(b)(4) of this title (relating to General Applicability).

(4) A report that contains data on a contaminant for which the United States Environmental Protection Agency (EPA) has set a treatment technique or an action level must include, depending on the contents of the report, the following definitions.

(A) Treatment technique (TT)--A required process intended to reduce the level of a contaminant in drinking water.

(B) Action level (AL)--The concentration of a contaminant which, if exceeded, triggers treatment or other requirements that a water system must follow.

(c) Information on detected contaminants.

(1) This subsection specifies the requirements for information to be included in each report for detected contaminants subject to mandatory monitoring, excluding *Cryptosporidium.* Mandatory monitoring is required for:

(A) regulated contaminants subject to an MCL, MRDL, action level, or treatment technique; and

(B) unregulated contaminants for which monitoring is required by 40 Code of Federal Regulations (CFR) §141.40, relating to Unregulated Contaminants and found in §290.275(4) of this title (relating to Appendices A - D).[; and]

[(C) disinfection by-products or microbial contaminants for which monitoring is required by 40 CFR §141.142, relating to Information Collection Requirements (ICR) for Public Water System--Disinfection by-product and related monitoring, and 40 CFR §141.143, relating to Microbial Monitoring Requirements.]

(2) The data relating to these detected contaminants must be displayed in one table or in several adjacent tables. Any additional monitoring results that a community water system chooses to include in its reports must be displayed separately.

(3) The data must be derived from data collected to comply with EPA and the commission monitoring and analytical requirements during the previous calendar year, except when a system is allowed to monitor for regulated contaminants less often than once per year. In that case, the table(s) must include the date and results of the most recent sampling, and the report must include a brief statement indicating that the data presented in the report is from the most recent testing done in accordance with the regulations. The report does not need to include data that is older than five years. [~~Furthermore, results of monitoring in compliance with 40 CFR §141.142 and §141.143 need only be included for five years from the date of the last sample or until any of the detected contaminants becomes regulated and subject to routine monitoring requirements, whichever comes first.~~]

(4) For detected regulated contaminants listed under §290.275 of this title, the table(s) must contain:

(A) the MCLs for those contaminants expressed as a number equal to or greater than 1.0 (as provided under §290.275 of this title);

(B) the MCLGs for those contaminants expressed in the same units as the MCLs (as provided for under §290.275 of this title);

(C) if there is no MCL for a detected contaminant, the treatment technique or specific action level applicable to that contaminant; and

(D) for contaminants subject to an MCL, except turbidity and total coliforms, the highest contaminant level used to determine compliance with National Primary Drinking Water Regulations and the range of detected levels.

(i) For contaminants subject to MCLs, except turbidity and total coliforms, when sampling takes place once per year or less often, the table(s) must contain the highest detected level at any sampling point and the range of detected levels expressed in the same units as the MCL.

(ii) When sampling takes place more than once per year at each sampling point, the table(s) must contain the highest average of any of the sampling points and the range of all sampling points expressed in the same units as the MCL.

(iii) In accordance with date requirements included in the table under §290.115(a) of this title (relating to Stage 2 Disinfection Byproducts (TTHM and HAA5)), entitled "Date to Start Stage 2 Compliance," for [~~For~~] the MCLs for trihalomethanes (TTHM) and haloacetic acids (HAA5), systems must include the highest locational running annual average for TTHM and HAA5 and the range of individual sample results for all monitoring locations expressed in the same units as the MCL. If more than one location exceeds the TTHM or HAA5 MCL, the system must include the locational running annual averages for all sampling points that exceed the MCL.

(iv) When compliance with any MCL is determined on a system-wide basis by calculating a running annual average of all samples at all sampling points, the table(s) must include the average and range of detections expressed in the same units as the MCL.

(v) When the executive director allows the rounding of results to determine compliance with the MCL, rounding should be done after multiplying the results by the factor listed under §290.275 of this title.

(E) When turbidity is reported under §290.111 of this title (relating to Surface Water Treatment), the table(s) must contain the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in that section for the filtration technology being used. The report should include an explanation of the reasons for measuring turbidity.

(F) When lead and copper are reported, the table(s) must contain the 90th percentile value of the most recent round of sampling and the number of sampling sites exceeding the action level.

(G) When total coliform is reported, the table(s) must contain either the highest monthly number of positive samples for systems collecting fewer than 40 samples per month or the highest monthly percentage of positive samples for systems collecting at least 40 samples per month.

(H) When fecal coliform is reported, the table(s) must contain the total number of positive samples.

(I) The table(s) must contain information on the likely source(s) of detected contaminants based on the operator's knowledge. Specific information regarding contaminants may be available in sanitary surveys or source water assessments and should be used when available. If the operator lacks specific information on the likely source, the report must include one or more typical sources most applicable to the system for any particular contaminant listed under §290.275 of this title.

(i) If a community water system distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources, the table(s) must contain a separate column for each service area, and the report must identify each separate distribution system. Systems may produce separate reports tailored to include data for each service area.

(ii) The table(s) must clearly identify any data indicating violations of MCLs, MRDLs, or treatment techniques. The report must contain a clear and readily understandable explanation of the violation. The explanation must include the length of the violation, the potential adverse health effects, and the actions taken by the system to address the violation. To describe the potential health effects, the system must use the relevant language contained under §290.275 of this title.

(5) For detected unregulated contaminants found under §290.275 of this title, for which monitoring is required (except *Cryptosporidium),* the table(s) must contain the average and range of concentrations at which the contaminant was detected. The report must include the following explanation: "Unregulated contaminants are those for which EPA has not established drinking water standards. The purpose of unregulated contaminant monitoring is to assist EPA in determining the occurrence of unregulated contaminants in drinking water and whether future regulation is warranted."

(d) Information on *Cryptosporidium,* radon, and other contaminants.

(1) If the system has performed any monitoring for *Cryptosporidium,* the report must include a summary of the results of any detections and an explanation of the significance of the results.

(2) If the system has performed any monitoring for radon, which indicates that radon may be present in the finished water, the report must include the results of the monitoring and an explanation of the significance of the results.

(3) If the system has performed additional monitoring, which indicates the presence of other contaminants in the finished water, the executive director strongly encourages systems to report

any results which may indicate a health concern. To determine if the results may indicate a health concern, the executive director recommends that systems find out if the EPA has proposed a standard in the *National Primary Drinking Water Regulations* (NPDWR) or issued a health advisory for any particular contaminant. This information may be obtained by calling the Safe Drinking Water Hotline at (800) 426-4791. The executive director considers detections that are above a proposed MCL or health advisory level to indicate possible health concerns. For such contaminants, the executive director recommends that the report include the results of the monitoring and an explanation of the significance of the results. The explanation should note the existence of a health advisory or a proposed regulation.

(e) Compliance with NPDWR. In addition to the requirements in subsection (c)(4)(I)(ii) of this section, the report must note any violation that occurred during the year covered by the report of a requirement listed in paragraphs (1) - (8) of this subsection.

(1) The report must include a clear and readily understandable explanation of each violation of monitoring and reporting of compliance data and explain any adverse health effects and steps the system has taken to correct the violation.

(2) The report must include a clear and readily understandable explanation of each violation of filtration and disinfection prescribed by Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems) and explain any adverse health effects and steps the system has taken to correct the violation. This applies both to systems that have failed to install adequate filtration, disinfection equipment, or processes, and to systems that have had a failure of such equipment or processes, each of which constitutes a violation. In either case, the report must include the following language as part of the explanation of potential adverse health effects: "Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches."

(3) The report must include a clear and readily understandable explanation of each violation of the lead and copper control requirements prescribed by §290.117 of this title (relating to Regulation of Lead and Copper). For systems that fail to take one or more actions prescribed by §290.117(g), (h), and (i) of this title, the report must include the applicable health effects language of §290.275(3) of this title for lead, copper, or both and the steps the system has taken to correct the violation.

(4) The report must include a clear and readily understandable explanation of each violation of treatment techniques for Acrylamide and Epichlorohydrin prescribed by §290.107 of this title (relating to Organic Contaminants). If a system violates these requirements, the report must include the relevant health effects language from §290.275 of this title and the steps the system has taken to correct the violation.

(5) The report must include a clear and readily understandable explanation of each violation of recordkeeping of compliance data and explain any adverse health effects and steps the system has taken to correct the violation.

(6) The report must include a clear and readily understandable explanation of each violation of special monitoring requirements for unregulated contaminants and special monitoring for sodium as prescribed by 40 CFR §141.40 and §141.41 and explain any adverse health effects and steps the system has taken to correct the violation.

(7) For systems required to conduct initial distribution sampling evaluation (IDSE) sampling in accordance with §290.115(c)(5) of this title [~~(relating to Stage 2 Disinfection By-products (TTHM and HAA5))~~], the system is required to include individual sample results for the IDSE when determining the range of TTHM and HAA5 results to be reported in the annual consumer confidence report for the calendar year that the IDSE samples were taken.

(8) The report must include a clear and readily understandable explanation of each violation of the terms of a variance, exemption, administrative order, or judicial order and explain any adverse health effects and steps the system has taken to correct the violation.

(f) Variances and exemptions. If a system is operating under the terms of a variance or exemption issued under §290.102(b) of this title, the report must contain:

(1) an explanation of the variance or exemption;

(2) the date on which the variance or exemption was issued and on which it expires;

(3) a brief status report on the steps the system is taking, such as installing treatment processes or finding alternative sources of water, to comply with the terms and schedules of the variance or exemption; and

(4) a notice of any opportunity for public input as the review or renewal of the variance or exemption.

(g) Additional information.

(1) The report must contain a brief explanation regarding contaminants that may reasonably be expected to be found in drinking water (including bottled water). This explanation may include the language contained within subparagraphs (A) - (C) of this paragraph, or systems may include their own comparable language. The report must include the language of subparagraphs (D) and (E) of this paragraph.

(A) The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally occurring minerals and, in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activity.

(B) Contaminants that may be present in source water include:

(i) microbial contaminants, such as viruses and bacteria, which may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife;

(ii) inorganic contaminants, such as salts and metals, which can be naturally occurring or result from urban storm water runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming;

(iii) pesticides and herbicides, which might have a variety of sources such as agriculture, urban storm water runoff, and residential uses;

(iv) organic chemical contaminants, including synthetic and volatile organic chemicals, which are byproducts [~~by-products~~] of industrial processes and petroleum production, and can also come from gas stations, urban storm water runoff, and septic systems; and

(v) radioactive contaminants, which can be naturally occurring or the result of oil and gas production and mining activities.

(C) In order to ensure that tap water is safe to drink, the EPA prescribes regulations that limit the amount of certain contaminants in water provided by public water systems. Food and Drug

Administration regulations establish limits for contaminants in bottled water that must provide the same protection for public health.

(D) Contaminants may be found in drinking water that may cause taste, color, or odor problems. These types of problems are not necessarily causes for health concerns. For more information on taste, odor, or color of drinking water, please contact the system's business office.

(E) Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the EPA's Safe Drinking Water Hotline at (800) 426-4791.

(2) The report must include the telephone number of the owner, operator, or designee of the community water system as an additional source of information concerning the report.

(3) Each English language report must include the following statement in a prominent place on the first page: "Este reporte incluye informacion importante sobre el agua para tomar. Para asistencia en español, favor de llamar al telefono (XXX) XXX-XXXX." In addition to this statement in Spanish, for communities with a large proportion of limited English proficiency residents, as determined by the executive director, the report must contain information in the appropriate language(s) regarding the importance of the report or contain a telephone number or address where such residents may contact the system to obtain a translated copy of the report or assistance in the appropriate language.

(4) The report must include information about opportunities for public participation in decisions that may affect the quality of the water (e.g., time and place of regularly scheduled board meetings). Investor-owned utilities are encouraged to conduct public meetings, but must include a phone number for public input.

(5) The systems may include such additional information for public education consistent with, and not detracting from, the purposes of the report.

(6) Systems that use an interconnect or emergency source to augment the drinking water supply during the calendar year of the report must provide the source of the water, the length of time used, an explanation of why it was used, and whom to call for the water quality information.

(7) Beginning December 1, 2009, any groundwater system that receives notice from a laboratory of a fecal indicator-positive groundwater source sample that is not invalidated by the executive director under §290.109(d) of this title (relating to Microbial Contaminants) must inform its customers of any fecal indicator-positive groundwater source sample in the next report. The system must continue to inform the public annually until the executive director determines that the fecal contamination in the groundwater source is addressed under §290.116(a) of this title (relating to Groundwater Corrective Actions and Treatment Techniques). Each report must include the following elements:

(A) the source of the fecal contamination (if the source is known) and the dates of the fecal indicator-positive groundwater source samples;

(B) actions taken to address the fecal contamination in the groundwater source as directed by §290.116 of this title and the date of such action;

(C) for each fecal contamination in the groundwater source that has not been addressed under §290.116 of this title, the plan approved by the executive director and schedule for correction, including interim measures, progress to date, and any interim measures completed; and

(D) for a fecal indicator-positive groundwater source sample that is not invalidated by the executive director under §290.109(d) of this title, the potential health effects using the health effects language of §290.275(3) of this title.

(8) Beginning December 1, 2009, any groundwater system that receives notice from the executive director of a significant deficiency must inform its customers of any significant deficiency that is uncorrected at the time of the next report. The system must continue to inform the public annually until the executive director determines that particular significant deficiency is corrected under §290.116 of this title. Each report must include the following elements:

(A) the nature of the particular significant deficiency and the date the significant deficiency was identified by the executive director;

(B) for each significant deficiency, the plan approved by the executive director and schedule for correction, including interim measures, progress to date, and any interim measures completed; and

(C) if corrected before the next report, the nature of the significant deficiency, how the deficiency was corrected, and the date of the corrections.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 23, 2010.

TRD-201006723
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 9, 2011
For further information, please call: (512) 239-6087

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CHAPTER 311. WATERSHED PROTECTION
SUBCHAPTER I. DISCHARGE OF PESTICIDES

30 TAC §311.91

The Texas Commission on Environmental Quality (commission or TCEQ) proposes new §311.91.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

On September 9, 2010, the Texas Parks and Wildlife Department submitted a petition for rulemaking which requested an exemption for discharges associated with pesticide applications authorized by the commission or exempted from permit requirements by federal or state statutes from discharge prohibitions currently found in 30 TAC Chapter 213, Subchapters A and B; and in Chapter 311, Subchapters A, B, and F. On November 3, 2010, the commission recommended approval of the petition for rulemaking.

A recent decision from the Sixth Circuit Court of Appeals overturned the United States Environmental Protection Agency's

(EPA) rule which provided that National Pollutant Discharge Elimination System (NPDES) permits were not required for pesticide applications into, over, or near waters of the United States *(National Cotton Council of America v. U.S. EPA, 553 F.3d 927).* As a result of the Sixth Circuit Court of Appeals decision and because Texas is a delegated state, the discharge of pesticides must now be regulated through the Texas Pollutant Discharge Elimination System (TPDES). By court order, applications of pesticides into, over, or near water in the United States must be authorized under the NPDES program by April 9, 2011. Currently, because the discharge of pesticides is not a point source, Chapters 213 and 311 allow the application of pesticides. However, on April 9, 2011, pesticide application will be prohibited within the Highland Lakes area (Lakes Travis, Austin, Inks, Buchanan, Lyndon B. Johnson, and Marble Falls) and Edwards Aquifer recharge, contributing, and transition zones.

This proposed rulemaking would allow the application of pesticides to continue within the Highland Lakes area for protection of human health and the environment. The inability to control pests could impact public health by preventing mosquito control, restricting recreational activities on the lakes due to invasive aquatic vegetation or invasive animals, restrict state and federal agencies from administering programs within their jurisdiction, restrict the volume of water flow due to invasive aquatic vegetation, and increase the potential for public water supply systems to experience taste and odor problems due to excessive vegetation and algae.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning Chapter 213, Edwards Aquifer.

SECTION DISCUSSION

The new Subchapter I, §311.91, Discharge of Pesticides, would allow for continued use of commission authorized pesticide application within the Highland Lakes area where discharges are prohibited.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rule. The proposed rule is not expected to have a fiscal impact on other state agencies or units of local government.

A recent decision from the Sixth Circuit Court of Appeals overturned the EPA's rule which provided that NPDES permits were not required for pesticide applications into, over, or near waters of the Unites States. The proposed rulemaking would add Subchapter I to Chapter 311 to allow the application of pesticides to continue within the Highland Lakes area after April 9, 2011.

The proposed rule will not have a fiscal impact on state agencies and units of local government in the Highland Lakes area. The proposed rule will allow governmental entities to continue to apply pesticides for pest control purposes. Unless continued pesticide application is allowed, governmental entities in the Highland Lakes area could not control pests that impact public health, have the potential to restrict water flow volumes, or cause taste and odor problems for public water supply systems. Examples of activities that could be affected without the proposed rule are: control of mosquitoes, control of invasive aquatic vegetation, control of algae, and control of invasive animals.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed new rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be continued protection of the public health and the environment in the Highland Lakes area.

The proposed rule will not have a fiscal impact on individuals or businesses in the Highland Lakes area. The proposed rule will allow individuals and businesses to continue to apply pesticides to control pests, which without pesticide use, would not be adequately controlled. Examples of pest control that will be allowed under the proposed rule are: control of mosquitoes, control of invasive aquatic vegetation, control of algae, and control of invasive animals.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses in the Highland Lakes area as a result of the proposed rule. Small and micro-businesses will be allowed to continue to apply pesticides to control pests, which without pesticide use, would not be adequately controlled.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is required to comply with federal regulations and to protect human health and the environment. The proposed rule does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225, because it does not meet the definition of a major environmental rule. A "major environmental rule" means a rule that the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking would exempt discharges associated with pesticide applications authorized by the commission or exempted from permit requirements by federal or state statue from the discharge prohibitions in Chapter 311, Subchapters A, B and F. This rule is not a major environmental rule and does not meet any of the four applicability requirements that apply to a major environmental rule. Under Texas Government Code, §2001.0225, this proposed rule does not exceed a standard set by federal law or a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. The proposed rule does not exceed a standard set by federal law nor exceeds the requirement of a delegation agreement.

The rulemaking does not adopt a rule solely under the general powers of the commission and does not exceed an express requirement of state law.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007, does not apply to the proposed rulemaking because the proposed rulemaking is not a taking as defined in Chapter 2007, nor is it a constitutional taking of private real property. The purpose of the rule is to exempt discharges associated with pesticide applications authorized by the commission or exempted from permit requirements by federal or state statue from the discharge prohibitions in Chapter 311, Subchapters A, B and F.

Promulgation and enforcement of the proposed rule will not affect private real property, which is the subject of the rule, because the proposed rulemaking will neither restrict or limit the owner's right to the property, nor cause a reduction of 25% or more in the market value of the property. The proposed rule only applies to the continued application of pesticides in the Highland Lakes area. Property values will not be decreased, because the proposed rulemaking will not limit the use of real property. Thus, the proposed rule will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin, Texas, on January 6, 2011, at 2:00 PM in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Ms. Natalia Henricksen, Texas Register Coordinator, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2010-055-311-OW. The comment period closes January 14, 2011. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* For further information, please contact Ms. Lynda Clayton, Water Quality Division, (512) 239-4591; or Mr. George Ortiz, Field Operations Support Division, (512) 239-1457.

STATUTORY AUTHORITY

The new section is proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws of Texas; TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction; TWC, §5.105, which provides the commission with the authority to establish and approve all general policy of the commission by rule; TWC, §7.002, which authorizes the commission to enforce provisions of the TWC; and TWC, §26.011, which provides that the commission administers the provisions of TWC, Chapter 26, establishes the level of quality to be maintained, and controls the quality of the water in the state; TWC, §26.011, which grants the commission with the powers necessary or convenient to carry out its responsibilities; and TWC, §26.121, which prohibits unauthorized discharges into or adjacent to water in the state; and Chapter 311 which regulates discharges into certain watersheds.

The proposed new section implements TWC, §26.011 and §26.121, and Chapter 311, Subchapters A, B, and F.

§311.91. Discharge of Pesticides.

Discharges associated with pesticide applications authorized by the commission or exempted from permit requirements by federal or state statute are exempt from the discharge prohibition in Subchapters A, B, and F of this chapter (relating to Watershed Protection).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 23, 2010.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0177

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 1. EXECUTIVE ADMINISTRATION
SUBCHAPTER C. PROCEDURE FOR PATENTING LAND

31 TAC §1.23

The General Land Office (GLO) proposes an amendment to §1.23, concerning Payment for Land.

BACKGROUND AND ANALYSIS OF PROPOSED AMENDMENT

The intent of this rulemaking is to incorporate and provide consistency with the statutory changes made during the 81st Legislative Regular Session by House Bill (HB) 3461 (Acts 2009, 81st Leg., Ch. 1175, §§20, 21, eff. June 19, 2009) which amended Texas Natural Resources Code §51.070 (relating to Unpaid Principal on Public School Land Sales), and to clarify agency rules related to procedures for patenting land.

§1.23, Payment for Land

Currently, §1.23 states that payment for land shall be made in full and based upon exact acreage. The proposed amendment clarifies that payment in full shall include all principal, accrued interest, late charges, other fees and expenses. This amendment conforms the rule to the provisions of Texas Natural Resources Code §51.070(b), which states that no patent may be issued for any public school land until such payment has been made.

FISCAL AND EMPLOYMENT IMPACTS

Mr. Hal Croft, Deputy Commissioner for the GLO's Asset Management Division, has determined that for each year of the first five years the amended section as proposed is in effect, there will be no significant fiscal implications for state government as a result of enforcing or administering the amended section. Further, there will be no significant fiscal impact on local governments for each of the first five years the amended section as proposed is in effect as a result of enforcing or administering the rule.

Mr. Croft has also determined that for each year of the first five years the amended section as proposed is in effect, there will be no direct adverse economic effect on small or large businesses for compliance.

Mr. Croft has determined that the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Mr. Croft has determined that the public will benefit from this rule amendment because it clarifies agency rules related to procedures for patenting land and conforms the rules to the statutory changes.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment to Chapter 1 is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative changes to Texas Natural Resources Code §51.070(b), related to payments made for patents issued on public school land.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19 of the Texas Constitution. Therefore, a detailed takings assessment is not required.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendment is proposed under Texas Natural Resources Code §51.070 and §51.014, which provides that the Commissioner may adopt rules necessary to carry out the provisions of that chapter and to alter or amend those rules to protect the public interest.

Texas Natural Resources Code §51.070 is affected and implemented by the proposed amendment.

§1.23. Payment for Land.

Payment in full, based upon exact acreage, shall be made, including all principal, accrued interest, late charges, and other fees and expenses. Upon request, a statement will be furnished showing the balance of principal and interest due, as well as the patent fee and patent recording fee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 22, 2010.

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Trace Finley
Deputy Commissioner, Policy and Governmental Affairs
General Land Office
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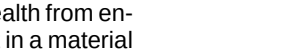
For further information, please call: (512) 475-1859



CHAPTER 2. RULES OF PRACTICE AND PROCEDURE

SUBCHAPTER C. PROCEDURES FOR SPECIAL BOARD OF REVIEW HEARINGS

31 TAC §2.41, §2.49

The General Land Office (GLO) proposes amendments to §2.41, concerning Definitions, and §2.49, concerning Binding Effect of Orders and Development Plans.

BACKGROUND AND ANALYSIS OF PROPOSED AMENDMENTS

The intent of this rulemaking is to incorporate and provide consistency with the statutory changes made during the 81st Legislative Regular Session by House Bill (HB) 3632 (Acts 2009, 81st Leg., Ch. 1182, §3, eff. June 19, 2009) which amended Texas Natural Resources Code §31.167 (relating to Binding Effect of Development Plan), and to correct a typographical error.

§2.41, Definitions

The proposed amendments to §2.41 correct a typographical error and expand the definition of "Board" in the rule to clarify that, after issuance of an order establishing a development plan for real property that is not part of the permanent school fund (PSF) or in which the PSF does not have a financial interest, the composition of any future special board of review (Board) called to consider revision of that order must be consistent with the provisions of Texas Natural Resources Code §31.167(d). Those provisions state that, in such circumstances, the members of the Board must consist of the presiding officer of the governing board of the agency or institution possessing the real property or the presiding officer's designated representative, such officer or representative to serve as presiding officer of the Board; two members who are employed by the agency or institution possessing the real property, appointed by the presiding officer of the governing board of the agency or institution or the presiding officer's designated representative; the county judge of the county in which the real property is located; and if the real property is located within the corporate boundaries or extraterritorial jurisdiction of a municipality, the mayor of the municipality.

§2.49, Binding Effect of Orders and Development Plans

The proposed amendments to §2.49 incorporate by reference the provisions of Texas Natural Resources Code §31.167(c), which states that development plans adopted by Board order shall be final and binding on the state, its lessees and affected political subdivisions unless subsequently revised by the Board; provided, however, that revisions to a development plan that are requested after the later of the 10th anniversary of the date on which the development plan was promulgated by the Board or the date on which the state no longer holds a financial or property interest in the real property subject to the plan are governed by local development policies and procedures.

FISCAL AND EMPLOYMENT IMPACTS

Mr. Hal Croft, Deputy Commissioner for the GLO's Asset Management Division, has determined that for each year of the first five years the amended sections as proposed are in effect, there will be no significant fiscal implications for state government as a result of enforcing or administering the amended sections. Further, there will be no significant fiscal impact on local governments for each of the first five years the amended sections as proposed are in effect as a result of enforcing or administering the rules.

Mr. Croft has also determined that for each year of the first five years the amended sections as proposed are in effect, there will be no direct adverse economic effect on small or large businesses for compliance.

Mr. Croft has determined that the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Mr. Croft has determined that the public will benefit from these rule amendments, which incorporate changes made by the Texas Legislature to the GLO's governing statutes, because they clarify special board of review procedures and conform the rules to the statutory changes.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to Chapter 2 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative changes from Texas Natural Resources Code §31.167 related to special board of review orders and the binding effect of development plans issued by the board.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19 of the Texas Constitution. Therefore, a detailed takings assessment is not required.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendments are proposed under Texas Natural Resources Code §31.166 which provides that hearings of the board shall be conducted in accordance with rules promulgated by the GLO for conduct of the special review, and under Texas Natural Resources Code §31.167.

Texas Natural Resources Code §§31.165 - 31.167 are affected and implemented by the proposed amendments.

§2.41. Definitions.

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

(1) Board--The special board of review, chaired by the Commissioner of the General Land Office, consisting of the members of the School Land Board; the chairperson of the governing board of the agency or institution possessing the property; the mayor of the city or town within the corporate boundaries or extraterritorial jurisdiction of which the property is located, if the property is located within a city or town; and the county judge of the county within which the property is located. If the property is owned by the permanent school fund, the board shall consist of the members of the School Land Board and the local officials, with the commissioner of the General Land Office serving as chairperson. After issuance of an order establishing a development plan for real property that is not a part of the permanent school fund or in which the permanent school fund does not have a financial interest, the composition of any future special board of review called to consider revision of that order must consist of members as specified in Texas Natural Resources Code §31.167(d).

(2) - (9) (No change.)

§2.49. Binding Effect of Orders and Development Plans.

(a) A development plan adopted by board order, or otherwise accepted by a political subdivision, shall be:

(1) final and binding on the state, its lessees, successors in interest and assigns, and affected political subdivisions, unless subsequently revised by the board, except as provided in Texas Natural Resources Code §31.167(c); and

(2) (No change.)

(b) No person shall revise or modify a development plan adopted by board order, or otherwise accepted by a political subdivision, without specific approval by the board, except as provided in Texas Natural Resources Code §31.167(c).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 22, 2010.

TRD-201006683
Trace Finley
Deputy Commissioner, Policy and Governmental Affairs
General Land Office
Earliest possible date of adoption: January 9, 2011
For further information, please call: (512) 475-1859

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CHAPTER 7. SURVEYING

31 TAC §§7.1 - 7.4, 7.6, 7.7

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the General Land Office or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The General Land Office (GLO) proposes the repeal of §§7.1 - 7.4, 7.6, and 7.7.

With the exception of §7.2, which was amended in 1995, these sections have not been modified since they were first adopted in 1976.

Following the publication of its Notice of Intent to Review in the June 25, 2010, issue of the *Texas Register* (35 TexReg 5583), the GLO reviewed all rules in Chapter 7 and determined that some of these rules should be modified. In order to accomplish the modification of these rules, the GLO determined that the rules to be modified should be repealed and, immediately thereafter, replacement rules should be adopted in their place. Therefore, concurrently with this proposed repeal of §§7.1 - 7.4, 7.6, and 7.7, the GLO is proposing the adoption of new §§7.1 - 7.4, 7.6, and 7.7 that will replace the sections proposed to be repealed. The proposed new sections have been modified to make the rules more clear and comprehensible to the public and to the GLO. Additionally, the proposed new sections have been modified to more accurately reflect the current practices and policies of the GLO. The Notice of Proposed Rulemaking for the new sections appears elsewhere in this issue of the *Texas Register.*

FISCAL AND EMPLOYMENT IMPACTS

Bill O'Hara, Director of Surveying for the GLO, has determined that, for each year of the first five years these sections have been repealed, there will be no fiscal impacts for the state government related to the repeal of these sections. There will also be no fiscal impact on local governments as a result of the repeal of these sections.

Mr. O'Hara has determined that the repeal of these sections will not have an effect on the costs of compliance for individuals and small businesses or large businesses. Mr. O'Hara has also determined that the repeal of these sections will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Mr. O'Hara has determined the public will benefit from the proposed repeal of these sections because the proposed adoption of the new rules to replace the proposed sections to be repealed will streamline the various processes related to surveying public lands and provide the public with a clearer understanding of the policies and procedures of the GLO related thereto.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed repeal of these sections in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed repeal of these sections does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article 1, Sections 17 and 19 of the Texas Constitution. Furthermore, the GLO has determined that the proposed repeal of these sections would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the proposed repeal of these sections.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed repeal of these sections in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not exceed express requirements of state law and does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from

environmental exposure and that may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed repeal of these sections is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

PUBLIC COMMENT REQUEST

To comment on the proposed repeals, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6433, or email to walter.talley@glo.state.tx.us. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The repeals are proposed pursuant to Texas Natural Resources Code §31.051(3), which authorizes the Commissioner of the GLO to make and enforce suitable rules consistent with the law.

The proposed repeals affect Texas Natural Resources Code Chapter 21, relating to Surveys and Surveyors; Chapter 33, relating to the Management of Coastal Public Land; and Chapter 51, relating to Land, Timber, and Surface Resources.

§7.1 Forms.

§7.2. Coastal Lands.

§7.3. Deeds of Acquittance.

§7.4. Corrected Patents.

§7.6. Surveyor's Maps or Plats.

§7.7. Surveyor's Reports, General.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 22, 2010.

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Trace Finley
Deputy Commissioner, Policy and Governmental Affairs
General Land Office
Earliest possible date of adoption: January 9, 2011
For further information, please call: (512) 475-1859

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31 TAC §§7.1 - 7.4, 7.6, 7.7

The General Land Office (GLO) proposes new §§7.1 - 7.4, 7.6, and 7.7.

Following the publication of a Notice of Intent to Review in the June 25, 2010, issue of the *Texas Register* (35 TexReg 5583), the GLO reviewed all rules in Chapter 7 and determined that some of these rules should be modified. In order to accomplish the modification of these rules, the GLO determined that the rules to be modified should be repealed and, immediately thereafter, replacement rules should be adopted in their place. Therefore, concurrently with the proposed repeal of §§7.1 - 7.4, 7.6, and 7.7, the GLO is proposing this adoption of new §§7.1 - 7.4, 7.6, and 7.7 that will replace the sections proposed to be repealed. The proposed new sections have been modified to make the rules more clear and comprehensible to the public and to the GLO. Additionally, the proposed new sections have been modified to more accurately reflect the current practices and policies of the GLO. The Notice of Proposed Rulemaking for the repeal appears elsewhere in this issue of the *Texas Register.*

SECTION-BY-SECTION ANALYSIS

Proposed §7.1, concerning Forms, requires the GLO to provide surveyors with the correct forms for field notes and corrected field notes.

Proposed §7.2, concerning Coastal Lands, defines the various terms used in the rule; describes the GLO's requirements for performing a coastal boundary survey and preparing field notes and survey plat of a coastal boundary survey; and describes the GLO's requirements for performing a coastal boundary survey relating to an erosion response activity and preparing field notes and survey plat of a coastal boundary survey relating to an erosion response activity.

Proposed §7.3, concerning Deeds of Acquittance, describes the GLO's requirements for performing a survey and preparing field notes, plats, and surveyor's reports of a survey related to the issuance of a deed of acquittance.

Proposed §7.4, concerning Corrected Patents, describes the GLO's requirements for performing a survey and preparing corrected field notes, plats, and surveyor's reports of a survey related to the issuance of a corrected patent.

Proposed §7.6, concerning Surveyor's Plats, describes the GLO's requirements for a surveyor's plat to be submitted to the GLO in connection with vacancy filings or applications to purchase excess acreage.

Proposed §7.7, concerning Surveyor's Reports, General, describes the GLO's requirements for the preparation of surveyor's reports to be submitted to the GLO.

FISCAL AND EMPLOYMENT IMPACTS

Bill O'Hara, Director of Surveying for the GLO, has determined that, for each year of the first five years the new sections as proposed are in effect, there will be no fiscal impacts for the state government related to the proposed adoption of these new sections. There will also be no fiscal impact on local governments as a result of the proposed adoption of the new sections.

Mr. O'Hara has determined that the proposed adoption of these rules will not have an effect on the costs of compliance for individuals and small businesses or large businesses. Mr. O'Hara has also determined that the proposed adoption of these rules will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Mr. O'Hara has determined the public will benefit from the proposed adoption of these rules because it will streamline the various processes related to surveying public lands, and provide the public with a clearer understanding of the policies and procedures of the GLO related thereto.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed adoption of these rules in accordance with Texas Government Code §2007.043(b) and

§2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed adoption of these rules does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article 1, Sections 17 and 19 of the Texas Constitution. Furthermore, the GLO has determined that the proposed adoption of these rules would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the proposed adoption of these rules.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed adoption of these rules in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not exceed express requirements of state law and does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The proposed adoption of these rules is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

PUBLIC COMMENT REQUEST

To comment on the proposed new rules, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6433, or email to walter.talley@glo.state.tx.us. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The new rules are proposed pursuant to Texas Natural Resources Code §31.051(3), which authorizes the Commissioner of the GLO to make and enforce suitable rules consistent with the law.

The proposed new rules affect Texas Natural Resources Code Chapter 21, relating to Surveys and Surveyors; Chapter 33, relating to the Management of Coastal Public Land; and Chapter 51, relating to Land, Timber, and Surface Resources.

§7.1. Forms.

The Surveying Division of the General Land Office will furnish a surveyor with the correct form for Field Notes or Corrected Field Notes in paper and/or electronic format.

§7.2. Coastal Lands.

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

(1) Buildup--Dry land that is created as a result of man-made or unnatural structures or events.

(2) Coastal Boundary Survey--A survey conducted to locate a littoral boundary.

(3) Fill--Material placed on submerged land or in the waters covering submerged land where the material has the effect of:

(A) replacing any portion of submerged land with dry land; or

(B) changing the bottom elevation of any submerged land. Examples of fill include, but are not limited to: dredge material, rock, sand, soil, clay, shells, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure on submerged land or in the waters covering submerged land.

(4) Littoral boundary--The boundary between state-owned submerged land and privately-owned littoral property.

(5) Littoral property--Dry land bordering on or contiguous to submerged land.

(6) Natural (original) littoral boundary--The location of the natural shoreline as it existed prior to the placement of fill or buildup.

(7) Submerged Land--Any land lying below mean high water or mean higher high water, as applicable, and within the tidewater limits, including any buildup or fill on such land.

(b) Coastal boundary surveys must satisfy the following conditions:

(1) The survey work must be done by or under the direct control and supervision of a licensed state land surveyor or the county surveyor of the county in which the land is located, and the surveyor shall certify:

(A) that the survey is correct and in accordance with Texas Natural Resources Code §21.042; and

(B) that the survey work was done by or under the surveyor's direct control and supervision.

(2) A surveyor, before performing a coastal boundary survey, shall discuss with the Surveying Division of the General Land Office as to the appropriate surveying method to be used to determine the littoral boundary. The surveyor should submit to the Surveying Division of the General Land Office relevant facts regarding the elevation of mean high water, mean higher high water, and/or other information that may be necessary to the determination of the littoral boundary.

(3) The surveyor must certify on the survey plat and report that he or she has located the littoral boundary in accordance with methodology for the project approved by the Surveying Division of the General Land Office and that to the best of the surveyor's knowledge no fill or buildup is located within the area surveyed. The plat must indicate the name and address of the adjacent littoral property owner or owners whose property is affected by the coastal boundary survey.

(4) Where the littoral boundary is located along a contour line, the beginning and ending points on the contour line must be established with X and Y coordinates utilizing the Texas Coordinate System of 1927 or 1983. Each end of the contour line must reference an N.G.S. Station.

(5) In cases where fill or buildup exists, the surveyor must locate and survey both the natural (original) littoral boundary and the boundary of the area of fill or buildup. Prior to surveying the natural (original) littoral boundary of the property, the surveyor must obtain approval from the Surveying Division of the General Land Office as to the method to be used to locate the natural (original) littoral boundary. The surveyor must submit a separate report to the Surveying Division of the General Land Office describing in detail the nature and source of the fill or buildup, and certifying that he or she has relocated the

natural (original) littoral boundary in accordance with the methodology approved by the Surveying Division of the General Land Office. The surveyor must also submit a separate field note description and survey plat of the area of fill or buildup.

(6) The surveyor must determine to the best of his or her knowledge whether or not any retaining walls or other structural modifications have been placed on or along the littoral boundary. Any such modifications identified by the surveyor shall be reflected on the survey plat.

(c) In addition to the requirements of subsection (b) of this section, a coastal boundary survey conducted pursuant to Texas Natural Resources Code §33.136, relating to an erosion response activity must meet the following criteria:

(1) The survey plat must briefly describe the nature of the erosion response activity. The description must reference a General Land Office file number for a General Land Office lease or other instrument authorizing the placement of a structure on coastal public land; a project number of an erosion response project conducted pursuant to Texas Natural Resources Code §33.603; or a General Land Office file number for a dune protection permit or beachfront construction certificate subject to the goals and policies of the Coastal Management Program under Texas Natural Resources Code §33.2053(i);

(2) The survey plat must contain the statement required by Texas Natural Resources Code §33.136(b);

(3) A preliminary version of the survey plat must be submitted to the Surveying Division of the General Land Office for review, prior to finalizing the survey report; and

(4) Upon approval of the survey plat by the Surveying Division of the General Land Office, a final, signed and sealed survey plat must be filed in the county surveyor's office (or county clerk's office if there is no county surveyor) in the county in which the land is located, then submitted to the Surveying Division of the General Land Office for filing in the Archives and Records Division of the General Land Office.

(d) A survey that does not include all information and certifications required under this section and Texas Natural Resources Code §33.136 shall be deemed administratively incomplete. The Surveying Division of the General Land Office shall inform the surveyor in writing of the information required to complete the survey. If the survey remains administratively incomplete and inactive ninety (90) days from the date such notification was sent to the surveyor, the General Land Office may return all submitted materials to the surveyor without approval.

(e) Upon approval of a coastal boundary survey conducted pursuant to Texas Natural Resources Code §33.136, relating to an erosion response activity, the Surveying Division of the General Land Office shall inform the surveyor of the approval in writing. The General Land Office shall also provide notice of approval within 30 days after approval by:

(1) publication in the *Texas Register;* and

(2) publication for two consecutive weeks in a newspaper of general circulation in the county or counties in which the land depicted in the survey is located, provided that publications costs must be paid directly to the newspaper by the littoral property owner or his or her representative or the erosion response project sponsor, as applicable; and

(3) filing a copy of the approval in Archives and Records Division of the General Land Office.

(f) A coastal boundary survey conducted pursuant to this section is required for an erosion response activity that is subject to the goals and policies of the Coastal Management Program under Texas Natural Resources Code §33.2053(a) or (i)(3). For the purposes of this section, it is presumed that a dune restoration activity below the threshold listed in Texas Natural Resources Code §33.2053(i)(3) will not cause or contribute to shoreline alteration and therefore does not require a coastal boundary survey.

§7.3. Deeds of Acquittance.

(a) Field note filing for a deed of acquittance for uplands:

(1) Before corrected field notes of a survey can be approved for the issuance of deed of acquittance under the provisions of Texas Natural Resources Code §51.246, the surveyor must furnish satisfactory evidence to the Surveying Division of the General Land Office that he or she has located the patented boundaries of the survey.

(2) The surveyor must submit a plat, corrected field notes, and a report to the Surveying Division of the General Land Office for filing in the Archives and Records Division of the General Land Office.

(b) Field note filing for a deed of acquittance when the survey is crossed by a navigable stream:

(1) If a resurvey reveals excess acreage, and it is determined that the survey crosses a navigable stream, then, under the provisions of Texas Civil Statutes, Article 5414a, commonly referred to as the "Small Bill", the owner is entitled to the acreage for which the survey is patented, even though a part or all of the stream bed may be included in this acreage. However, if more than the patented acreage lies outside of the stream bed, the state will hold title to all of the stream bed and the land owner may make application to purchase such excess not included in the stream bed.

(2) Under the conditions outlined in paragraph (1) of this subsection, the surveyor must first locate the patented boundaries of the survey, then survey the gradient boundary of both banks of the navigable stream within the survey. The corrected field notes must follow the meanders of the stream excluding the stream bed from the survey.

(3) The surveyor must submit a plat, corrected field notes, and a report to the Surveying Division of the General Land Office for filing in the Archives and Records Division of the General Land Office.

(4) In surveys where the state retains only a part of the stream bed acreage, the state's part of the stream bed will be taken from the entire length of the stream bed, using the thread of the stream bed as the center of the state's acreage.

§7.4. Corrected Patents.

Except for correcting a scrivener's error, corrected patents will not be issued unless the following conditions are satisfied:

(1) Sufficient surveying must be performed on the ground in order to identify the original boundaries of the subject survey and the survey or surveys with which it conflicts.

(2) The survey work must be done by or under the direct control and supervision of a licensed state land surveyor or the county surveyor of the county in which the land is located, and the surveyor shall certify:

(A) that the survey is correct and in accordance with Texas Natural Resources Code §21.042; and

(B) that the survey work was done by or under the surveyor's direct control and supervision.

(3) The corrected field notes shall describe the area actually clear of conflict with any senior surveys.

(4) The surveyor must submit a plat, corrected field notes and the surveyor's report with the Surveying Division of the General Land Office for filing in the Archives and Records Division of the General Land Office.

§7.6. Surveyor's Plats.

(a) A surveyor must submit plats with:

(1) all field notes furnished in connection with vacancy filings or with applications to purchase excess acreage;

(2) with other field notes if the sketch does not appear on the face of the field notes; and

(3) when multiple surveys are involved and it is necessary to file a report to explain the survey.

(b) The plat must:

(1) have a suitable heading and legend;

(2) give the date(s) of the survey; and

(3) show the surveyor's certificate with signature and with seal affixed.

(c) All plats are to be the original and should be made in ink on mylar or the equivalent. A copy of the plat shall be filed in the county surveyor's records of each county affected, with the original being sent to the General Land Office bearing the required recording certificate showing the filing in the county records. In the event an affected county has no county surveyor, a copy of the survey shall be filed in the county clerk's records of that county.

§7.7. Surveyor's Reports, General.

(a) A written surveyor's report is required for all surveys made in connection with vacancy filings and for surveys made in connection with applications to purchase excess acreage.

(b) The commissioner may also require surveyor's reports in connection with any survey to be filed in the General Land Office where it is considered necessary to clarify the surveyor's plat or field notes.

(c) The surveyor's report must be written in such a manner so that the construction of the surveys covered in the report can be fully comprehended by any one familiar with the statutes and/or case law pertaining to the construction of surveys.

(d) In general, the surveyor's report will consist of the following:

(1) History of the surveys involved.

(2) Explanation of the actual survey on the ground with descriptions of corners, marked lines, natural objects, etc., located in the survey. The description of corners should be related to the accompanying plat.

(3) Analysis of the survey. The surveyor should explain his or her construction of the surveys on his or her plat, based upon the history of the area and his or her findings on the ground, applying the statutes and/or case law pertaining to surveying.

(4) A summary.

(5) The report shall be dated and signed, with the appropriate seal affixed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 22, 2010.

TRD-201006686
Trace Finley
Deputy Commissioner, Policy and Governmental Affairs
General Land Office
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For further information, please call: (512) 475-1859

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE PROBATION COMMISSION

CHAPTER 341. TEXAS JUVENILE PROBATION COMMISSION STANDARDS

SUBCHAPTER K. CARRYING OF WEAPONS

37 TAC §§341.80 - 341.91

The Texas Juvenile Probation Commission proposes new Subchapter K, §§341.80 - 341.91, concerning juvenile probation officers carrying weapons. These rules are being proposed in an effort to further the safe and lawful implementation of juvenile probation officers carrying a firearm in the course of their duties pursuant to Senate Bill 1237 (81st Texas Legislature, Regular Session).

Lisa Capers, Deputy Executive Director and General Counsel, has determined that for the first five-year period the new rules are in effect, there will be no fiscal implications for state government. The fiscal impact in local government will be connected directly to the cost of training and the procurement and maintenance of the weapons the juvenile probation officers are authorized and required to carry in the course of their duties. There will be no fiscal implications for small businesses or individuals as a result of enforcement or implementation.

Ms. Capers has also determined that for each year of the first five years the rules are in effect, the public benefit expected as a result of enforcement or implementation will be enhanced public safety. Safety is the paramount concern when weapons are involved. Juvenile probation officers who are authorized to carry a weapon in the course of their duties can only do so safely if they are knowledgeable in the legal use of the weapons and if they engage in continuing education specifically designed to enhance the officer's skills and proficiency. The proposed standards help ensure that the requirements of Senate Bill 1237 (81st Texas Legislature, Regular Session) are implemented safely.

Public comments on the proposed rules may be submitted in writing to Kristy Almager at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547. Comments may also be submitted electronically to *Kristy.Almager@tjpc.state.tx.us* or faxed to (512) 424-6718.

The rules are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affect by these rules.

§341.80. Definitions.

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

(1) Draw--To un-holster a weapon in preparation for use against a perceived threat.

(2) Empty-Hand Defense--Defensive tactics through the use of pressure points, releases from holds, blocking and striking techniques using natural body weapons such as an open hand, fist, forearm, knee, or leg.

(3) Intermediate Weapons--Weapons designed to neutralize or temporarily incapacitate an assailant. This level of self-defense employs the use of tools to neutralize aggressive behavior when deadly force is not justified but when empty-hand defense is not sufficient for escaping from a physical confrontation. For the purposes of this subchapter, intermediate weapons include only electronic restraint devices, irritants and impact weapons.

(4) On-Duty--An officer is engaged in the actual discharge of the officer's duties when the officer is within the course and scope of his/her employment and is actually authorized to engage in the work being performed. Being on-call is not considered as being engaged in the actual discharge of the officer's duties unless or until the officer is actually called into service.

§341.81. Applicability and Authorization.

(a) Applicability. This subchapter applies only to actively certified juvenile probation officers who are authorized to carry a firearm pursuant to this subchapter.

(b) Authorization to Carry a Firearm.

(1) In accordance with §142.006 of the Texas Human Resources Code, a juvenile probation officer is authorized to carry a firearm during the course of the officer's official duties if:

(A) The officer possesses a certificate of firearms proficiency issued by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) under §1701.258 of the Texas Occupations Code verifying successful completion of the TCLEOSE Juvenile Probation Officer Firearms Certification Course;

(B) The chief juvenile probation officer of the juvenile probation department that employs the juvenile probation officer authorizes the juvenile probation officer to carry a firearm in the course of the officer's official duties; and

(C) The juvenile probation officer has been employed for at least one year by the juvenile probation department described in subparagraph (B) of this paragraph.

(2) This subchapter does not authorize a juvenile probation officer to carry a firearm while not on-duty.

(3) A license obtained under Chapter 411, Subchapter H of the Texas Government Code (i.e., Concealed Handgun License), does not enable a certified juvenile probation officer to carry a firearm in the course of the officer's official duties and shall not satisfy, or be accepted in lieu of, the requirements contained in this subchapter.

§341.82. Requirements to Qualify for a Firearms Proficiency Certificate.

Prior to obtaining a firearms proficiency certificate from TCLEOSE, a juvenile probation officer seeking authorization to carry a firearm during the course of his/her official duties shall provide proof to the Texas Juvenile Probation Commission of the following required qualifications:

(1) current employment as a juvenile probation officer for at least one year by the county juvenile probation department;

(2) active certification in good standing as a juvenile probation officer by the Texas Juvenile Probation Commission;

(3) appropriate documentation from each chief juvenile probation officer who has authorized the applicant's participation in the juvenile probation officer firearms proficiency training program and that the applicant has been subjected to a complete search of local, state and national records to disclose any criminal record or criminal history;

(4) written documentation from each chief juvenile probation officer who has authorized the applicant's participation in the juvenile probation officer firearms proficiency training program that the applicant has been examined by a psychologist, selected by the current employing department and licensed by the Texas State Board of Examiners of Psychologists; and

(5) a written declaration from the examining psychologist that the officer possesses the requisite psychological and emotional health to carry a firearm in the course of the officer's official duties.

§341.83. Responsibilities of a Juvenile Probation Officer Authorized to Carry a Weapon.

A juvenile probation officer authorized to carry a firearm in accordance with this subchapter shall:

(1) comply with the requirements of this subchapter, the officer's department policies and procedures and the laws of this State and of the United States;

(2) be knowledgeable of the places where a firearm or other weapons are prohibited;

(3) immediately report to the chief juvenile probation officer and the Commission any criminal arrests, charges or convictions;

(4) satisfy the firearms proficiency requirements in accordance with §221.1(b) of this title at least once every 12 months;

(5) successfully complete all sections of the TCLEOSE training course for juvenile probation officers in accordance with §221.35(b) and (c) of this title, including the classroom training and range qualification;

(6) utilize TCLEOSE approved forms for the documentation of the requirements of paragraphs (4) and (5) of this section and provide copies to the Commission;

(7) maintain the firearm and all other authorized weapons in proper working order at all times;

(8) be responsible for the safe handling of the firearm and all other authorized weapons; and

(9) store the firearm and other weapons in a secure, locked location designed for secure storage of a weapon when the firearm or other weapon is not on the officer's person.

§341.84. Use of Force Continuum.

(a) A juvenile probation officer who satisfies the requirements of this subchapter is justified in using force for the protection of persons pursuant to Chapter 9 of the Texas Penal Code.

(b) Prior to carrying a firearm in the course of the officer's duties, a juvenile probation officer authorized to carry a firearm in accordance with this subchapter shall:

(1) receive a minimum of 20-hours of training in the use of an empty-hand defense tactics; and

(2) receive adequate training in the use of at least one intermediate weapon prior to carrying a firearm in the course of the officer's duty.

(c) Carry at least one intermediate weapon at all times when the officer carries a firearm.

§341.85. Chief Juvenile Probation Officers or Other Supervising Officer.

(a) The chief juvenile probation officer, or the supervising officer of a juvenile probation officer who is authorized to carry a firearm, shall be subject to the same requirements as an officer authorized to carry a firearm in accordance with this subchapter. This requirement does not mandate the chief juvenile probation officer or the other supervising officer carry a firearm or other weapon in the course of their duties.

(b) The chief juvenile probation officer, or designee, shall notify TCLEOSE and the Commission within 24 hours if the department's authorization of a juvenile probation officer to carry a firearm is rescinded.

(c) The chief juvenile probation officer, or designee, shall submit the requisite forms to TCLEOSE and the Commission within 24 hours if an officer who is authorized to carry a firearm separates from the department.

(d) The chief juvenile probation officer, or designee, shall submit to the Commission the department's approved policies and procedures regarding a juvenile probation officer's authorization to carry a firearm in accordance with this subchapter.

(e) The chief juvenile probation officer, or designee, shall submit to the Commission within five working days copies of all requisite training certificates and forms submitted to the TCLEOSE in accordance with this subchapter.

(f) The chief juvenile probation officer, or designee, shall conduct an internal investigation in all incidents in which a juvenile probation officer uses an empty-hand defense tactic, draws or utilizes an intermediate weapon, or draws or discharges a firearm.

(g) The chief juvenile probation officer, or designee, shall immediately place on administrative leave or reassign the person to a position having no contact with juveniles or relatives of the juveniles, a juvenile probation officer, who uses an empty-hand defense tactic, utilizes or draws an intermediate weapon, or draws or discharges a firearm until the conclusion of the internal investigation.

§341.86. Written Policies and Procedures.

Each chief juvenile probation officer who authorizes a juvenile probation officer to carry a firearm in accordance with the requirements contained in this subchapter shall have written policies and procedures that:

(1) define which juvenile probation officers within the department are authorized to carry firearms;

(2) stipulate whether the firearm is to be purchased and maintained by the department or the individual officer;

(3) require that the firearm and all other authorized weapons remain under the control of the officer authorized to carry the firearm and weapon;

(4) require that the firearm be fully loaded when carried or worn on-duty;

(5) require that the officer display credentials identifying the officer as a certified juvenile probation officer while carrying a firearm in accordance with this subchapter;

(6) describe the circumstances and limitations under which the officer is justified to use force (i.e., self-defense and defense of a third party pursuant to Chapter 9 of the Texas Penal Code);

(7) specify the firearms to be carried, including the type of firearm, manufacturer, model and caliber;

(8) specify the type of ammunition authorized for use in the firearm;

(9) prescribe whether the firearm will be carried in plain view or concealed;

(10) require that the firearm be encased in an appropriate holster and be worn or carried in such a manner that is appropriate to the situation;

(11) define the process for reporting and investigating use of force incidents;

(12) define the process for rescinding or suspending the authorization to carry a firearm;

(13) prohibit the consumption of alcohol while carrying a firearm or intermediate weapon;

(14) define the process for conducting an internal investigation of each incident involving a juvenile, in which a juvenile probation officer uses an empty-hand defense tactic, draws or utilizes an intermediate weapon or draws or discharges a firearm; and

(15) require that a juvenile probation officer be placed on administrative leave or be reassigned to a position having no contact with juveniles or relatives of the juveniles until the conclusion of an internal investigation of a use of force as defined in this subchapter.

§341.87. Reporting and Investigating Use of Force Incidents.

(a) The chief juvenile probation officer, or designee, shall report to the Commission, each incident involving a juvenile, in which a juvenile probation officer uses an empty-hand defense tactic, draws or utilizes an intermediate weapon or draws or discharges a firearm.

(1) The initial report shall be made to the Commission immediately, but no later than four (4) hours from the time of the use of force incident;

(2) The initial report shall be made using the toll-free number as designated by the Commission; and

(3) Within 24 hours of the report by phone, the completed Use of Force form shall be submitted to the Commission via fax or e-mail.

(b) The chief juvenile probation officer, or designee, shall report to local law enforcement any discharge of a firearm by a juvenile probation officer immediately, but no later than one (1) hour from the time of discharge.

§341.88. Records.

(a) The personnel file of each juvenile probation officer authorized to carry a firearm in accordance with this subchapter shall contain a copy of the:

(1) Firearms Proficiency for Juvenile Probation Officers Application;

(2) PID Assignment (TCLEOSE C-1);

(3) Criminal history checks conducted pursuant to the requirements of this subchapter;

(4) Licensee Psychological and Emotional Health Declaration (TCLEOSE L-3); and

(5) Proof of annual firearms proficiency.

(b) Juvenile probation departments shall allow TCLEOSE, other law enforcement agencies and the Commission access to records pertaining to firearms and use of force incidents for auditing and investigation purposes.

§341.89. Training and Qualification Requirements.

(a) No juvenile probation officer shall be authorized to carry a firearm in the course of their duties unless the officer has:

(1) Completed the TCLEOSE approved firearms training program;

(2) Received a certificate of firearms proficiency from TCLEOSE as provided in §221.1 of this title; and

(3) Completed the training requirements in accordance with §341.84 of this subchapter.

(b) All training received pursuant to the requirements of this subchapter shall be received from a TCLEOSE approved instructor.

(c) All training received pursuant to the requirements of this subchapter shall be designed with the intent to prepare juvenile probation officers to carry and utilize firearms, intermediate weapons and empty-hand defense tactics in the context of self-defense and in defense of a third party.

(d) In addition to the training requirements contained in Chapter 344 of this title relating to maintaining an active certification as a JPO, a juvenile probation officer authorized to carry a firearm in accordance with this subchapter, shall successfully complete 20 hours of continuing education every two years. The continuing education shall be specially designed to enhance the officer's skills and knowledge relating to the proficient and legal use of a firearm, empty-hand defense and intermediate weapon as authorized by this subchapter. The training shall include, but not be limited to:

(1) Use of Force;

(2) Weapons Retention; and

(3) Crisis Intervention.

(e) Upon completion of each training requirement, the chief juvenile probation officer or designee, shall submit proof of the successful completion of the training to the Commission within five working days of completion of the training.

§341.90. Disqualifying Conduct.

Pursuant to §142.006(b) of the Texas Human Resources Code, a juvenile probation officer is disqualified from seeking authorization to carry a firearm if the officer has been assigned the role of designated or sustained perpetrator in a TJPC abuse, neglect or exploitation investigation.

§341.91. Prohibited Conduct.

A certified juvenile probation officer authorized to carry a firearm during the course of the officer's official duties is strictly prohibited from engaging in the following conduct:

(1) firing warning shots;

(2) shooting at fleeing vehicles; and

(3) using a striking weapon as an intermediate weapon.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 22, 2010.

TRD-201006670
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Earliest possible date of adoption: January 9, 2011
For further information, please call: (512) 424-6710

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CHAPTER 348. JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAMS

The Texas Juvenile Probation Commission (TJPC) proposes the repeal of Chapter 348, §§348.1 - 348.15, 348.18, 348.19, and 348.30 - 348.33, relating to standards for juvenile justice alternative education programs. The repeal is in an effort not to overlap with proposed new Chapter 348 rules, which provide structural and substantive changes from the current standards.

Lisa Capers, Deputy Executive Director and General Counsel, has determined that for the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government. There will be no fiscal implications for small businesses or individuals as a result of enforcement or implementation.

Ms. Capers has also determined that for each year of the first five years the repeal is in effect, the public benefit expected as a result of the repeal will provide TJPC with a more accurate account in evaluating the effectiveness and services provided within juvenile justice alternative education programs.

Public comments on the repeal may be submitted in writing to Kristy Almager at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547. Comments may also be submitted electronically to *Kristy.Almager@tjpc.state.tx.us* or faxed to (512) 424-6718.

SUBCHAPTER A. PROGRAM OPERATIONS

37 TAC §§348.1 - 348.15, 348.18, 348.19

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

This repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by this repeal.

§348.1. Purpose.
§348.2. Definitions.
§348.3. Program Administration and Organization.
§348.4. Personnel Administration.
§348.5. Management Information System.
§348.6. Curriculum.
§348.7. Program Requirements.
§348.8. Inter-Local Cooperation.
§348.9. Physical Plant.
§348.10. Security and Control.
§348.11. Physical Restraint Definitions.
§348.12. Requirements.

§348.13. Prohibitions.

§348.14. Documentation.

§348.15. Mechanical Restraint.

§348.18. Student Code of Conduct.

§348.19. Waiver or Variance to Standards.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 22, 2010.

TRD-201006672
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Earliest possible date of adoption: January 9, 2011
For further information, please call: (512) 424-6710

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SUBCHAPTER B. ACCOUNTABILITY

37 TAC §§348.30 - 348.33

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

This repeal is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by this repeal.

§348.30. Mission of Program.

§348.31. Annual Performance Evaluation.

§348.32. Assessment Reliability and Safeguards.

§348.33. Performance Reports.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 22, 2010.

TRD-201006673
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Earliest possible date of adoption: January 9, 2011
For further information, please call: (512) 424-6710

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CHAPTER 348. JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAMS

The Texas Juvenile Probation Commission proposes new Chapter 348, §§348.100 - 348.102, 348.104, 348.106, 348.108, 348.110, 348.112, 348.114, 348.116, 348.118, 348.120, 348.122, 348.124, 348.126, 348.128, 348.130, 348.132, 348.134, 348.136, 348.138, 348.200, 348.202, 348.204, and 348.206, concerning juvenile justice alternative education programs. These rules are being proposed in an effort to enhance the existing rules currently in place for juvenile justice alternative education programs.

Lisa Capers, Deputy Executive Director and General Counsel, has determined that for the first five-year period the new rules are in effect, there will be no fiscal implications for state or local government. There will be no fiscal implications for small businesses or individuals as a result of enforcement or implementation.

Ms. Capers has also determined that for each year of the first five years the rules are in effect, the public benefit expected as a result of enforcement or implementation will be to ensure the safety of the community and provide an education to those students expelled from public school or placed in a juvenile justice alternative education program.

Public comments on the proposed rules may be submitted in writing to Kristy Almager at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547. Comments may also be submitted electronically to *Kristy.Almager@tjpc.state.tx.us* or faxed to (512) 424-6718.

SUBCHAPTER A. PROGRAM OPERATIONS

37 TAC §§348.100 - 348.102, 348.104, 348.106, 348.108, 348.110, 348.112, 348.114, 348.116, 348.118, 348.120, 348.122, 348.124, 348.126, 348.128, 348.130, 348.132, 348.134, 348.136, 348.138

The rules are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affect by these rules.

§348.100. Purpose.

The purpose of this chapter is to establish minimum operational, programmatic, and educational standards for juvenile justice alternative education programs (JJAEP) in Texas.

§348.101. Interpretation and Applicability.

(a) Headings. The headings in this chapter are for convenience only and are not intended as a guide to the interpretation of the standards herein.

(b) Including. The word "including", when following a general statement or term, is not to be construed as limiting the general statement or term to any specific item or manner set forth or to similar items or matters, but, rather, as permitting the general statement or term to refer also to all other items or matters that could reasonably fall within its broadest possible scope.

(c) Applicability. This chapter applies to JJAEPs operated under §37.011 of the Texas Education Code and who receive funds from the Texas Juvenile Probation Commission for the operation of a JJAEP. Furthermore, all standards requiring written policies and procedures are expected to be implemented and practiced.

(d) Compliance Resource Manual and Implementation of Agency Policy. The Commission may establish by administrative rule or other reasonable agency policy, the required guidelines, procedures, and documentation necessary to ensure compliance and verification of the standards set forth in this chapter.

§348.102. Definitions.

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

(1) Attendance Days--The actual number of instructional days a student is enrolled and in attendance at the JJAEP for a minimum of four (4) hours per day.

(2) Absent Days--The actual number of instructional days a student is enrolled and not in attendance at the JJAEP for a minimum of four (4) hours per day.

(3) Commission--The Texas Juvenile Probation Commission.

(4) Exit Reason--The reason a student exits the JJAEP program. A student shall be accounted for in only one of the following categories:

(A) Completed program/returned to home school--Student's term of expulsion has expired or has been terminated early by the home school district.

(B) Completed program/term of probation expired--Student has returned to home school district due to expiration of probation order or term of probation placement in JJAEP ended.

(C) Completed program/term of placement ended--Student returned to home school district due to termination of expulsion status and probation status.

(D) GED Completion--Student has successfully tested and passed the high school equivalency examination.

(E) Graduated--Student has completed all necessary requirements to receive a high school diploma.

(F) Left Program Incomplete--Student has been terminated from the program due to:

(i) a probation modification or revocation;

(ii) an out-of-home placement;

(iii) being held in juvenile detention;

(iv) being held in jail;

(v) absconding (violation of conditions of release from detention or court order);

(vi) being committed to the Texas Youth Commission;

(vii) being committed to the Texas Department of Criminal Justice; or

(viii) being truant or a runaway.

(G) Other--A student who left program due to out of county move, death, medical reason, other non-delinquency reason or withdrew to enroll in another educational program that is not provided by the student's home district (i.e., expelling school).

(5) Inactive Status--Attendance status assigned to a student where the student is maintained as enrolled and not counted as absent or present from the JJAEP.

(6) Intensive Physical Activity--Rigorous physical activity that involves rhythmic, repetitive physical activities that use large muscle groups with an increase in heart rate and respiration.

(7) JJAEP Staff--All full-time, part-time, temporary, seasonal employees and volunteers performing JJAEP related duties.

(8) Juvenile Justice Alternative Education Program (JJAEP)--An educational program operated by the juvenile board of a county to serve students pursuant to Chapter 37 of the Texas Education Code or student's under the jurisdiction of the juvenile court.

§348.104. Program Administration and Organization.

(a) Policy.

(1) The JJAEP shall have written policies and procedures that govern all facets of the operation of the program.

(2) The JJAEP shall be operated according to current written policies and procedures which address personnel, administration, programming, training, and standards under this chapter.

(b) Truancy and Failure to Attend. The JJAEP shall have a written policies concerning truancy as defined under the §51.03(b)(2) of the Texas Family Code and failure to attend under §25.094 of the Texas Education Code. The policies shall, at a minimum, contain the following:

(1) who is responsible for reporting truancy and failure to attend;

(2) to what enforcement agency truancy and failure to attend are to be reported; and

(3) the requirement to report truancy and failure to attend to the identified enforcement agency within two (2) school days.

(c) Performance Review. The juvenile board and the JJAEP administrator shall participate in an annual performance review of the JJAEP between the conclusion of the school year and prior to the beginning of the next school year to determine the effectiveness of the program.

(1) The review shall, at a minimum, include statistical information on the number of student program entries and exits, the reason for student entries and exits, student academic performance, attendance rates, assessment scores for math and reading, recidivism rates among students who exit the JJAEP, restraints, and the number of students with disabilities.

(2) Documentation of the review shall be maintained.

(d) Management Review. The JJAEP Administrator that oversees the daily functions of the JJAEP shall conduct an annual review of the overall operations of the JJAEP prior to the beginning of each school year.

(1) The review shall include, but is not limited to:

(A) safety and security;

(B) inter-local cooperation; and

(C) the student code of conduct.

(2) Existing policies and procedures shall be reviewed to determine their continued relevance to the mission of the JJAEP.

(3) Documentation of the review shall be maintained.

(e) Required Staff. The JJAEP shall maintain the required administration, programmatic and supervision staffing as required by this section.

(1) Administration. The juvenile board or chief juvenile probation officer shall designate a JJAEP administrator.

(A) Qualifications. The JJAEP administrator shall, at a minimum, hold a four-year degree from an accredited university and shall possess juvenile justice and/or education experience.

(B) Duties.

(i) The JJAEP administrator shall be responsible for the management of the JJAEP and shall ensure compliance with all applicable laws and rules related to JJAEPs.

(ii) The JJAEP administrator shall ensure compliance with contractual provisions of all contracts with the Commission related to JJAEPs.

(2) Instructional Staff. The JJAEP shall ensure adequate instructional staff are maintained to provide appropriate educational services to students while attending the JJAEP.

(A) The instructional staff for the JJAEP shall include, at a minimum, one Texas certified teacher.

(B) The JJAEP shall ensure the adequate number of special education teachers are maintained as required by federal law. A special education teacher shall meet the requirements of certification as required by the State Board for Educator Certification.

(C) Instructional staff shall, at a minimum, hold a four-year degree from an accredited university.

(D) Instructional staff to student Ratio. 1 to 16 preferred; 1 to 24 maximum.

(3) Caseworkers. The JJAEP shall ensure adequate caseworker staff are maintained.

(A) Caseworkers shall be either social workers, juvenile probation officers assigned to the JJAEP, counselors or other mental health professionals.

(B) Qualifications. All caseworkers shall meet the minimum professional requirements and shall be licensed or certified by the appropriate authority in their field.

(C) Caseworker Staff to Student Ratio. 1 to 25 preferred; 1 to 50 maximum.

(i) A minimum of one (1) caseworker shall be present during the operational hours of the JJAEP.

(ii) Any caseworker above the required one (1) shall be present at least four (4) hours of the JJAEP operational hours.

(iii) A substitute caseworker is not required when the caseworker is absent for three (3) school days or less from a JJAEP. Alternative arrangements for a substitute caseworker are required if absence is more than three (3) days.

(iv) A caseworker who must leave the JJAEP site in order to complete a JJAEP related duty shall be considered present for ratio purposes.

(4) Supervision Staff.

(A) The JJAEP shall ensure adequate supervision staff are maintained. Supervision staff includes drill instructors, teacher aides, security personnel, caseworker aides, county employed juvenile supervision officers, and behavior management staff.

(B) Supervision staff shall, at a minimum, possess a high school diploma or Certificate of General Educational Development (GED).

(C) Any staff, excluding certified physical education teachers, who participates in the administration of intensive physical activity, shall be certified as a juvenile supervision officer under Chapter 344 of this title.

(D) County employed staff whose primary job function is supervision of JJAEP students may obtain certification as juvenile supervision officers.

(5) Operational Staff.

(A) Operational staff includes instructional staff, supervision staff, caseworkers, and JJAEP administrators.

(B) Operational Staff to Student Ratio. 1 to 8 preferred; 1 to 12 maximum.

(f) Verification Documentation.

(1) The JJAEP shall maintain a daily staff roster, staff sign-in sheet or other verification document that indicates all of the operational staff present in the program each day.

(2) The staff roster or sign-in sheet shall include, at a minimum, the date, the time of entry and exit, the staff member's full name and the staff member's position or title.

§348.106. Personnel Administration.

(a) Personnel Policies.

(1) Written policies and procedures shall be readily accessible to all JJAEP staff.

(2) Documentation of acknowledgement of receipt of the policies and procedures by all staff shall be maintained in the staff personnel or training file.

(b) Personnel Records. The JJAEP Administrator shall ensure that a personnel file is maintained for each employee or person working at the JJAEP who is included in any program ratio. The file shall, at a minimum, include:

(1) criminal history searches;

(2) training records;

(3) applicable personnel actions;

(4) documentation of the employee's education transcripts; and

(5) applicable certification verification.

(c) New Employee Orientation. All staff, including temporary, seasonal or substitute employees shall have orientation training prior to having sole contact with students.

(1) Orientation training shall occur within the first two weeks of employment.

(2) Documentation of new employee orientation training and agendas shall be maintained in the employee's personnel file or training file.

(3) Orientation training, at a minimum, shall include:

(A) safety and security procedures including, but not limited to, emergency exit drills and the JJAEP's safety disaster plan;

(B) child abuse, neglect and exploitation identification and reporting as required by Chapter 358 of this title;

(C) incident reports;

(D) student code of conduct;

(E) behavior management program;

(F) transporting students;

(G) crisis intervention;

(H) distribution of medication;

(I) sexual harassment;

(J) Personal Restraint policy;

(K) student grievance procedures; and

(L) job descriptions including duties and responsibilities of the assigned position.

(d) Criminal History Searches. The criminal history searches described in this subsection shall apply to individuals who begin employment or service provision on or after August 19, 2011. Current JJAEP employees shall complete the criminal history searches as described in this subsection by January 5, 2012.

(1) Fingerprint Search.

(A) Fingerprints shall be submitted through the Texas Department of Public Safety (DPS) Fingerprint Application Services of Texas (FAST) system.

(B) The juvenile board, chief administrative officer, JJAEP administrator or designee shall initiate a criminal history search prior to the first day of employment on all JJAEP staff.

(C) Continued employment shall be contingent upon the completion and review of the criminal history report as well as confirmation that the applicant has no disqualifying criminal history.

(2) Criminal History Clearinghouse. The Commission and the juvenile board or designee shall participate in the electronic clearinghouse and subscription service operated by the DPS. This service is known as the Fingerprint-Based Applicant Clearinghouse of Texas (FACT).

(3) Military History.

(A) When an applicant has prior military experience, the program or facility shall request from the applicant the long copy DD-214 to determine if the applicant has a disqualifying criminal history that martial law is not required to report to any state or federal criminal database.

(B) If the applicant does not have a long copy DD-214, the program or facility shall request the authorization of the applicant to obtain the document by completing the for SF-180 and submit said form to the corresponding address for the military branch found on the form.

(C) A copy of the long copy DD-214 shall be maintained in the applicant's confidential personnel file.

(4) Disqualifying Criminal History.

(A) An individual with the following criminal history shall not be eligible for continued employment or certification:

(i) a felony conviction against the laws of this state, another state, or the United States within the past ten (10) years;

(ii) a deferred adjudication for a felony against the laws of this state, another state, or the United States within the past ten (10) years;

(iii) a current felony deferred adjudication, probation or parole;

(iv) a jailable misdemeanor conviction against the laws of this state, another state or the United States within the past five (5) years;

(v) a deferred adjudication for a jailable misdemeanor against the laws of this state, another state, or the United states within the past five (5) years;

(vi) a current jailable misdemeanor deferred adjudication, probation or parole; or

(vii) the requirement to register as a sex offender under Chapter 62 of the Texas Code of Criminal Procedure.

(B) The offense disposition date shall be used to determine applicable time frames.

(C) Variance of Disqualifying Criminal History. A variance under §349.200 of this title may not be requested for any class A misdemeanor or felony unless the person received a pardon based upon proof of innocence or the reversal of a finding of guilt by a trial or appellate court.

(5) Non-Certified Employees and Service Providers.

(A) Non-Licensed Service Providers. Departments who contract with a service provider that provides a significant portion of the JJAEP operations shall complete criminal history searches as defined above for a service provider and adhere to §411.083(b)(5)(A) - (D) of the Texas Government Code.

(B) State-Licensed Service Providers. The chief administrative officer or designee shall obtain documentation confirming that the provider's license is in good standing with the licensing entity. The JJAEP shall not contract for services with a provider whose license is not in good standing.

(C) Independent School District Employees. The chief administrative officer or designee shall obtain documentation from the school district confirming that fingerprint-based criminal history searches of criminal information databases maintained by the Federal Bureau of Investigation and by the State of Texas have been completed prior to the date of hire.

(D) Employees of Contracted JJAEP Providers. The chief administrative officer or designee shall conduct the required criminal history searches and confirm that the applicant has no disqualifying criminal history prior to the date of hire.

(6) Criminal History Records Retention. A copy of the initial criminal history report or documentation confirming it was completed is required in this section and any reports reflecting subsequent criminal activity shall be maintained for monitoring purposes for the duration of an individual's employment. These records shall be maintained in accordance with the county's established records retention schedule after the monitoring purpose has been fulfilled.

(e) Research Programs.

(1) The juvenile board shall review proposals for research to ensure conformity with departmental policy.

(2) Departmental policy shall forbid student participation in medical, pharmacological, and cosmetic research programs.

(3) Students may voluntarily participate in approved research programs with the written consent of the student's parent, guardian or custodian. A student's non-participation shall not have adverse consequences on the student.

§348.108. Management Information System.

(a) Data Collection. The JJAEP administrator shall ensure that statistical and programmatic data pertaining to each student admitted to a JJAEP are gathered, documented, maintained, and accurately reported to the Commission. The following is a list of data elements that are required:

(1) headquarter county;

(2) student's first name, middle name, last name;

(3) student's social security number;

(4) date of birth;

(5) race;

(6) gender;

(7) PIEMS student ID;

(8) student's personal identification number (PID), if applicable;

(9) referral number;

(10) sequence number, if applicable;

(11) expulsion date;

(12) campus ID;

(13) expulsion offense;

(14) entrance date;

(15) grade level;

(16) math tested grade level;

(17) math standard score;

(18) reading tested grade level;

(19) reading standard score;

(20) special education, if applicable;

(21) special education type, if applicable;

(22) exit date;

(23) juvenile court disposition, if applicable;

(24) math tested grade level-exit;

(25) math standard score-exit;

(26) reading tested grade level-exit;

(27) reading standard score-exit;

(28) expulsion ended, if applicable;

(29) probation ended, if applicable;

(30) total days attended;

(31) total days absent; and

(32) exit reason.

(b) Student Educational Data and Records. At a minimum, the following information shall be accurately documented and maintained in the case file for each student in the program:

(1) current grade level;

(2) notice of expulsion;

(3) applicable court orders placing student into JJAEP;

(4) police offense report, if applicable;

(5) entry and exit transition plans;

(6) education records to include special education determination, appropriate special educational records, statewide assessment scores, and home language survey;

(7) admission and exit testing data, if applicable;

(8) physical exam, as required under §348.112(f) of this chapter;

(9) documentation of regular education program review of student as required by §37.011(d) of the Texas Education Code;

(10) date of admission;

(11) number of attendance days;

(12) number of absence days;

(13) date of release;

(14) emergency notification contacts for the student;

(15) special medical needs, if any, of the student;

(16) student immunization records; and

(17) medical release form.

§348.110. Curriculum.

(a) Required Courses. At a minimum, the JJAEP shall provide the following required courses at the JJAEP:

(1) English language arts;

(2) mathematics;

(3) social studies;

(4) science;

(5) high school equivalency program (GED); and

(6) self-discipline which may be integrated into the program and may include formal instruction in drug awareness, anger management, impulse control and cognitive skills.

(b) Recommended Courses. The following courses are recommended to be provided to all students in attendance at the JJAEP:

(1) life skills;

(2) physical fitness;

(3) vocational training; and

(4) other electives.

(c) Curriculum Development. Programs shall have a strong accelerated component to their instruction for all required areas of instruction.

(1) At least one certified teacher shall oversee the development and implementation of the curriculum in the JJAEP academic program.

(2) The JJAEP Administrator shall assure that course instruction is consistent with the essential knowledge and skills of each subject of the foundation curriculum as defined under the rules of the State Board of Education under §28.002(c) of the Texas Education Code.

(3) The high school equivalency program (GED) curriculum must address the elements required to pass the GED test.

(4) Program components may be integrated into the regular program curriculum.

§348.112. Program Requirements.

(a) Special Education. Students with disabilities who are placed in the JJAEP shall be afforded education services determined by a duly constituted admissions, review and dismissal committee to be appropriate for the student to receive a free and appropriate public education as defined by federal and state laws.

(b) English as a Second Language (ESL). English as a second language services and instruction shall be provided in the JJAEP and shall be appropriate to address the needs of those students who speak English as a second language or who are non-English speaking.

(c) General Educational Development Test (GED). Scores on each GED test administered shall be certified by a GED examiner.

(d) Counseling. Counseling services shall be available to all students enrolled and in attendance at the JJAEP.

(e) Meals.

(1) Policies and procedures shall ensure the provision of a lunch meal for each student in attendance at the JJAEP on each school day.

(2) A student shall not be denied a lunch meal as a sanction or disciplinary measure.

(f) Medical.

(1) The JJAEP shall have a medical release on file for each student in accordance with §32.001 of the Texas Family Code signed by the student's parent, guardian or custodian.

(2) Screening.

(A) A JJAEP that has an intensive physical fitness component shall require a medical screening for each student performed by a licensed physician, licensed physician assistant a registered nurse or doctor of chiropractic. Medical screenings completed within one (1) calendar year prior to the student's participation in intense physical activity shall be accepted.

(B) No student shall be permitted to participate in an intensive physical activity unless a licensed physician, licensed physician assistant, a registered nurse or doctor of chiropractic certifies in writing that the student has no physical limitations or conditions that would prohibit participation.

(3) In accordance with §142.005(a) of the Texas Human Resources Code, the JJAEP shall have written policies and procedures governing the storage, use and distribution of all medication to students. The policy shall specify which personnel are authorized to dispense medication to students.

(A) The student's parent, legal guardian or custodian shall provide a written request for the administration of the medication and the medication shall be in the original, properly labeled container.

(B) The JJAEP policies shall require that distribution of all medication be chronologically documented including the time administered, name of administrator, student's name, type of medication, and dosage.

(g) Physical Activity. A JJAEP that has an intensive physical activity component shall develop policies regarding extreme weather conditions. These policies shall address the following:

(1) gradual acclimatization to hot weather;

(2) student clothing for the various weather conditions;

(3) temperatures and weather conditions in which activity outside is unallowable; and

(4) the provision of a water break to students every 30 minutes during the intensive physical activity period.

§348.114. Student Attendance Accounting.

(a) The JJAEP administrator shall ensure that current attendance records for all students enrolled in the JJAEP are documented, maintained and accurately reported to the Commission.

(b) Aggregate attendance accounting.

(1) The program shall identify the expulsion category of each student enrolled on the student attendance records.

(2) A specific character on the student attendance record shall be used to identify a students' attendance, absence or inactive status.

(c) Student entry and exit accounting.

(1) The student's entry date is the first day the student is physically present at the JJAEP.

(2) A student's recorded withdrawal date shall represent the date in which the student is no longer enrolled in the program.

(3) The JJAEP shall maintain daily student sign-in sheets. The sign-in sheets shall be recorded daily and contain a student's printed name and signature.

(4) The time of entry or exit shall be noted on the student sign-in/sign-out sheet for a student who arrives late or leaves early on any school day.

(5) A student shall be considered present if in attendance for at least four hours of the school day.

(d) Inactive Status.

(1) A student shall be placed on Inactive Status as defined in §348.102 of this chapter. Inactive Status shall begin on the date noted on the verification documentation. The documentation shall be maintained in the student's file.

(2) A student shall be placed on Inactive Status if any of the following occur:

(A) is in juvenile detention or jail;

(B) is absent for a minimum of ten (10) consecutive school days;

(C) is a documented runaway; or

(D) has an extended illness or medical reason documented by a licensed physician or physician assistant.

(3) A student that is maintained on Inactive Status for 30 consecutive school days shall be withdrawn on the 31st day. A student shall not be maintained on Inactive Status for more than 30 consecutive school days.

§348.116. Inter-Local Cooperation.

(a) Parent, Guardian or Custodian.

(1) The JJAEP shall maintain written documentation of notification to a student's parent, guardian or custodian of the student's enrollment in and withdrawal from the JJAEP.

(2) Periodic progress reports shall be given to the student and the student's parent, guardian or custodian at a minimum of every 120 school days.

(b) School District.

(1) Student Entry and Exit Transition Plans.

(A) The JJAEP shall coordinate with the school district a written transition plan for entrance into the JJAEP.

(B) The JJAEP shall develop, provide and communicate to the school district a written exit transition plan. The exit transition plan shall inform the receiving school of the student's academic and behavioral improvements and provide the receiver information necessary for the student's continued success.

(C) The JJAEP shall provide the student's parent, guardian or custodian with a copy of the exit transition plan.

(D) Documentation of the entry and exit transition plans shall be maintained in each student's file.

(2) The JJAEP shall provide to each enrolled student's home school district the student's attendance records, grades, and transition plans as well as any other records upon the student's transition back to the home school. The JJAEP shall maintain documentation that the required information was provided to the home school upon the student's exit from the JJAEP.

(3) All students enrolled in the JJAEP shall take the statewide assessment as required under §39.023 of the Texas Education Code. The JJAEP shall have policies addressing the delivery of testing materials to and from the JJAEP and the provision of the statewide assessment to the students.

(c) Juvenile Probation Departments.

(1) The JJAEP and the local juvenile probation department shall cooperate in the coordination of providing needed social services for the students enrolled in the JJAEP.

(2) Local probation departments shall, at a minimum, provide information to the JJAEP regarding the probation status of the student, as well as the name of the student's probation officer.

(3) The JJAEP shall provide the local probation department with monthly attendance records of juvenile probationers enrolled in the JJAEP.

§348.118. Physical Plant.

(a) The JJAEP shall conform to all applicable federal, state, and/or local ordinances and codes. Each JJAEP shall have on file the most recent inspections (i.e., health and fire) conducted by the local governmental authority having jurisdiction.

(b) The population of the JJAEP shall not exceed the rated capacity as determined by the local fire marshal. Each JJAEP shall maintain the documentation of the rated capacity of each classroom from the appropriate fire authority.

(c) The classroom space, fixtures and common areas shall be adequate to meet the programmatic requirements for each student enrolled and in attendance in the JJAEP.

§348.120. Security and Control.

(a) Security Plan. The JJAEP shall have a written plan that addresses security:

(1) within the JJAEP;

(2) on the JJAEP campus;

(3) at JJAEP sponsored events off campus property; and

(4) during transportation of JJAEP students; if applicable.

(b) Transportation. Policies shall govern the use of motor vehicles to transport students enrolled in the JJAEP and address the following:

(1) methods of transportation authorized;

(2) security and supervision;

(3) authorized transport personnel;

(4) emergency procedures;

(5) the requirement of auto liability insurance when transporting in personal vehicles; and

(6) circumstances under which students will be allowed to drive a personal vehicle to the JJAEP campus.

(c) Emergency Situations.

(1) The JJAEP shall have written policies and procedures regarding emergency situations. Policies, at a minimum, shall address the following:

(A) emergency evacuation plans;

(B) assignment of staff responsibilities; and

(C) notification of emergency services.

(2) Emergency situations include, but are not limited to:

(A) fires;

(B) bomb threats;

(C) hazardous weather conditions; and

(D) riots.

(d) Medical Emergencies. The JJAEP shall have written policies and procedures addressing medical emergencies. At a minimum, the policies shall include provisions regarding the following:

(1) when emergency medical assistance shall be called;

(2) securing medical assistance and notification to appropriate staff and the parent, guardian, or custodian of the student involved; and

(3) documentation of the incident.

(e) Cardio-Pulmonary Resuscitation (CPR) and First Aid. Each JJAEP shall have a minimum of two staff members on duty at all times certified in CPR and first aid. Proof of current certification shall be maintained in staff personnel or training files. Documentation shall reflect the day certification expires or the length of certification.

(f) Emergency Exit Drills. Unless otherwise required more frequently by local fire codes or ordinances, the JJAEP shall conduct two emergency exit drills during the school year. A minimum of one (1) of the emergency exit drills shall be conducted during the first half of the school year (August-December) and one (1) shall be conducted during the second half of the school year (January-June).

(1) Written documentation (i.e., fire drill log, etc.) of the emergency exit drills shall be maintained. Documentation shall include the date, time and staff involved in the emergency drill.

(2) JJAEPs shall post emergency exit routes in all classrooms and common areas.

(g) JJAEP Closure. The JJAEP shall have written policies and procedures addressing the cancellation of classes due to an emergency situation. The policy shall at a minimum address:

(1) the cancellation of school due to inclement weather and/or emergency situations;

(2) who is the responsible party in making that decision; and

(3) the methods in which the closure is to be communicated to the students and parents.

(h) Supervision.

(1) The JJAEP shall have a written policies and procedures that ensure students removed from the classroom for disciplinary purposes and placed in an unlocked isolation, administrative segregation, time-out, in-school suspension or other disciplinary removals from the regular classroom, are under continuous visual supervision by a JJAEP staff member.

(2) Policies and procedures shall prohibit the use of electronic monitoring equipment as a substitute for staff's continuous visual supervision.

(i) Searches.

(1) All students entering the JJAEP shall be subjected to a pat-down search or a metal detector screening on a daily basis.

(2) Searches shall be conducted in accordance with written policies limited to certain conditions. The policies shall address:

(A) when a search is appropriate and/or required;

(B) who is authorized to conduct the search;

(C) what types of searches are permissible;

(D) how the pat-down searches will be conducted; and

(E) what to do when contraband is found.

(3) Policies shall limit pat-down searches to be conducted only by staff of the same sex.

(4) Program written policies shall prohibit strip searches by JJAEP staff.

(j) Disciplinary Reports.

(1) Written policies and procedures shall require JJAEP staff to prepare a written disciplinary report for each incident occurring in the JJAEP that constitutes a major violation of the student code of conduct or JJAEP rules. The policies shall require that the written disciplinary report include the details of the incident, the violation that occurred, action taken by the staff member(s), the date and time of the incident and the outcome.

(2) The disciplinary report shall be forwarded to the JJAEP administrator within 24 hours or on the next working day. Documentation of a disciplinary report being forwarded to the JJAEP administrator shall be maintained. The documentation shall include the date and time the report was forwarded to the JJAEP administrator.

(k) Weapons. Only certified peace officers and certified juvenile probation officers acting in the scope of their authority may possess and carry weapons or chemical agents within the premises of the JJAEP.

(1) The JJAEP shall have a written policies that prohibit staff, other than a law enforcement officer acting in the scope of his or her official duty, from the possession of a weapon or a chemical agent as defined by the §46.01 of the Texas Penal Code on the JJAEP premises or at a JJAEP sponsored event.

(2) Under §142.006 of the Texas Human Resources Code, certified juvenile probation officers are authorized to carry a firearm. A program's firearm prohibition policies, procedures, and practices shall address situations involving armed certified juvenile probation officers who either work at the JJAEP or who may be visiting, delivering or retrieving students.

§348.122. Personal Restraint Definitions.

The following words and terms when used in this chapter shall have the following meanings unless otherwise expressly defined:

(1) Approved Personal Restraint Technique--A professionally trained curriculum-based and competency-based restraint technique that uses a person's physical exertion to completely or partially constrain another person's body movement without the use of mechanical restraints. The approved personal restraint technique shall be approved for use by the Commission.

(2) Approved Mechanical Restraint Devices--A professionally manufactured and commercially available mechanical device designed to aid in the restriction of a person's bodily movement. The approved mechanical restraint devices shall be approved by the Commission. The following are Commission approved mechanical restraint devices:

(A) Ankle Cuffs--Metal, cloth or leather band designed to be fastened around the ankle to restrain free movement of the legs;

(B) Anklets--Cloth or leather band designed to be fastened around the ankle or leg;

(C) Handcuffs--Metal devices designed to be fastened around the wrist to restrain free movement of the hands and arms;

(D) Plastic Cuffs--Plastic devices designed to be fastened around the wrist or legs to restrain free movement of hands, arms or legs;

(E) Waist Belt--A cloth, leather, or metal band designed to be fastened around the waist used to secure the arms to the sides or front of the body; and

(F) Wristlets--A cloth or leather band designed to be fastened around the wrist or arm which may be secured to a waist belt.

(3) Mechanical Restraint--The application of an approved mechanical restraint device which restricts or aids in the restriction of the movement of the whole or a portion of an individual's body to control physical activity.

(4) Personal Restraint--The application of physical force alone, restricting the free movement of the whole or a portion of an individual's body to control physical activity.

(5) Physical Escort--Touching or holding a student with a minimum use of force for the purpose of directing the student's movement from one place to another. A physical escort is not considered a personal restraint.

(6) Protective Devices--Professionally manufactured devices used for the protection of students or staff that do not restrict the movement of a student. Protective devices are not considered mechanical restraint devices.

(7) Restraint--Application of an approved personal restraint technique, an approved mechanical restraint device, or chemical restraint to an individual to restrict the individual's freedom of movement or to modify the individual's behavior.

§348.124. Mechanical Restraint.

Mechanical restraints shall only be used by certified juvenile probation or certified juvenile supervision officers in the manner defined under Chapters 341 and 343 of this title.

§348.126. Requirements.

The use of Restraints shall be governed by the following criteria:

(1) Restraints shall only be used by JJAEP staff certified in the use of the approved personal restraint technique;

(2) Prior to participating in any restraint, JJAEP staff shall be trained in the use of the JJAEPs specific verbal de-escalation policies, procedures and practices;

(3) Prior to participating in a personal restraint JJAEP staff shall have received training in the restraint used and have demonstrated competency in the use of that restraint used by the JJAEP;

(4) Restraints shall only be used in instances of threat of imminent self-injury, injury to others, or serious property damage;

(5) Restraints shall only be used as a last resort;

(6) Only the amount of force and type of restraint necessary to control the situation shall be used;

(7) Restraints shall be implemented in such a way as to protect the health and safety of the student and others;

(8) Restraints shall be terminated as soon as the student's behavior indicates that the threat of imminent self-injury, injury to others, or serious property damage has subsided;

(9) Restraints shall be administered in a manner specific or consistent to the approved personal restraint technique adopted by the JJAEP; and

(10) JJAEP staff shall be re-trained in the approved personal restraint technique at least every 365 calendar days.

§348.128. Prohibitions.

Restraints that employ a technique listed in paragraphs (1) - (10) of this section are prohibited:

(1) Restraints used for punishment, discipline, retaliation, harassment, compliance, or intimidation;

(2) Restraints that deprive the student of basic human necessities including restroom privileges, water, food and clothing;

(3) Restraints that are intended to inflict pain;

(4) Restraints that place a student in a prone or supine position with sustained or excessive pressure on the back, chest or torso;

(5) Restraints that place a student in a prone or supine position with pressure on the neck or head;

(6) Restraints that obstruct the airway or impair the breathing of the student including a procedure that places anything in, on, or over the student's mouth or nose;

(7) Restraints that interfere(s) with the student's ability to communicate;

(8) Restraints that obstruct the view of the student's face;

(9) Any technique that does not require the monitoring of the student's respiration and other signs of physical distress during the restraint; and

(10) percussive or electrical shocking devices.

§348.130. Documentation.

All restraints shall be fully documented and the documentation maintained. Written documentation regarding the use of restraints shall require, at a minimum:

(1) name of student;

(2) staff member(s) name and title(s) who administered the restraint;

(3) date of the restraint;

(4) duration of the restraint including notation of the time the restraint began and ended;

(5) location of the restraint;

(6) description of preceding activities;

(7) behavior which prompted the initial and the continued restraint of the student;

(8) type of restraint applied:

(A) specific type of personal restraint hold applied; and

(B) any type of mechanical restraint device(s) applied;

(9) efforts made to de-escalate the situation and alternatives to restraint that were attempted; and

(10) whether or not any injury occurred during the restraint and the description of the injury.

§348.132. Serious Incidents.

All JJAEP programs shall adhere to the serious incident requirements set forth in Chapters 350 and 358 of this title.

§348.134. Abuse, Exploitation and Neglect.

(a) All JJAEP programs shall adhere to the abuse, exploitation and neglect requirements set forth in Chapters 350 and 358 of this title.

(b) All JJAEPs shall have a zero tolerance policies and practices regarding sexual abuse in accordance with the Prison Rape Elimination Act of 2003 that provides for administrative and/or criminal disciplinary sanctions.

§348.136. Student Code of Conduct.

(a) Adoption.

(1) The JJAEP student code of conduct shall be adopted by the juvenile board and shall describe and define in writing the JJAEP's behavior management system.

(2) The JJAEP administrator shall conduct an annual review of the student code of conduct between the conclusion of each school year and prior to the beginning of the next school year.

(b) Notice. The JJAEP student code of conduct shall be provided to each student and the student's parent, guardian or custodian upon admittance into the JJAEP.

(1) The student code of conduct shall be reviewed with each student and the student's parent, guardian or custodian and shall be translated if necessary to ensure understanding of the content by all parties.

(2) A signed acknowledgment of receipt of the student code of conduct by the student and their parent, guardian or custodian, shall be maintained in each student's file.

(3) JJAEP staff shall be provided a copy of the student code of conduct.

(4) Annually, JJAEP staff shall sign an acknowledgement of receipt of the student code of conduct. This acknowledgement shall be maintained in the staff's personnel file.

(c) Discipline and Sanctions. The JJAEP student code of conduct shall detail the sanctions and disciplinary procedures that may be applied to students for particular behaviors. Disciplinary procedures shall be carried out promptly and all students shall be afforded due process protections. The student code of conduct shall include, but not be limited to, the following:

(1) prohibited behaviors and conduct;

(2) disciplinary consequences for prohibited behaviors and conduct;

(3) description of circumstances that will allow removal from the classroom; and

(4) circumstances under which a JJAEP student may be placed into another educational setting.

(d) Prohibited Sanctions. The following sanctions shall be prohibited in the JJAEP and their prohibition shall be clearly noted in the student code of conduct:

(1) corporal punishment, physical abuse, humiliating punishment or hazing;

(2) deprivation of food and water;

(3) one student sanctioning another; or

(4) expulsion from a JJAEP.

(e) Dress Code. The JJAEP student code of conduct may require a reasonable dress code or uniforms for students in attendance.

(f) Grievance Procedures. Student grievance procedures shall be explained fully in the student code of conduct. The student code of conduct shall clearly state the process by which a student may file a grievance and how a grievance will be handled.

(1) Procedures and practices shall facilitate student complaints of mistreatment or complaints of programmatic issues and shall ensure students are protected against retaliation in any form.

(2) Grievance procedures shall ensure that each student is afforded at least one level of appeal on all grievance complaints.

(3) A copy of each grievance submitted by a student shall be provided to the student's parent, guardian or custodian within two (2) school days of submission.

(g) Sexual Abuse. The JJAEP shall have written policies and procedures regarding the Prison Rape Elimination Act of 2003. Policies, at a minimum, shall address the following information:

(1) prevention and intervention;

(2) methods of minimizing risk of sexual abuse;

(3) reporting sexual abuse and assault; and

(4) treatment and counseling.

§348.138. Waiver or Variance to Standards.

Unless expressly prohibited by another standard, the juvenile board or chief administrative officer may make an application for waiver and the juvenile board may make an application for variance of any standard or standards adopted by the Commission in accordance with §349.200 of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 22, 2010.

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Lisa A. Capers
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Texas Juvenile Probation Commission
Earliest possible date of adoption: January 9, 2011
For further information, please call: (512) 424-6710

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SUBCHAPTER B. ACCOUNTABILITY

37 TAC §§348.200, 348.202, 348.204, 348.206

The rules are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affect by these rules.

§348.200. Mission of Program.

Academically, the mission of the JJAEP shall be to allow students to perform at grade level. The JJAEP shall provide an instructional program that result in a level of student academic progress in the areas of reading and math. The mission statement shall be located in the program's policies and procedures manual and/or student code of conduct.

§348.202. Annual Performance Evaluation.

A JJAEP's performance indicators shall be based primarily on non-academic and academic performance indicators. In evaluating a JJAEP, the Commission may consider other factors, including but not limited to, the recidivism rate of its students, classroom behaviors measured through a standardized methodology, total number of course credits earned and total number of courses passed.

(1) Non-Academic Indicator. Average rate of attendance for all JJAEP students shall not be less than seventy-five percent of the total number of student attendance days for the school year.

(2) Academic Indicator. The JJAEP shall use the assessment instrument as selected by the Commission in assessing student performance in the areas of reading and mathematics. The pre- and post-testing instruments shall be valid for measuring performance improvement for an individual student for a period of 90 school days or longer.

(A) Pre-Tests. Every student that will be enrolled in a JJAEP for 90 or more school days shall be assessed during the admission period. The pre-test shall be administered to appropriate JJAEP students no more than 15 school days after the student is enrolled in the JJAEP.

(B) Post-Tests. Post-tests shall evaluate the change in academic performance of the student while in attendance at the JJAEP in the areas of reading and mathematics. A JJAEP is not required to administer a post-test to:

(i) Those students whose exit reasons are "incomplete" or "other" as defined by §348.102 of this chapter.

(ii) Students who are not enrolled in a JJAEP for at least 90 instructional days.

(C) Passage rates in the statewide assessment as required under Chapter 39 of the Texas Education Code shall be used to demonstrate performance in the areas of reading and math. Performance of students who were enrolled for a period of 90 days or longer at the time the instrument was administered shall be compared to the students' previous performance on the same instrument.

(3) Re-Contact Rate. The rate of subsequent contact with the juvenile probation department.

(4) Establishment of Benchmarks. A benchmark analysis shall be conducted on each indicator over a three-year period. Thereafter, JJAEP benchmark computation and methodology shall be re-assessed every five years.

§348.204. Assessment Reliability and Safeguards.

(a) Written policy of the JJAEP shall describe the safeguards it will use to maintain the integrity of the assessment process so that all student scores reflect actual student progress.

(b) The JJAEP shall ensure that the on-site assessment process provides valid assessment test scores that have not been tainted.

(c) JJAEP policies and procedures, at a minimum, shall include the following:

(1) Maintaining the tests in a secure setting (e.g., a locked file cabinet) so that staff and students do not have access to the instrument except while the test is being administered during the actual testing time;

(2) Staff are prohibited from releasing copies of the test; and

(3) Staff are prohibited from teaching the specific questions on the test.

§348.206. Performance Reports.

(a) Each biennium the Commission shall provide statistical and performance data for each mandatory JJAEP. Performance data will indicate if the JJAEPs are impacting the measures being utilized in the evaluation.

(b) The JJAEP administrator shall provide the juvenile board, chairman of the board of trustees or superintendent of each school district that participates in a mandatory JJAEP and the regional education service center representing the area served by the mandatory JJAEP with a copy of the report.

(c) The report will examine changes in the following factors:

(1) Academic achievement in reading and mathematics as assessed by the statewide assessment for students enrolled at least 90 days;

(2) Academic achievement as assessed by the pre- and post-assessment instrument in the areas of reading and mathematics for students enrolled at least 90 school days;

(3) The average rate of attendance for all JJAEP students;

(4) Percent of students who complete the program and return to their home school, graduate or complete their GED while in the program;

(5) Percent of students who have a subsequent referral to the juvenile probation department one (1) year after leaving the JJAEP; and

(6) Pre and Post JJAEP attendance rates and disciplinary referrals.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Texas Juvenile Probation Commission
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For further information, please call: (512) 424-6710

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CHAPTER 355. NON-SECURE JUVENILE CORRECTIONAL FACILITIES

The Texas Juvenile Probation Commission proposes new Chapter 355, §§355.100, 355.102, 355.104, 355.106, 355.108, 355.110, 355.200, 355.202, 355.204, 355.206, 355.208, 355.210, 355.212, 355.214, 355.216, 355.218, 355.220, 355.222, 355.224, 355.226, 355.228, 355.300, 355.302, 355.304, 355.306, 355.308, 355.310, 355.312, 355.314, 355.316, 355.318, 355.320, 355.322, 355.324, 355.326, 355.328, 355.330, 355.332, 355.334, 355.336, 355.338, 355.340, 355.342, 355.344, 355.346, 355.348, 355.350, 355.352, 355.354, 355.356, 355.400, 355.402, 355.404, 355.406, 355.408, 355.410, 355.412, 355.414, 355.416, 355.418, 355.500, 355.502, 355.504, 355.506, 355.508, 355.510, 355.512, 355.514, 355.516, 355.518, 355.520, 355.522, 355.524, 355.526, 355.528, 355.530, 355.532, 355.534, 355.536, 355.538, 355.540, 355.542, 355.544, 355.546, 355.548, 355.550, 355.552, 355.554, 355.556, 355.558, 355.560, 355.562, 355.564, 355.566, 355.568, 355.570, 355.572, 355.574, 355.576, 355.578, and 355.580, concerning non-secure juvenile correctional facilities. These rules are being proposed in an effort to comply with the §51.126 of the Texas Family Code and House Bill 3689, adopted by the 81st Texas Legislature, authorizing the Commission to develop non-secure correctional facility standards.

Lisa Capers, Deputy Executive Director and General Counsel, has determined that for the first five-year period the new rules are in effect, there will be a wide range of fiscal implications for state or local government as a result of enforcement and implementation depending on the existence of physical plant and staffing requirements. For the first five-year period that the new rules are in effect, there could also be significant fiscal implications as a result of enforcement or implementation for small businesses or individuals who choose to operate a non-secure correctional facility in order to comply with these new rules. Factors involve the number of staff and the certification requirements as well as various physical plant issues that may affect the fiscal implications.

Ms. Capers has also determined that for each year of the first five years the rules are in effect, the public benefit expected as a result of enforcement or implementation will be having a standardized accountability system in place for non-secure correctional facilities in order to rehabilitate a juvenile offender while maintaining safety in the community as well as within the facilities.

Public comments on the proposed rules may be submitted in writing to Kristy Almager at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547. Comments may also be submitted electronically to *Kristy.Almager@tjpc.state.tx.us* or faxed to (512) 424-6718.

SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §§355.100, 355.102, 355.104, 355.106, 355.108, 355.110

The rules are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affect by these rules.

§355.100. Purpose.

The purpose of this chapter is to establish minimum operational and programmatic standards for non-secure correctional facilities in Texas.

§355.102. Certification and Registration of Facility.

Before admitting residents, the governing board in the county where the facility is located, shall:

(1) certify the non-secure correctional facility in compliance with §51.126 of the Texas Family Code;

(2) indicate the number of beds in the facility certification;

(3) register the facility with the Commission in compliance with §51.126 of the Texas Family Code; and

(4) post within a public area of the facility the current facility certification and the Commission's facility registration.

§355.104. Interpretation and Applicability.

(a) Headings. The headings in this chapter are for convenience only and are not intended as a guide to the interpretation of the standards in this chapter.

(b) Including. The word "including", when following a general statement or term, is not to be construed as limiting the general statement or term to any specific item or manner set forth or to similar items or matters, but, rather, as permitting the general statement or term to refer also to all other items or matters that could reasonably fall within its broadest possible scope.

(c) Applicability. This chapter applies to all non-secure correctional facilities in this State, except for a facility operated or certified by the Texas Youth Commission. This chapter does not apply to a facility that is licensed by a state governmental entity or that is exempt from licensure by state or federal law. Furthermore, all standards requiring written policies and procedures are expected to be implemented and practiced.

(d) Compliance Resource Manual and Implementation of Agency Policy. The Commission may establish by administrative rule or other reasonable agency policy, the required guidelines, procedures, and documentation necessary to ensure compliance and verification of the standards set forth in this chapter.

§355.106. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless otherwise expressly defined within the chapter.

(1) Chief Administrative Officer--Regardless of title, the person hired by a governing board who is responsible for oversight of the day-to-day operations of a juvenile probation department for a single county or a multi-county judicial district.

(2) Commission--The Texas Juvenile Probation Commission (TJPC).

(3) Contraband--Any item not issued to employees for the performance of their duties and which employees have not obtained supervisory approval to possess. Contraband also includes any item given to a resident by an employee or other individual, which a resident is not authorized to possess or use. Specific items of contraband include, but are not limited to:

(A) firearms;

(B) knives;

(C) ammunition;

(D) drugs;

(E) intoxicants;

(F) pornography; and

(G) any unauthorized written or verbal communication brought into or taken from an institution for a resident, former resident, associate of or family members of a resident.

(4) Date and Time of Admission--The date and time that a juvenile has been admitted into a non-secure correctional facility.

(5) Designee--The person authorized to perform a specific duty as assigned by the facility administrator.

(6) Discipline--Guidance that is constructive or educational in nature and is appropriate to the resident's age, development, situation and severity of behavior.

(7) Facility Administrator--The individual designated by the chief administrative officer or governing board of the facility who has the ultimate responsibility for managing and operating the facility. This definition includes the certified juvenile supervision officer or non-secure residential worker who is designated in writing as the acting facility administrator during the absence of the facility administrator.

(8) Governing Board--Any governmental unit as defined in §101.001 of the Texas Civil Practice and Remedies Code that operates a non-secure correctional facility, including but not limited to a juvenile board.

(9) Hazardous Material--Any substance that is explosive, flammable, combustible, poisonous, corrosive, irritating or otherwise harmful and is likely to cause injury or death.

(10) Health Care Professional--A term that includes physicians, physician assistants, nurses, nurse practitioners, dentists, medical assistants, emergency medical technicians (EMT), and others who, by virtue of their education, credentials and experience, are permitted by law to evaluate and care for patients.

(11) Health Service Authority--The agency, organization or entity primarily composed of health care professionals or an individual health care professional that consults and collaborates with the facility administrator and/or the health services coordinator to ensure a coordinated and adequate health care system is available to residents of the facility.

(12) Housing Area--An area within the non-secure correctional facility that contains resident housing units.

(13) Housing Unit--A unit within the housing area that may be designed and constructed as either a single occupancy housing unit (SOHU) or a multiple occupancy housing unit (MOHU).

(14) Intensive Physical Activity Component--Any program or component that requires participants to engage in and perform strenuous physical training and activity. This does not include recreational team activities or activities related to the educational curriculum (i.e., physical education).

(15) Intra-Jurisdictional Custodial Transfer--The transfer of a resident from a pre-adjudication or post-adjudication secure facility into a non-secure correctional facility under the same administrative authority.

(16) Isolation--The segregation of a resident from other residents and the placement of the resident alone in an area for medical or protective purposes.

(17) Juvenile--A person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility, or participating in a juvenile justice program administered or operated under the authority of the juvenile board.

(18) Juvenile Supervision Officer--A person whose primary responsibility and essential function is the supervision of juveniles in a juvenile justice facility, or a juvenile justice program operated by or under contract with the governing board.

(19) Material Safety Data Sheet (MSDS)--A document prepared by the supplier or manufacturer of a product clearly stating its hazardous nature, ingredients, precautions to follow, health effects and safe handling/storage information.

(20) Medical Treatment--Medical care, other than routine examinations, including diagnostic testing (e.g., x-rays, laboratory testing, etc.), performed or ordered by a physician, physician assistant or performed by a licensed nurse practitioner, emergency medical technician (EMT), paramedic or licensed vocational nurse (LVN) according to their respective licensure.

(21) Mental Health Professional--An individual who has met the educational requirements and is licensed or certified by one or more of the following governmental entities:

(A) Texas State Board of Examiners of Psychologists;

(B) Texas State Board of Examiners of Professional Counselors;

(C) Texas State Board of Examiners of Marriage and Family Therapists;

(D) Texas Department of State Health Services;

(E) Texas Medical Board;

(F) Texas State Board of Social Worker Examiners provided that the licensure is Licensed Clinical Social Work; or

(G) Texas State Board of Social Worker Examiners provided that the licensure is Licensed Master Social Work accompanied with written recognition by the board for independent practice.

(22) Mental Health Screening--A process that includes using a screening instrument approved by the Commission designed to identify a resident who is at an increased risk of having mental health issues that warrant further review.

(23) Multiple Occupancy Housing Unit (MOHU)--A housing unit designed and constructed for multiple occupancy sleeping.

(24) Non-Program Hours--Time period when scheduled resident activity on the facility's premises has ceased for the day.

(25) Non-Secure Juvenile Correctional Facility--A facility, other than a secure correctional facility, that accepts juveniles who are on probation and that is operated by or under contract with a governmental unit, as defined by §101.001 of the Texas Civil Practice and Remedies Code.

(26) Non-Secure Residential Worker--A person who is responsible for the supervision, guidance, and protection of a juvenile in a non-secure correctional setting and is certified as a youth activities supervisor by the Commission when meeting the requirements under Chapter 344 of this title. This includes persons employed on a part-time, temporary or seasonal basis.

(27) Positive Screening--A scored result of a completed mental health screening instrument (i.e., MAYSI-2) recommending services requiring a primary service by a mental health professional as described on the MAYSI-2 reference card.

(28) Probation--For the purposes of this chapter, the period of time that a juvenile is placed under the jurisdiction of the juvenile court.

(29) Program Staff--All full-time, part-time, temporary and seasonal staff, other than certified juvenile probation officers, certified juvenile supervision officers and certified youth activities supervisors, who are employed or contracted to perform program-related duties.

(30) Professionals--The following persons are considered to be professionals for the limited purposes of this chapter:

(A) teachers certified as educators by the State Board for Educator Certification, including teachers certified by the State Board for Educator Certification with provisional or emergency certifications;

(B) educational aides or paraprofessionals certified by the State Board for Educator Certification;

(C) health care professionals licensed or certified by:

(i) the Texas Board of Nursing;

(ii) the Texas Medical Board;

(iii) the Texas Physician Assistant Board;

(iv) the Texas Department of State Health Services; or

(v) the Texas State Board of Dental Examiners.

(D) mental health professionals as defined in this section;

(E) qualified mental health professional as defined in this section;

(F) mental health paraprofessional as defined in this section;

(G) social workers licensed by the Texas Board of Social Worker Examiners;

(H) juvenile personnel certified by the Texas Juvenile Probation Commission; and

(I) commissioned law enforcement personnel.

(31) Protective Isolation--The exclusion of a threatened resident from the group by placing the resident in an individual room that minimizes contact with the residents from a specific group.

(32) Program Hours--The time period when the resident population has scheduled facility activities.

(33) Qualified Mental Health Professional--An individual employed by the local mental health authority or an entity who contracts as a service provider with the local mental health authority who meets the guidelines of the Texas Department of State Health Services.

(34) Rated Capacity--The maximum number of beds available in a facility that were architecturally designed or redesigned as a housing unit.

(35) Resident--A juvenile who is placed in the non-secure correctional facility under the jurisdiction of the juvenile court.

(36) Restriction--The segregation of a resident from program activities or other residents for behavior modification or minor disciplinary reasons for 60 minutes or less.

(37) Secondary Screening--A triage process that is brief and designed to clarify if a resident is in need of intervention or a more comprehensive assessment of the MAYSI-2 screening.

(38) Separation--The segregation of a resident from program activities or other residents because of major rule violations for 24 hours or less.

(39) Single Occupancy Housing Unit (SOHU)--A housing unit designed and constructed with separate and individual resident sleeping quarters.

(40) Volunteer--An individual who agrees to perform services without compensation and may have regular or periodic supervised contact with juveniles under the direction of the non-secure correctional facility.

(41) Youth-on-Youth Sexual Conduct--Two or more juveniles, regardless of age, who engage in deviate sexual intercourse, sexual contact, sexual intercourse, or sexual performance as those terms are defined in this paragraph:

(A) "Deviate sexual intercourse" means:

(i) any contact between any part of the genitals of one person and the mouth or anus of another person; or

(ii) the penetration of the genitals or the anus of another person with an object.

(B) "Sexual contact" means the following acts, if committed with the intent to arouse or gratify the sexual desire of any person:

(i) any touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a person; or

(ii) any touching of any part of the body of a person, including touching through clothing, with the anus, breast, or any part of the genitals of a person.

(C) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.

(D) "Sexual performance" means acts of a sexual or suggestive nature performed in front of one or more persons, including simulated or actual sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.

(E) A juvenile may not consent to the acts as defined in this paragraph under any circumstances. Consent may not be implied regardless of the age of the juvenile.

(42) Youth Activities Supervisor--Regardless of title, an individual whose primary responsibility and essential job function is the supervision of youth who are participating in the activities of a juvenile justice program or non-secure facility.

§355.108. Waiver or Variance to Standards.

Unless expressly prohibited by another standard, the governing board or chief administrative officer may make an application for waiver and the governing board may make an application for variance of any standard or standards adopted by the Commission in accordance with §349.200 of this title.

§355.110. Acceptance of Residents.

A non-secure correctional facility may only accept and admit a child, as that term is defined in §51.02(2) of the Texas Family Code, who is under the jurisdiction of the juvenile court and whose placement is authorized by law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 22, 2010.

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Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
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SUBCHAPTER B. PHYSICAL PLANT

37 TAC §§355.200, 355.202, 355.204, 355.206, 355.208, 355.210, 355.212, 355.214, 355.216, 355.218, 355.220, 355.222, 355.224, 355.226, 355.228

The rules are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affect by these rules.

§355.200. Building and Operational Codes.

(a) The facility shall conform to all applicable federal, state and/or local ordinances and codes. Each facility shall have on file the most recent inspections conducted by the local governmental authority having jurisdiction.

(b) A formalized Life Safety Code/fire safety inspection shall be completed prior to the facility becoming operational.

(c) All subsequent Life Safety Code/fire safety inspections shall be conducted no later than 365 calendar days from the date of previous inspection.

(d) Each Life Safety Code/fire safety inspection shall result in a written report that minimally contains the following information:

(1) the name of the governmental entity that conducted the inspection;

(2) the identification of any applicable code violations or infractions and the corresponding corrective action requirements;

(3) the name and title of the person conducting the inspection; and

(4) the date(s) of the inspection.

(e) Any deficiencies noted in the annual inspection report shall be immediately addressed with the corrective action documented by the facility administrator or designee. If corrective action cannot be made within three working days, the facility administrator shall develop and document a corrective action plan to rectify deficiencies.

§355.202. Alternative Power Source.

(a) The facility shall have an alternate source(s) of electrical power that provides for the simultaneous operations of life safety systems including:

(1) emergency lighting;

(2) illuminated emergency exit lights and signs;

(3) emergency audible communication systems and equipment; and

(4) fire detection and alarm system.

(b) The alternate power source system shall be tested at least every 15 calendar days to ensure the system is in working condition.

(c) The alternate power source shall be inspected at least every 365 calendar days. This inspection must be completed by a person with qualifications established one of the following:

(1) work experience;

(2) relevant training;

(3) specialized licensure; or

(4) certification.

(d) All of the aforementioned tests shall be documented to minimally include test date and test results.

(e) A written corrective action plan shall be developed within 15 calendar days of any system malfunctions or maintenance needs that are identified. Any immediate corrective actions taken shall be documented.

§355.204. Heating and Ventilation.

(a) The facility shall provide fully functioning heating, cooling and ventilation systems adequate for the square footage of the facility.

(b) Alternate means of ventilation in the facility shall be maintained in case regular power is interrupted.

§355.206. Rated Capacity.

The population of the facility shall not exceed the rated capacity of the facility.

§355.208. Secure Storage of Restraint Devices.

There shall be a location for secure storage of restraint devices and related security equipment. This equipment shall be readily accessible to authorized persons.

§355.210. Single Occupancy Housing Units--SOHU.

(a) SOHUs shall be constructed to contain no more than 24 beds in each housing unit.

(b) Individual resident sleeping quarters shall be utilized as single occupancy only, and, at no time, may more than one resident be placed in an individual resident sleeping quarter.

(c) Individual resident sleeping quarters shall contain a bed above floor level.

§355.212. Spatial Requirements--SOHU.

(a) Individual resident sleeping quarters shall have a minimum ceiling height of 7.5 feet.

(b) Individual resident sleeping quarters shall have a minimum of 60 square feet of floor space.

§355.214. Multiple Occupancy Housing Units--MOHU.

(a) MOHUs shall be designed to contain no more than 24 beds in each housing unit.

(b) MOHUs shall have one bed above floor level for every resident assigned to the unit.

(c) MOHUs shall contain residents of the same sex.

§355.216. Spatial Requirements--MOHU.

(a) MOHUs shall have a minimum ceiling height of 7.5 feet.

(b) MOHUs shall have a minimum of 35 square feet of unencumbered floor space per bed in the housing unit.

§355.218. Shower Facilities.

Residents shall have uninhibited access to shower facilities. Non-secure correctional facilities shall contain one operable shower with hot and cold running water for every six beds in the facility.

§355.220. Toilet Facilities.

All housing areas shall contain at least one operable toilet above floor level for every six beds.

(1) Residents shall have uninhibited access to the toilet facilities.

(2) Urinals may be substituted for up to one-half of the toilets in housing areas permanently designed as all-male units.

§355.222. Washbasins.

Residents shall have uninhibited access to washbasins. Facilities shall contain one washbasin with hot and cold running water for every 12 residents.

§355.224. Drinking Water.

Residents shall have uninhibited access to clean and fresh drinking water.

§355.226. Lighting.

(a) The facility shall have adequate artificial lighting in all areas of the facility.

(b) All housing units shall provide natural light from a source directly within the housing area.

§355.228. Exercise and Common Activity Areas.

(a) Exercise Area. The facility shall provide space for an exercise area.

(b) Activity Space. The facility shall provide ample and appropriate space for residents to participate safely in program activities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 22, 2010.

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Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
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SUBCHAPTER C. POLICIES AND PROCEDURES

37 TAC §§355.300, 355.302, 355.304, 355.306, 355.308, 355.310, 355.312, 355.314, 355.316, 355.318, 355.320, 355.322, 355.324, 355.326, 355.328, 355.330, 355.332, 355.334, 355.336, 355.338, 355.340, 355.342, 355.344, 355.346, 355.348, 355.350, 355.352, 355.354, 355.356

The rules are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affect by these rules.

§355.300. Policy, Procedure, and Practice.

The facility shall have written policies and procedures governing the operation of all non-secure correctional facilities in the county. The policies, procedures, and practices of the facility shall include:

(1) a policy in the following areas strictly prohibiting:

(A) physical, sexual or emotional abuse, neglect or exploitation of a resident by any individual having contact with a resident of the facility;

(B) youth-on-youth sexual conduct between residents;

(C) violations of the juvenile supervision officer code of ethics and code of conduct as outlined in Chapter 345 of this title;

(D) violations of any professional code of ethics or conduct by any individual providing services to or having contact with residents of the facility; and

(2) a zero tolerance policy and practice regarding sexual abuse in accordance with the Prison Rape Elimination Act of 2003 that provides for administrative and/or criminal disciplinary sanctions.

§355.302. Designation and Qualifications of Facility Administrator.

(a) The chief administrative officer, the governing board of the facility or a designee shall appoint a single facility administrator for each non-secure correctional facility. The chief administrative officer may be the facility administrator.

(b) The facility administrator shall:

(1) have acquired a bachelor's degree conferred by a college or university accredited by an accrediting organization recognized by the Texas Higher Education Coordinating Board;

(2) have either:

(A) one year of graduate study in criminology, corrections, counseling, law, social work, psychology, sociology, or other field of instruction approved by the Commission; or

(B) one year of experience in full-time case work, counseling, or community or group work:

(i) in a social service, community corrections, or juvenile agency that deals with offenders or disadvantaged persons;

(ii) the Commission determines the kind of experience necessary to meet this requirement; and

(3) maintain an active Commission certification as a juvenile supervision officer.

§355.304. Duties of Facility Administrator.

(a) The facility administrator shall be responsible for the daily operations of the facility and shall maintain an office at the facility.

(b) The facility administrator shall designate an individual who is at least a certified youth activities supervisor to be in charge during his or her absence from the facility.

(c) The facility administrator shall develop, implement and maintain a policy and procedure manual for the facility and shall ensure the daily facility practice conforms to the policies and procedures detailed in the manual.

(d) The facility administrator shall review the facility's policy and procedure manual at least every 365 calendar days and maintain documentation of this review.

(e) The facility administrator shall make readily accessible the written policies and procedures manual to all staff.

(1) Documentation of acknowledgement of receipt of the policies and procedures by all staff shall be maintained in the staff personnel or training file.

(2) All changes or modifications to the policies and procedures manual shall be made available to all staff in a timely manner.

(f) The facility administrator shall ensure that all staff, including contract, temporary, seasonal or substitute employees, shall receive orientation training prior to performing the duties assigned to them.

(1) Documentation of staff orientation training and agendas shall be maintained in the personnel file or training file.

(2) Orientation training, at a minimum, shall be documented as required by the Commission and include the following topics:

(A) safety and security procedures, including but not limited to, fire drills and non-fire emergency preparedness plan;

(B) child abuse, neglect and exploitation identification and reporting as required by Chapter 358 of this title;

(C) incident reports;

(D) resident orientation handbook;

(E) behavior management system;

(F) transporting residents outside the facility;

(G) crisis intervention;

(H) distribution of medication;

(I) sexual harassment;

(J) restraint policy;

(K) resident grievance procedures; and

(L) job descriptions including duties and responsibilities of the assigned position.

(g) The facility administrator or designee shall ensure that current personnel records are maintained for each employee, which shall include:

(1) proof of age;

(2) criminal history searches conducted as required by Chapter 344 of this title;

(3) the completed application for employment;

(4) training records;

(5) applicable personnel actions;

(6) documentation of the employee's education transcripts; and

(7) applicable documentation verifying Commission certification.

(h) The facility administrator or designee shall ensure that current records are maintained for each contract service provider, which includes:

(1) a copy of the contract between the service provider and the facility;

(2) criminal history searches required by Chapter 344 of this title; and

(3) documentation verifying the service provider's licensure.

(i) The facility administrator or chief administrative officer shall provide the presiding officer of the juvenile board or governing board of the facility with periodic updates on the operation of the facility, including the following information to be provided at least every quarter:

(1) facility population/capacity reports;

(2) number of serious incidents by category that occurred in the facility;

(3) number of resident restraints by type (i.e., personal, mechanical and chemical);

(4) number of injuries to residents requiring medical treatment; and

(5) number of injuries to staff requiring medical treatment.

(j) The facility administrator or chief administrative officer shall ensure the accurate and timely submission of statistical data to the Commission in an electronic format or other format as requested by the Commission.

(k) The facility administrator or chief administrative officer shall ensure that all individuals employed by the facility or who provide contracted services who have contact with residents are subjected to all required criminal history background checks as required by Chapter 344 of this title.

§355.306. Criminal History Searches.

All staff, including contract staff, shall have criminal history searches in accordance with Chapter 344 of this title.

§355.308. Volunteers and Interns.

Facilities utilizing a volunteer or internship program shall have written policies and procedures that contain the following components:

(1) a description of the authority, responsibility, and accountability of volunteers and interns who work with the department;

(2) the selection and termination criteria, including disqualification based on specified criminal history;

(3) the orientation and training requirements, including training on recognizing and reporting abuse, neglect, and exploitation;

(4) a requirement that volunteers and interns meet minimum professional requirements, when applicable; and

(5) a written volunteer and intern registry, log or other documentation that details all dates and times a volunteer or intern is present on the premises of the facility as well as the purpose of their visit.

§355.310. Restraint Definitions.

The following words and terms when used in this chapter shall have the following meanings unless otherwise expressly defined:

(1) Approved Personal Restraint Technique--A professionally trained, curriculum-based and competency-based restraint technique that uses a person's physical exertion to completely or partially constrain another person's body movement without the use of mechanical restraints. The approved personal restraint technique shall be approved for use by the Commission.

(2) Approved Mechanical Restraint Devices--A professionally manufactured and commercially available mechanical device designed to aid in the restriction of a person's bodily movement. The approved mechanical restraint devices shall be approved by the Commission. The following are Commission-approved mechanical restraint devices:

(A) Ankle Cuffs--Metal, cloth or leather band designed to be fastened around the ankle to restrain free movement of the legs;

(B) Anklets--Cloth or leather band designed to be fastened around the ankle or leg;

(C) Handcuffs--Metal devices designed to be fastened around the wrist to restrain free movement of the hands and arms;

(D) Plastic Cuffs--Plastic devices designed to be fastened around the wrist or legs to restrain free movement of hands, arms or legs;

(E) Waist Band--A cloth, leather, or metal band designed to be fastened around the waist used to secure the arms to the sides or front of the body; and

(F) Wristlets--A cloth or leather band designed to be fastened around the wrist or arm which may be secured to a waist belt.

(3) Physical Escort--Touching or holding a resident with a minimum use of force for the purpose of directing the resident's movement from one place to another. A physical escort is not considered a personal restraint.

(4) Protective Devices--Professionally manufactured devices used for the protection of residents or staff that do not restrict the movement of a resident. Protective devices are not considered approved mechanical restraint devices.

(5) Mechanical Restraint--The application of an approved mechanical restraint device which restricts or aids in the restriction of the movement of the whole or a portion of an individual's body to control physical activity.

(6) Personal Restraint--The application of physical force alone, restricting the free movement of the whole or a portion of an individual's body to control physical activity.

(7) Restraint--Application of an approved personal restraint technique, an approved mechanical restraint device, or a chemical restraint to an individual to restrict the individual's freedom of movement or to modify the individual's behavior.

§355.312. Requirements.

The use of restraints shall be governed by the following criteria:

(1) Restraints shall only be used by juvenile supervision officers and non-secure residential workers certified in the use of the approved personal restraint technique and trained in the use of applicable mechanical restraint devices;

(2) Prior to participating in any restraint, juvenile supervision officers, non-secure residential workers and program staff shall be trained in the use of the non-secure correctional facility's specific verbal de-escalation policies, procedures and practices;

(3) Restraints shall only be used in instances of threat of imminent self-injury, injury to others, or serious property damage;

(4) Restraints shall only be used as a last resort;

(5) Only the amount of force and type of restraint necessary to control the situation shall be used;

(6) Restraints shall be implemented in such a way as to protect the health and safety of the resident and others;

(7) Restraints shall be terminated as soon as the resident's behavior indicates that the threat of imminent self-injury, injury to others, or serious property damage has subsided;

(8) Restraints shall be administered in a manner specific or consistent to the approved personal restraint technique adopted by the facility; and

(9) Juvenile supervision officers and non-secure residential workers shall be re-trained in the approved personal restraint technique at least every 365 calendar days.

§355.314. Prohibitions.

Restraints that employ a technique listed in paragraphs (1) - (11) of this section are prohibited:

(1) Restraints used for punishment, discipline, retaliation, harassment, compliance, or intimidation;

(2) Restraints that deprive the resident of basic human necessities including restroom privileges, water, food and clothing;

(3) Restraints that are intended to inflict pain;

(4) Restraints that place a resident in a prone or supine position with sustained or excessive pressure on the back, chest or torso;

(5) Restraints that place a resident in a prone or supine position with pressure on the neck or head;

(6) Restraints that obstruct the airway or impair the breathing of the resident including a procedure that places anything in, on, or over the resident's mouth or nose;

(7) Restraints that interfere(s) with the resident's ability to communicate;

(8) Restraints that obstruct the view of the resident's face;

(9) Any technique that does not require the monitoring of the resident's respiration and other signs of physical distress during the restraint;

(10) Percussive or electrical shocking devices; and

(11) Non-ambulatory restraints.

§355.316. Documentation.

All restraints shall be fully documented and maintained. Written documentation regarding the use of restraints shall, at a minimum, require:

(1) the name of resident;

(2) the staff member(s) name and title(s) who administered the restraint;

(3) the date of the restraint;

(4) the duration of the each type of restraint, including notation of the time the restraint began and ended;

(5) location where the restraint occurred;

(6) the description of preceding activities;

(7) the behavior that prompted the initial and the continued restraint of the resident;

(8) the type of restraint applied;

(A) the specific type of personal restraint hold applied; and

(B) any type of mechanical restraint device(s) applied;

(9) efforts made to de-escalate the situation and alternatives to restraint that were attempted; and

(10) whether or not any injury occurred during the restraint to the resident or staff and the description of the injury.

§355.318. Mechanical Restraint.

Mechanical restraints shall only be used by a certified juvenile probation officer, juvenile supervision officer or non-secure residential worker trained in their use.

§355.320. Serious Incidents.

All non-secure correctional facilities shall adhere to the requirements set forth in Chapter 358 of this title regarding serious incidents.

§355.322. Abuse, Neglect and Exploitation.

All non-secure correctional facilities shall adhere to requirements set forth in Chapter 358 of this title regarding abuse, neglect and exploitation.

§355.324. Weapons.

(a) The facility shall have written policies and procedures that prohibits staff, other than a law enforcement officer acting in the scope of his or her official duty, from the possession of a weapon as defined by §46.01 of the Texas Penal Code on the facility premises or at a facility-sponsored event.

(b) The facility's policies and procedures required in subsection (a) of this section shall prohibit a juvenile probation officer authorized to carry a firearm under the auspices of §142.006 of the Human Resources Code from entering the secure area of the facility with a firearm.

(c) Each non-secure correctional facility shall have a secure apparatus outside of the facility's housing area and area that is frequently occupied by residents to store weapons other than those described in subsections (a) and (b) of this section.

§355.326. Safety and Security.

(a) Security Plan. The facility shall have a written plan that addresses security:

(1) within the facility; and

(2) on and off facility premises.

(b) Transportation. The security plan shall include policies that govern the use of motor vehicles to transport residents and address the following:

(1) methods of transportation authorized;

(2) safety and supervision;

(3) authorized transport personnel;

(4) emergency procedures;

(5) the requirement of auto liability insurance when transporting in personal vehicles; and

(6) circumstances under which residents will be allowed to drive a personal vehicle.

(c) Internal Security. The security plan shall address the facility's internal security with regard to the following:

(1) continued operations in the event of a work stoppage;

(2) key control;

(3) control of the use of:

(A) tools;

(B) medical equipment; and

(C) kitchen tools;

(4) provisions to prevent firearms from entering the facility; and

(5) provisions for coordination with law enforcement authorities in the case of situations requiring assistance from city, county or state law enforcement agencies.

(d) Documentation.

(1) The facility administrator or designee shall ensure the documentation of all special incidents, where the health and safety of residents and/or staff were or could have been jeopardized.

(2) A copy of the report shall be placed in the permanent file of any resident(s) involved in the incident.

§355.328. Searches.

(a) The facility shall have written policies and procedures that address the following elements regarding resident searches:

(1) when a search is appropriate and/or required;

(2) who is authorized to conduct the search;

(3) what types of searches are permissible;

(4) how the searches will be conducted;

(5) what to do when contraband is found; and

(6) searches being conducted only by staff of the same sex as the resident.

(b) Upon intake, residents shall be subjected to the only following searches:

(1) a pat down or frisk search as necessary for facility safety and security;

(2) an oral cavity search to prevent concealment of contraband, to ensure the proper administration of medication;

(3) a strip search in which the resident is required to surrender their clothing based on the reasonable belief that the resident is in possession of contraband or if there is reasonable belief that the resident presents a threat to the facility's safety and security;

(A) a strip search shall be limited to a visual observation of the resident and shall not involve the physical touching of a resident;

(B) a strip search shall be performed in an area that ensures the privacy and dignity of the resident; and

(C) a strip search shall be conducted by a staff member of the same gender as the resident being searched;

(4) an anal or genital body cavity search only if there is probable cause to believe that they are concealing contraband;

(A) an anal or genital body cavity search shall be conducted only by a physician. The physician shall be of the same gender as the resident, if available;

(B) all anal and genital body cavity searches shall be conducted in an office or room designated for medical procedures; and

(C) all anal and genital body cavity searches shall be documented with the documentation being maintained in the resident's file.

(c) During searches, the residents shall not be touched any more than necessary to conduct a comprehensive search.

(d) Every effort shall be made to prevent embarrassment or humiliation of the resident.

§355.330. Fire Safety Plan.

(a) The facility shall have in effect and available to all personnel, written copies of a fire safety plan for the protection of all persons in the event of a fire for their evacuation to areas of refuge and for their evacuation from the building, if necessary.

(b) The fire safety plan shall be coordinated with and reviewed by the fire department whose jurisdiction includes the facility. The coordination and review efforts required in this standard shall be validated by written documentation prepared or attested to by a representative of the applicable fire department.

(c) The fire safety plan shall require that all employees be instructed on the following:

(1) proper disposal of combustible refuse;

(2) prompt evacuation of the facility;

(3) procedures for the use and control of flammable, toxic, and caustic materials;

(4) emergency audible communication systems and equipment; and

(5) fire detection and alarm systems.

§355.332. Fire Drills.

(a) Required Fire Drills. Fire drills shall be conducted on all shifts at least every 90 calendar days. The facility shall maintain documentation of the date, time and participating staff of each fire drill.

(b) Participation. All staff on duty in the facility shall participate in the fire drills.

(c) Exits. Facility exits shall be clear of obstruction and properly marked for evacuation in the event of fire or emergencies.

(d) Evacuation Plans. Facility emergency evacuation plans shall be posted.

§355.334. Non-Fire Emergency Preparedness Plan.

The facility shall have an emergency preparedness plan that includes, but is not limited to severe weather, natural disasters, disturbances or riots, national security issues, and medical emergencies. The plan shall address:

(1) the identification of key personnel and their specific responsibilities during an emergency or disaster situation;

(2) agreements with other agencies or departments; and

(3) transportation to pre-determined evacuation sites.

§355.336. Hazardous Materials.

(a) The facility shall maintain an inventory and a copy of the Material Safety Data Sheet (MSDS) for all hazardous materials located in the facility.

(b) Materials manufactured for cleaning purposes or those used in the training process of a vocational training program or another program may be used by residents under the general supervision of a non-secure residential worker or a qualified program staff. The resident must be provided instruction on the use of the hazardous material and the proper equipment as prescribed by the MSDS.

(c) Any use of hazardous materials shall be used according to the manufacturer's instructions.

§355.338. Facility Maintenance, Cleanliness and Appearance.

(a) Housekeeping Plan. The facility shall have a written and implemented housekeeping plan for the maintenance of a clean and sanitary facility that promotes a safe environment for residents.

(1) The plan shall contain the following:

(A) a schedule for periodic and routine cleaning and housekeeping including:

(i) the identification of staff and resident responsibilities; and

(ii) the regular cleaning and disinfection of toilet and shower areas currently in use;

(B) a schedule for pest and vermin control; and

(C) a requirement for the weekly cleaning, safety, and maintenance inspection by facility staff of all areas of the facility that are currently in use.

(2) The housekeeping plan shall be accessible to facility staff.

(b) Maintenance. The facility administrator shall be responsible for ensuring that the interior physical plant, exterior grounds, and all equipment are in proper repair and safely functioning including, but not limited to, the following:

(1) repairs shall be made promptly to all furniture, fixtures, and equipment currently in use that are not in safe working order;

(2) all surfaces in facility areas currently being used shall be regularly maintained and repaired if damaged and reasonably free from graffiti and markings, excluding minor damage from reasonable and expected wear and tear from normal use; and

(3) all exterior grounds currently used for programmatic purposes or accessed by staff, residents or visitors are free from any health and safety hazards and are appropriately maintained to ensure the safe use by residents, staff and visitors.

(c) Cleanliness. All areas of the facility where residents reside or participate in programming or services shall be clean, sanitary and reasonably free from debris, rodents, insects and strong, offensive or foul odors.

§355.340. Experimentation and Research Studies.

(a) Experimentation. Participation by residents in medical, psychological, pharmaceutical, or cosmetic experiments is prohibited.

(b) Research Studies. Participation by residents in medical, psychological, pharmaceutical, or cosmetic research is prohibited unless the research study is approved in writing by the juvenile board subject to the following guidelines:

(1) The juvenile board shall promulgate approved policies that govern all authorized research studies. Studies that include medically invasive procedures shall be prohibited.

(2) Approved research studies shall adhere to all applicable policies of the authorizing juvenile board.

(3) Research studies approved by the juvenile board shall be reported to the Commission in a format prescribed by the Commission prior to the commencement of the study.

(4) The results of the study shall be made available to the Commission upon request from the facility administrator, chief administrative officer, or juvenile board.

(5) Policies governing research studies shall adhere to all federal requirements governing human subjects and confidentiality.

(6) Residents may voluntarily participate in approved research programs with the written consent of the resident's parent, guardian or custodian.

(7) A resident shall not be punished for not participating in any research study.

§355.342. Data Collection.

The facility administrator or chief administrative officer shall maintain and report to the Commission electronically, or in the format requested, accurate statistics in the following areas:

(1) total number of resident grievances;

(2) total number of personal restraint incidents;

(3) total number of mechanical restraint incidents;

(4) total number of chemical restraint incidents;

(5) total number of separations; and

(6) total number of injuries to facility staff resulting from interaction with residents.

§355.344. Classification Plan.

Facilities shall have a written classification plan that determines how residents are grouped in housing units. Residents shall, at a minimum, be classified for grouping by age, sex, offense, behavior, and any other considerations including a resident's potential vulnerabilities for sexual abuse that are discovered during the behavioral screening required in §355.352 of this chapter.

§355.346. Resident Records.

(a) Format and Maintenance of Records.

(1) Resident records shall be maintained in a uniform format for identifying and separating files.

(2) The facility shall have written policies and procedures to ensure the confidentiality of resident files.

(b) Content of Resident Records. Each resident's record shall include, at a minimum, the following:

(1) the court order and/or placement authorization documentation;

(2) a list of approved visitors;

(3) the name of the assigned probation officer;

(4) the behavioral record, including any special incidents, discipline, or grievances;

(5) emergency notification contacts;

(6) education records; and

(7) a physical as required by §355.570(b) of this chapter if the facility's programming includes an intensive physical activity component.

§355.348. Housing Records.

For each housing unit in the facility, the following documentation shall be maintained:

(1) a daily chronological log or electronic record documenting the resident's activity that identifies the non-secure residential worker(s) supervising the residents;

(2) a daily report of admissions and releases; and

(3) a population roster compiled as of 5:00 a.m. each day that shall include at a minimum:

(A) the date and time the roster was compiled;

(B) the name of all residents in the facility;

(C) the sex of all residents in the facility;

(D) the housing assignment location of all residents in the facility; and

(E) the numerical total of the resident population for each day.

§355.350. Disciplinary Reports.

(a) The facility shall have written policies and procedures that require juvenile supervision officers and non-secure residential workers to prepare a written disciplinary report for each incident occurring in the facility that constitutes a major rule violation. The policy shall require that the written disciplinary report include the details of the incident, the violation that occurred, action taken by the staff member(s), the date and time of the incident and the outcome.

(b) The disciplinary report shall be forwarded to the facility administrator within 24 hours or on the next working day. The date and time that the disciplinary report was forwarded shall be documented on the report.

§355.352. Behavioral Screening.

(a) Prior to admitting a juvenile into a non-secure correctional facility, the juvenile shall be screened for potential vulnerabilities or tendencies of acting out with sexually aggressive or assaultive behavior. Housing assignments shall be made accordingly.

(b) The behavioral screening shall take into consideration the following information, if readily available:

(1) age;

(2) current charge(s) and offense history;

(3) physical size/stature;

(4) current state of mind;

(5) sexual orientation;

(6) prior sexual victimization or abuse;

(7) level of emotional and cognitive development;

(8) physical disabilities;

(9) mental disabilities, including emotional, intellectual and developmental disabilities; and

(10) any other pertinent information.

§355.354. Personal Property.

If a resident's personal property is removed from the resident, the facility shall inventory and properly store the items taken. Documentation of the inventory shall be signed by the resident and the non-secure residential worker and maintained in the resident's file.

§355.356. Release Procedures.

Prior to the release of a resident from the facility, the authorized officer shall:

(1) verify the release authorization documents;

(2) verify the identity of the person receiving custody;

(3) secure a signed release by the individual receiving the resident's personal property;

(4) provide information to the person receiving custody regarding:

(A) all medication prescribed while the resident was in the facility that the resident is currently taking, and the name and contact information of the prescribing physician;

(B) any pending medical, mental health, or dental appointments;

(C) any present concerns regarding the resident; and

(5) secure a receipt signed by the person receiving custody.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 22, 2010.

TRD-201006679
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Earliest possible date of adoption: January 9, 2011
For further information, please call: (512) 424-6710

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SUBCHAPTER D. RESIDENT HEALTH AND SAFETY

37 TAC §§355.400, 355.402, 355.404, 355.406, 355.408, 355.410, 355.412, 355.414, 355.416, 355.418

The rules are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affect by these rules.

§355.400. Mental Health Screening and Referral.

(a) Screening. A mental health screening instrument approved by the Commission shall be administered to each resident that is admitted into the non-secure correctional facility within two hours of admission.

(b) Referral. A resident who scores a positive screening on the screening instrument shall be:

(1) administered a secondary screening immediately to assist in clarifying the resident's need for mental health intervention;

(A) If the secondary screening confirms the positive screening and that mental health intervention is warranted, then a referral shall be made to a mental health professional or licensed physician within two hours from the completion of the initial mental health screening;

(B) If the secondary screening substantiates that the initial positive screening was false, then no further mental health intervention is required; or

(2) referred to a qualified mental health professional for consultation within two hours from the completion of the initial mental health screening to determine if further mental health intervention is warranted.

(A) The facility shall maintain documentation of the consultation in the resident's file.

(B) If the qualified mental health professional recommends further mental health intervention is needed, then the resident must be referred to a mental health professional or licensed physician by the end of the program day.

(c) Documentation of recommendations or referrals specific to the juvenile's positive screening on the screening instrument shall be forwarded to the supervising juvenile probation officer.

(d) Documentation of referrals, completed assessments and evaluations, including dates and times, shall be retained in the resident's file and forwarded to the supervising juvenile probation officer.

§355.402. Suicide Prevention Plan.

(a) Plan. The facility shall have a written suicide prevention plan developed in consultation with a mental health professional that, at a minimum, addresses the following components:

(1) definitions of moderate and high risk for suicidal behavior;

(2) a screening methodology to assess and assign a resident's risk of suicide upon admission into the facility, and upon any indication a resident previously screened may now be at moderate or high risk for suicidal behavior. The screening methodology shall include specific provisions regarding the assessment of risk when a resident refuses or is unable to cooperate with the screening process;

(3) level of supervision for residents assigned to moderate or high risk for suicidal behavior;

(4) communication protocols among facility staff, mental health professionals, the resident's juvenile probation officer, the resident and the resident's parent, legal guardian, or custodian, including communication regarding observations or indications a resident previously screened may now be at moderate or high risk for suicidal behavior;

(5) policies and procedures for intervening in suicide attempts;

(6) reporting of resident suicides and attempted suicides, in accordance with any applicable state law, administrative standard, or local policy or ordinance;

(7) staff training on the contents and implementation of the suicide prevention plan;

(8) temporary housing of residents assigned to moderate or high risk for suicidal behavior, including the removal from the resident's presence any dangerous objects which may include clothing and bedding items; and

(9) mortality reviews designed to review the facility's compliance and possible needed revisions to the suicide prevention plan following a resident's suicide.

(b) Implementation. The facility shall implement the suicide prevention plan, and all residents shall be screened and assessed for suicide risk upon admission and as necessary thereafter.

§355.404. Transfer, Release and Referral of High Risk Suicidal Youth.

(a) If a resident is classified as a high risk for suicidal behavior, the facility shall immediately notify the sending agency for prompt transfer or release.

(1) Upon the recommendation of the sending agency, the facility shall transfer or release the resident as soon as possible.

(2) Documentation of this notification shall be maintained including the date, time, name and jurisdiction of the juvenile probation officer notified.

(b) If prompt transfer or release is not possible, the facility shall refer the resident classified as a high risk for suicidal behavior to a mental health professional or mental health care facility for further assessment or intervention. If this referral occurs, the facility shall maintain written documentation that includes:

(1) the name and title of the mental health professional or mental health care facility notified;

(2) the date and time of the referral;

(3) the method of referral; and

(4) a brief description of the response provided by the mental health professional or the responsive document from the mental health professional.

§355.406. Supervision of High Risk Suicidal Youth.

(a) Supervision. Residents classified as a high risk for suicidal behavior who are awaiting transfer or release by a juvenile probation officer or an assessment by a mental health professional as described in §355.404(b) of this chapter shall be:

(1) provided constant, uninterrupted supervision by a certified juvenile probation officer, certified juvenile supervision officer or certified youth activities supervisor; and

(2) the supervising officer shall document his or her personal observations of the high-risk resident at intervals not to exceed 30 minutes.

(b) Required Documentation. The following documentation shall be maintained for high-risk suicidal residents:

(1) the date and time the resident was classified as a high risk for suicidal behavior;

(2) name and title of the person who classified the resident as high risk for suicidal behavior;

(3) a description of the resident's behavior and/or factors that led up to the resident's classification as high risk for suicidal behavior;

(4) name of the non-secure residential worker providing supervision of the resident;

(5) the location of the resident's supervision;

(6) the date and time that the resident's juvenile probation officer was contacted regarding the high-risk classification for transfer or release; and

(7) name and title of person who contacted the resident's juvenile probation officer.

§355.408. Health Care Services.

(a) Health Service Authority. The facility shall designate a health service authority with which to consult when developing and implementing the health service plan.

(b) Health Service Plan. The facility shall have a written health service plan developed in consultation with the designated health service authority. The health service plan shall establish the facility's health care delivery system for all residents.

(c) Review of Health Service Plan. The health service plan shall be reviewed at least every 24 months in consultation with the health service authority.

§355.410. Medical.

(a) Mandatory Health Assessment. If a resident who is placed at a non-secure correctional facility as an alternative to detention and who has not had a health assessment by a health care professional within the 12 months immediately preceding admission into the facility, the resident shall be given a health assessment by a health care professional within 30 calendar days after admission into the facility.

(b) Pre-Admission Records. The facility shall have the following records prior to a resident's admission if the resident is placed at a non-secure correctional facility as a condition of probation or deferred prosecution agreement:

(1) A medical examination conducted by a health care professional within 30 calendar days prior to the resident's admission date.

(2) A psychological evaluation completed within 365 calendar days prior to the resident's admission.

(c) Consent for Medical Treatment.

(1) Consent for medical treatment shall be secured in accordance with Chapter 32 of the Texas Family Code.

(2) Documentation of consent for medical treatment shall be maintained in the applicable resident files.

(d) Health Screening.

(1) A health screening shall be conducted on each resident within two hours after admission by either a health care professional or an individual who has received specific training on administering the facility's health screening. The health screening instrument shall address:

(A) mental health problems;

(B) suicide risk assessment in accordance with the facility's suicide prevention plan;

(C) current state of health including:

(i) allergies;

(ii) tuberculosis;

(iii) other chronic conditions;

(iv) sexually transmitted diseases;

(v) history of gynecological problems or pregnancies; and

(vi) recent injuries at or near time of admission;

(D) current use of medication including type, dosage, and prescribing physician;

(E) visual observation of teeth and gums and notation of any obvious dental problems;

(F) vision problems;

(G) drug and alcohol use;

(H) physical or developmental disabilities;

(I) evidence of physical trauma; and

(J) the resident's weight.

(2) Intra-Jurisdictional Custodial Transfer. For intra-jurisdictional custodial transfer of residents, the only items required for the health screening at admission into a non-secure correctional facility are items enumerated in paragraph (1)(B) and (I) of this subsection.

(3) If the health screening indicates that a resident is in need of further medical evaluation, the resident shall be referred to a health care professional for further assessment within 24 hours, excluding weekends and holidays, from the date and time of the completed screening.

(4) In accordance with §142.005(a) of the Texas Human Resources Code, the facility shall have written policies and procedures governing the distribution of all medication to residents. The policy shall specify which personnel are authorized to dispense medication to residents.

(5) The facility shall have written policies and procedures governing the use and storage of prescription and non-prescription medications for residents.

(6) The resident's parent, guardian or custodian shall provide a written request for the administration of prescription medication. All medication shall be in the original, properly labeled containers.

(7) The facility shall require in policies and practice that the distribution of all medication be documented including the date and time administered, name of person administering the medication, resident's name, type of medication and dosage.

(8) The facility's policies and practices shall require a medication log for over-the-counter medications distributed to the residents.

§355.412. Medical and Mental Health Services for Victims of Sexual Abuse.

(a) The facility shall make available medical and mental health services to juveniles who are victims of sexual abuse that occurred in the facility. These services include, but are not limited to, testing for sexually transmitted diseases, treatment for physical injuries and mental health issues that result from the sexual abuse.

(b) The cost of services or treatment identified under this standard shall not be assessed to the resident or the resident's parent, guardian or custodian.

§355.414. Medical Isolation.

Medical isolation may be authorized as a health precaution at the direction of a health care professional or the facility administrator.

(1) The reasons for the medical isolation of a resident shall be documented and a copy placed in the resident's file.

(2) A health care professional shall be consulted within 12 hours of the initial medical isolation for a resident that has been placed on medical isolation by a facility administrator.

(3) During medical isolation, non-secure residential workers shall personally observe and record the resident's behavior at random intervals not to exceed 15 minutes.

§355.416. First-Aid Kits.

Each facility shall have a first-aid kit available to the facility staff and shall be:

(1) clearly labeled;

(2) kept in a clean and sanitary condition;

(3) easily accessible to all staff;

(4) stored in a designated location known to all employees; and

(5) kept out of the reach of the residents.

§355.418. Supervision.

(a) Ratios. While on the facility premises, ratios for non-secure residential workers to residents shall adhere to the requirements set forth in this section.

(1) Program Hours.

(A) Supervision Ratio. One juvenile supervision officer or non-secure residential worker to every twelve residents; and

(B) Facility-Wide Ratio. One juvenile supervision officer or non-secure residential worker to every eight residents.

(2) Non-Program Hours.

(A) Supervision Ratio. One juvenile supervision officer or non-secure residential worker to every twenty-four residents; and

(B) Facility-Wide Ratio. One juvenile supervision officer or non-secure residential worker twenty residents.

(b) Same-Sex Supervision Requirement.

(1) If both male and female residents are housed in the facility, at least one juvenile supervision officer or non-secure residential worker of each sex shall be on duty and available to the residents for every shift.

(2) Non-secure residential workers of one sex shall be the sole supervisors of residents of the same sex during showers, physical searches, pat downs, disrobing of suicidal youth, or during other times in which personal hygiene practices or needs would require the presence of a non-secure residential workers of the same sex.

(c) Level of Supervision.

(1) Program hours. The facility shall have written policies and procedures detailing the supervision requirements while residents are away from the facility premises.

(2) Small Groups. No more than six residents shall be supervised by a qualified individual when the individual is working with the residents in a capacity that relates to the individual's:

(A) work experience;

(B) relevant training;

(C) specialized licensure; or

(D) certification.

(3) Non-Program Hours.

(A) The facility shall have at least two juvenile supervision officers and/or non-secure residential worker on duty during non-program hours when there is at least one resident in the facility.

(B) A juvenile supervision officer and/or non-secure residential worker shall visually observe each resident at random intervals not to exceed 15 minutes in a SOHU.

(C) A juvenile supervision officer and/or non-secure residential worker shall have constant visual observation of residents in a MOHU and shall document general observations of dorm activity at intervals not to exceed 30 minutes.

(4) Non-secure residential workers shall document each visual observation made. The documentation shall include the time of the observation and generally describe the residents' behavior.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 22, 2010.

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Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
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For further information, please call: (512) 424-6710

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SUBCHAPTER E. RESIDENT RIGHTS AND PROGRAMMING

37 TAC §§355.500, 355.502, 355.504, 355.506, 355.508, 355.510, 355.512, 355.514, 355.516, 355.518, 355.520, 355.522, 355.524, 355.526, 355.528, 355.530, 355.532, 355.534, 355.536, 355.538, 355.540, 355.542, 355.544, 355.546, 355.548, 355.550, 355.552, 355.554, 355.556, 355.558, 355.560, 355.562, 355.564, 355.566, 355.568, 355.570, 355.572, 355.574, 355.576, 355.578, 355.580

The rules are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affect by these rules.

§355.500. Resident Handbook.

(a) The written resident handbook shall be adopted by the governing board and shall include a clear explanation for the following topics:

(1) the facility's behavior management system;

(2) accessing available health care and services;

(3) accessing available mental health care and services;

(4) program rules with corresponding and maximum disciplinary sanctions;

(5) the due process protections including the formal appeal process as required by §355.512 of this chapter;

(6) grievance policies and procedures;

(7) the process for visitation and telephone use;

(8) the process for sending and receiving mail;

(9) the right to access an attorney, including legal correspondence;

(10) facility expectations regarding experimentation and research programs;

(11) the right against:

(A) illegal discrimination;

(B) residents supervising other residents;

(C) degrading and purposeless work;

(12) the right to attend or refuse religious services;

(13) information required by the Prison Rape Elimination Act of 2003 including:

(A) prevention and intervention;

(B) methods of minimizing risk of sexual abuse;

(C) reporting sexual abuse and assault; and

(D) treatment and counseling;

(14) information regarding the reporting of suspected abuse, neglect, or exploitation of a child in a juvenile justice facility program;

(15) the right of confidentiality with regard to the items included in paragraphs (6), (13) and (14) of this subsection and the assurance that the resident will not face reprisal for participating in the procedures described in these items; and

(16) the facility's zero-tolerance policy regarding sexual abuse in accordance with the Prison Rape Elimination Act of 2003.

(b) The facility shall review the content of the resident handbook with each resident within four hours of admission into the facility and provide a copy of the resident handbook to the resident.

(1) The facility shall maintain a signed acknowledgment verifying that the resident understood the content of the resident handbook in the resident's file.

(2) If the resident is not sufficiently fluent in English, a verbal and written translation shall be provided to the resident in the resident's primary language within 48 hours of admission.

(c) The facility administrator shall conduct an annual review of the resident handbook every 365 calendar days.

§355.502. Behavior Management System.

The facility shall have written policies and procedures detailing the facility's behavior management system, which shall include but not be limited to the following:

(1) Disciplinary Sanctions. The facility's policies and procedures shall include the maximum sanctions that may be applied to residents for particular behaviors that violate the facility's program rules. The policies and procedures shall, at a minimum, include the following:

(A) a requirement that disciplinary procedures be carried out promptly and that all residents are afforded due process protections;

(B) a requirement that residents are at least one level of appeal on all discipline sanctions as required by §355.512 of this chapter;

(C) prohibited behaviors and conduct, including an indication of which are major rule violations;

(D) disciplinary consequences for prohibited behaviors and conduct;

(E) description of circumstances that will allow removal from program activities; and

(F) circumstances under which a resident may be placed into another setting.

(2) Prohibited Sanctions. The facility's policies and procedures shall contain the following prohibited sanctions:

(A) corporal punishment;

(B) humiliating punishment including verbal harassment of a sexual nature or that relates to a resident's sexual orientation or gender identity;

(C) allowing or directing one resident to sanction another;

(D) deprivation or modification of required meals and snacks;

(E) deprivation of clean and appropriate clothing;

(F) deprivation or intentional disruption of scheduled sleeping opportunities;

(G) deprivation or intentional delay of medical and mental health services; and

(H) physical exercises imposed for the purposes of compliance, intimidation, or discipline with the exception of practices allowed in §355.570 of this chapter.

(3) Notice.

(A) The facility's policies, procedures, and practices shall require that a resident be provided written notice of an alleged major rule violation against him or her no more than 24 hours after the knowledge of the violation.

(B) Documentation that the resident received the notice of an alleged major rule violation shall be maintained in the resident's file.

§355.504. Protective Isolation.

(a) Protective isolation may be ordered when a resident is physically threatened by a resident or a group of residents and approved in writing by the facility administrator or designee.

(b) A resident in protective isolation shall be in the least restrictive setting possible, allowing as much program time as possible while maintaining order and safety.

(c) While in protective isolation, non-secure residential workers shall observe and record the resident's behavior at random intervals not to exceed 15 minutes.

(d) If the protective isolation of a resident exceeds 24 hours, the facility administrator or designee shall immediately conduct a documented review of the circumstances surrounding the level of threat faced by the resident and make a determination as to whether other less restrictive protective measures are appropriate and available. If continued protective isolation is approved, the facility administrator or designee shall ensure that the formalized written review document includes an alternative service delivery plan to ensure the isolated resident is afforded all required program services during their period of protective isolation.

§355.506. Restriction.

(a) Restriction may be used in increments of up to 60 minutes for behavior modification or minor disciplinary reasons.

(b) When restriction is used, non-secure residential workers shall personally observe and record the resident's behavior at random intervals not to exceed 15 minutes.

§355.508. Separation.

(a) Separation may be used when a resident commits a major rule violation.

(b) When separation is used, a written disciplinary report that describes the resident's precipitating behavior and identifies the staff's response shall be completed promptly, but no later than the end of the shift on which the separation occurs.

(c) Separation shall be approved in writing by the facility administrator and shall not be in excess of 24 hours.

(d) During separation, non-secure residential workers shall personally observe and record the resident's behavior at random intervals not to exceed 15 minutes.

(e) In addition to the requirements enumerated in subsections (b) - (d) of this section, the facility shall provide the secluded resident with an explanation of the disciplinary review process.

(f) Documentation required in this standard shall be maintained in the resident's file.

§355.510. Separation Prohibition.

Residents removed from facility programming or activities for disciplinary reasons shall not be placed in a locked area or room.

§355.512. Formal Appeals.

A resident may appeal a restriction or separation. The facility shall have written policies and procedures manual that include the provisions of a formal appeal. The provisions shall minimally include the following:

(1) provisions for a documented appeals process before a neutral and impartial person or persons not involved in administering the sanction. The appeals process shall afford each of the following due process provisions:

(A) provisions that require the resident to submit the request for an appeal no later than seven calendar days after a sanction; and

(B) provisions that require the resident's appeal to be heard within ten calendar days of resident's request; and

(2) provisions for a final disposition. A copy of the final disposition shall be retained in the resident's file.

§355.514. Discrimination.

Residents shall not be subjected to discrimination based on race, national origin, sex, sexual orientation, gender identity, or disability.

§355.516. Resident Grievance Process.

Written policies and procedures, as well as actual practices, shall demonstrate that there is a formalized grievance process to address residents' complaints about their treatment and facility services. At a minimum, the formalized grievance process shall include the following policy, procedural, and practice elements:

(1) The residents' ability to submit a grievance with full access to the process;

(2) A response and resolution to all grievances no later than five calendar days from the date the grievance is received by staff;

(3) Confidentiality of grievance without fear of reprisal;

(4) At least one level of appeal on all grievance complaints;

(A) The appeal shall be decided in a timely manner after receipt;

(B) The resident shall promptly be notified of the resolution of the appeal;

(5) The resident's ability to participate in the resolution of a grievance, including the use of an intermediary and the ability to request witnesses;

(6) Periodic formal reviews of the grievance process and dispositions by administrative-level staff;

(7) A tracking system and grievance log that accounts for all grievances submitted; and

(8) Unresolved grievances submitted by any resident who is released shall be forwarded to the facility administrator or designee to determine if any action is needed.

§355.518. Grievance Form.

The formal grievance form shall contain the following elements:

(1) the name of the resident;

(2) the resident's room;

(3) the date of the grievance;

(4) the nature or description of the grievance;

(5) the date and time of receipt;

(6) the name and title of the person receiving the grievance;

(7) the response or resolution to the grievance;

(8) the date and time of the response;

(9) the name and title of the person responding to the grievance; and

(10) a space for a written request to appeal the grievance response.

§355.520. Telephone.

(a) A resident shall be provided the opportunity for at least one five-minute phone call every seven calendar days.

(b) The parent, legal guardian, or custodian of the resident shall be provided a copy of the facility's policy regarding telephone usage.

(c) Restrictions on the minimum requirement of a resident's telephone usage shall not be imposed as a disciplinary sanction.

§355.522. Visitation.

(a) Residents have the right to receive visitors and the facility may limit a resident's rights only to the extent required maintain safety within the facility.

(b) In accordance with §61.103 of the Texas Family Code, residents shall be allowed visitation by a parent, guardian or custodian and biological children, if applicable, at least once every seven calendar days for at least thirty minutes or the equivalent over multiple visits.

(c) The parent, guardian or custodian of the resident shall be provided a copy of the visitation schedule and with proper documentation an alternative visitation schedule allowing for employment and travel issues.

(d) A registry of all visitors shall be maintained to document the name and relationship to the resident.

§355.524. Limitations on Visitation.

(a) The policies, procedures, and practices of the facility may limit a resident's visitation rights only to the extent required to maintain safety within the facility. These policies and procedures shall be in accordance with §61.103 of the Texas Family Code.

(b) The facility administrator or designee shall provide written documentation justifying any restriction placed on a resident's visitation rights.

(c) A resident shall not be denied communication or visitation with a parent, guardian, or custodian for a prescribed period of time after admission into the facility.

(d) Restrictions on a resident's visitation rights shall not be imposed as a disciplinary sanction.

§355.526. Mail.

(a) Residents shall be provided access to writing materials and postage for no fewer than two letters every seven calendar days.

(b) When a resident is released or transferred from the facility, his or her mail shall be forwarded to the resident's new address or returned to the sender.

(c) Money received in the mail shall be held for the resident in their personal property inventory, with receipt provided to the resident, or returned to the sender.

§355.528. Inspection of Mail.

Mail may be opened by staff only in the presence of the resident with inspection limited to searching for contraband.

§355.530. Limitations on Mail.

(a) Authorized Limitations. A resident's rights to privacy and correspondence shall not be limited except when:

(1) a reasonable belief exists to suspect that the correspondence is a part of an attempt to formulate, devise, or otherwise effectuate a plan to violate state or federal laws. If such cause exists, then non-secure residential workers shall:

(A) ask the resident's permission to read the letter;

(B) if permission is denied, request a search warrant prior to opening and reading the letter;

(C) if a search warrant request is denied, the correspondence shall be provided to the resident;

(2) correspondence with certain individuals is specifically prohibited by:

(A) the resident's juvenile court-ordered rules of probation or parole;

(B) the facility's rules of separation; or

(C) a specific list of individuals furnished by a resident's parent, guardian or custodian indicating whom they feel should not communicate with the resident.

(b) Returning Mail. Such incoming correspondence as identified in subsection (a)(2) of this section shall be returned unopened to the sender.

(c) Withholding Mail. When mail is withheld from the resident, the reasons shall be documented and a copy placed in the resident's file.

§355.532. Legal Correspondence.

Residents shall be furnished adequate postage for legal correspondence during their stay in the facility.

§355.534. Personal Property.

The facility administrator shall ensure that there is adequate storage space for each resident's personal property.

§355.536. Personal Hygiene.

(a) Residents shall be given appropriate instruction on personal and oral hygiene and shall be provided necessary articles to maintain proper personal cleanliness.

(b) Residents shall be provided the opportunity to shower daily and after participating in strenuous exercise.

§355.538. Bedding.

(a) Each resident shall be provided clean and suitable bedding, including two sheets, a pillow and pillowcase, a mattress and a blanket. Mattresses with an integrated pillow may be substituted for a separate pillow and a pillowcase.

(b) Clean bed linens shall be issued at least every seven calendar days.

§355.540. Clothing.

(a) Residents shall have access to clean and appropriate clothing upon admission into the facility.

(b) Residents shall have clean and disinfected undergarments and socks daily and other clean clothing at least twice per week.

(c) Climate appropriate clothing shall be provided to all residents in the facility for any outdoor programming or activities.

§355.542. Towels.

A clean towel shall be issued to each resident daily.

§355.544. Meals.

(a) The facility shall have written policies and procedures ensuring the provision of meals for each resident in the facility.

(b) Residents shall not eat meals in their rooms unless it is necessary for facility safety.

(c) A resident shall not be denied a meal as a sanction or disciplinary measure.

§355.546. Daily Meal Schedule.

(a) Three meals shall be provided daily to each resident in the facility.

(b) At least two of the meals shall be hot.

(c) No more than 14 hours may elapse between the evening meal and breakfast unless a snack is provided.

(d) Residents shall be allowed no less than ten minutes to eat once they have received their food.

§355.548. Menu Plans.

(a) The facility shall develop and follow daily written menu plans. Menu plans shall be reviewed and approved at least every 365 calendar days by a licensed or provisionally licensed dietician to ensure that the menu plans meet or exceed the requirements of the United States Department of Agriculture (USDA).

(b) If a program staff determines that there is a legitimate need to deviate from an already approved written menu plan, such as food delivery problems, spoiled/expired food, etc., the reason for the deviation and menu substitution shall be fully documented. When menu substitutions are made, the substitution shall be of equal portions and nutritional value.

§355.550. Nutritional Requirements.

Menus shall contain a variety of foods that meet the dietary requirements of the United States Department of Agriculture (USDA).

§355.552. Modified Diets.

Modified diets shall be provided upon the recommendation of a health care professional or when a resident's religious beliefs require it.

§355.554. Staff Meals.

Staff members on duty where residents are eating are not required to eat, but if they do, they shall eat the same food served to the residents unless a special diet has been ordered by a health care professional or a staff's religious beliefs require it.

§355.556. On-site Food Preparation.

A facility that prepares food on site shall maintain a valid permit and any required licenses issued by the local health department or the Texas Department of State Health Services.

§355.558. Off-site Food Preparation.

A facility that receives food from an off-site source shall maintain a copy of the source's valid permit and any required licenses issued by the local health department or the Texas Department of State Health Services. The transfer of such food to the facility shall be conducted in a manner to prevent contamination or adulteration.

§355.560. Educational Program.

If the educational program is on the facility premises, the facility administrator shall ensure the following:

(1) that all residents are required to participate. The educational program provided shall be administered in accordance with the Texas Education Code (TEC);

(2) that the education provider has access to residents so that the educational program is afforded to all residents, in accordance with the TEC;

(3) that residents shall be provided coursework that is aligned the Texas Essential Knowledge and Skills (TEKS), in accordance with the TEC;

(4) that the educational program provides for at least 180 days of instruction unless a waiver has been granted by the Texas Education Agency (TEA) for fewer days or the number of educational days coincides with the local school district calendar;

(5) that educational space is adequate to meet the instructional requirements for each resident for educational services provided on site; and

(6) all educational staff shall receive a facility orientation prior to performing instructional duties at the facility. Orientation shall include:

(A) security and safety procedures;

(B) emergency procedures;

(C) behavior management system and prohibited sanctions; and

(D) reporting abuse, neglect and exploitation.

§355.562. Special Education.

(a) The facility administrator, through a cooperative effort with the Local Education Agency (LEA), shall ensure that residents with disabilities are provided a free and appropriate public education as determined by the Admission, Review and Dismissal (ARD) Committee in order to meet the individual educational needs of the resident as defined by federal and state laws.

(b) The facility administrator, through a cooperative effort with the LEA, shall ensure that residents with disabilities have available an instructional day commensurate with that of residents without disabilities, in accordance with requirements contained in 19 Texas Administrative Code §89.1075(d).

(c) The facility administrator or designee shall send notification of a resident placement in a non-secure correctional facility to the LEA as required by §29.012 of the Texas Education Code and shall retain documentation of this notice.

§355.564. Supervision During Educational Program.

If the facility offers educational services on the premises, there shall be at least one non-secure residential worker to every 12 residents. Educational staff shall not be counted in staff-to-resident ratios.

§355.566. Reading Materials.

Age-appropriate reading materials shall be available to all residents.

§355.568. Recreation and Exercise.

(a) The recreational schedule for residents who are at the facility during program hours shall offer at least one hour of the following each day:

(1) large muscle exercise; and

(2) open recreational activity.

(b) Exceptions. A resident's recreational schedule may be altered under the following conditions:

(1) participation by the resident is contra-indicated for medical reasons;

(2) the resident is in separation, restriction, protective isolation, or medical isolation; or

(3) extenuating circumstances exist that impede the recreational schedule.

(c) Recreational equipment and supplies shall be provided to the residents.

§355.570. Intensive Physical Activity Component.

(a) Governing Board Approval. Facilities shall have written authorization from the governing board prior to utilizing an intensive physical activity component.

(b) A resident shall not be permitted to participate in intensive physical activity without a copy of a physical performed by a licensed physician, licensed physician assistant, a registered nurse or doctor of chiropractic, which states that the resident has no physical limitations or conditions that would prohibit participation.

(c) A facility that has an intensive physical activity component shall develop written policies and procedures regarding extreme weather conditions that shall address the following:

(1) gradual acclimatization to hot weather;

(2) resident clothing for the various weather conditions; and

(3) temperatures and weather conditions in which activity outside is not allowed.

(d) During the intensive physical activity period, the facility shall provide residents with a water break every 30 minutes.

(e) With the exception of certified physical education teachers, staff that participate in the administration of intensive physical activity shall be certified as a juvenile supervision officer.

(f) The facility shall have written policies and procedures, including guidelines, parameters, and limitations, on the types of physical activity that may be utilized for discipline or refocusing purposes (e.g., physical activities used to discipline for non-compliant behavior or as a substitute for write-ups or separations).

§355.572. Program Hours.

Each facility shall have a daily written program schedule outlining the planned activities during program hours for residents who are on the facility premises.

§355.574. Work by Residents.

(a) Residents may be required to perform the following types of work responsibilities without monetary compensation:

(1) assignments that are part of a formalized vocational training program;

(2) tasks performed as a community service; and

(3) routine housekeeping chores that are shared by all residents in the facility, including general facility maintenance.

(b) Residents shall not be permitted to perform any work prohibited by state or federal regulations pertaining to child labor.

(c) Repetitive, purposeless, or degrading make-work is prohibited.

(d) A resident's work assignments shall be excused or temporarily suspended if medically contra-indicated.

(e) Residents shall be provided with the necessary supervision, appropriate tools, cleaning implements, and clothing to safely and effectively complete their assignments.

(f) Residents shall not perform personal services for staff.

(g) Residents shall not perform any work that is unsafe or poses a known risk to the health and safety of the residents.

(h) Credit toward the completion of community service restitution shall be given according to the juvenile court's approval.

§355.576. Vocational Training Programs.

The facility administrator shall ensure that a vocational training program offered to residents, that is not administered by the local education provider and through which no academic credit is gained, is administered by appropriately qualified persons to provide instruction or mentoring in the vocational skills.

§355.578. Religious Services.

Residents shall not be required to participate in religious services or religious counseling.

§355.580. Case Plans.

The facility shall participate with the sending juvenile probation department, the child and the child's parent, guardian or custodian in the development of the resident's case plan.

(1) The case plan shall be signed and dated by the participating facility representative, juvenile probation officer, child and child's parent, guardian or custodian.

(2) The facility shall maintain a copy of the signed and dated case plan in the resident's file.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 22, 2010.

TRD-201006681
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Earliest possible date of adoption: January 9, 2011
For further information, please call: (512) 424-6710

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE PROBATION COMMISSION

CHAPTER 341. TEXAS JUVENILE PROBATION COMMISSION STANDARDS

SUBCHAPTER K. CARRYING OF WEAPONS

37 TAC §§341.80 - 341.91

The Texas Juvenile Probation Commission withdraws proposed new §§341.80 - 341.91 which appeared in the October 8, 2010, issue of the *Texas Register* (35 TexReg 9069).

Filed with the Office of the Secretary of State on November 22, 2010.

TRD-201006669
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: November 22, 2010
For further information, please call: (512) 424-6710

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.112

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.112, concerning Attendant Compensation Rate Enhancement, without changes to the proposed text as published in the September 24, 2010, issue of the *Texas Register* (35 TexReg 8555) and will not be republished.

Background and Justification

Pursuant to §531.0973, Deaf-Blind Multiple Disabilities Waiver Program: Career Ladder for Interveners, as amended by S.B. 63, 81st Legislature, Regular Session, 2009, the Department of Aging and Disability Services (DADS) implemented a career ladder for persons who provide intervener services in the Deaf-Blind with Multiple Disabilities (DBMD) program, effective June 1, 2010. Chapter 531 requires the career ladder to include four levels of interveners (Intervener, Intervener I, Intervener II, and Intervener III) with increasing experience and education requirements and the compensation an intervener receives under the DBMD program be based on and commensurate with the intervener's career ladder classification. Prior to S.B. 63, there was only one level of intervener with one payment rate under the DBMD program.

Interveners I, II, and III are required to meet experiential and educational requirements significantly greater than those of a typical community care attendant and payment rates for these staff types are significantly greater than those for an Intervener and other community care attendants. Given these characteristics, the inclusion of Interveners I, II and III in the attendant compensation rate enhancement would not meet the intent of the enhancement program as described in its enabling legislation, the 2000-01 General Appropriations Act (Article II, Department of Human Services, Rider 37, H.B. 1, 76th Legislature, Regular Session, 1999). This enabling legislation required the legacy Department of Human Services to adopt rules that incentivize increased wages and benefits for community care attendants for the purpose of improving the quality of care for community care clients.

In response to the implementation of this career ladder, HHSC, under its authority and responsibility to administer and implement rates, is amending §355.112 to exclude Interveners I, II, and III from the definition of an attendant. The end result of this amendment is that DBMD providers will not be eligible to receive attendant compensation rate enhancements to the Intervener I, II or III rates. Providers will still be able to receive attendant compensation rate enhancements to the Intervener rate. HHSC is also amending Title 1, Part 15, Chapter 355, Subchapter E, §355.513, Reimbursement Methodology for the Deaf-Blind with Multiple Disabilities Waiver Program, to implement a reimbursement methodology for Interveners I, II and III and to exclude these job classifications from the attendant compensation rate enhancement. The adopted amendment to §355.513 appears in this issue of the *Texas Register.*

Comments

The 30-day comment period ended October 25, 2010. Staff received one comment regarding the proposed amendment to §355.112 from representatives of the Texas Association for Home Care and Hospice. A summary of comment relating to the proposed rules and HHSC's response follows.

Comment concerning §355.112(b): The language should be changed to mimic the definition of an attendant used in Primary Home Care "§47.3(2) Attendant--A person who provides authorized tasks to an individual." Rationale: Streamline definition in new rules for DADS LTSS programs to allow continuity among programs.

Response: The rules at §355.112 apply to multiple DADS programs in addition to Primary Home Care and the language must be broad enough to encompass all of these programs. HHSC did not change the proposed rule in response to this comment.

The amendment is adopted under the Human Resources Code, §32.021, which provides HHSC with the authority to adopt rules necessary to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; and the Texas Government Code §531.021(a), which authorizes the Executive Commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies and to adopt or approve rates of payment required by law to be adopted or approved by a health and human services agency.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 23, 2010.

TRD-201006725

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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Proposal publication date: September 24, 2010
For further information, please call: (512) 424-6900

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SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.306

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §355.306, concerning Cost Finding Methodology, without changes to the proposed text as published in the October 1, 2010, issue of the *Texas Register* (35 TexReg 8834) and will not be republished.

Background and Justification

Section 355.306 establishes some of the requirements for completing the HHSC cost report for nursing facilities. HHSC, under its authority and responsibility to administer and implement rates, is amending the rule to replace an outdated reference.

Comments

The 30-day comment period ended November 1, 2010. During this period, HHSC received no comments regarding the proposed amendment to this rule.

Legal Authority

The amendment is adopted under the Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Texas Human Resources Code, §32.021, and the Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.510, §355.511

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.510, Reimbursement Methodology for Emergency Response Services (ERS) and §355.511, Reimbursement Methodology for Home-Delivered Meals (HDM), under Title 1, Part 15, Chapter 355, Subchapter E, without changes to the proposed text as published in the September 17, 2010, issue of the *Texas Register* (35 TexReg 8463) and will not be republished.

Background and Justification

Section 355.510 establishes the methodology for determining the reimbursement ceiling for the ERS program and §355.511 establishes the methodology for determining the reimbursement ceiling for the Home-Delivered Meals (HDM) program. HHSC, under its authority and responsibility to administer and implement rates, is updating these rules to replace outdated references. The adopted amendments replace references to the Department of Human Services (DHS) with references to HHSC and the Department of Aging and Disability Services (DADS) and replace outdated references to Chapter 20 at Title 40 of the Texas Administrative Code (TAC) with references to Chapter 355 at Title 1 of the TAC.

Comments

The 30-day comment period ended October 17, 2010. During this period, HHSC received no comments regarding the proposed amendments to these rules.

The amendments are adopted under the Human Resources Code, §32.021, which provides HHSC with the authority to adopt rules necessary to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; and the Texas Government Code §531.021(a), which authorizes the Executive Commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies and to adopt or approve rates of payment required by law to be adopted or approved by a health and human services agency.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 23, 2010.

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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1 TAC §355.513

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.513, concerning Reimbursement Methodology for the Deaf-Blind with Multiple Disabilities Waiver Program, without changes to the proposed text as published in the September 24, 2010, issue of the *Texas Register* (35 TexReg 8556) and will not be republished.

Background and Justification

Pursuant to §531.0973, relating to Deaf-Blind Multiple Disabilities Waiver Program: Career Ladder for Interveners, as amended by S.B. 63, 81st Legislature, Regular Session, 2009, the Department of Aging and Disability Services (DADS) implemented a career ladder for persons who provide intervener services in the Deaf-Blind with Multiple Disabilities (DBMD) program, effective June 1, 2010. Chapter 531 requires the career ladder to include four levels of interveners (Intervener, Intervener I, Intervener II, and Intervener III) with increasing experience and education requirements and the compensation an intervener receives under the DBMD program be based on and commensurate with the intervener's career ladder classification. Prior to S.B. 63, there was only one level of intervener with one payment rate under the DBMD program.

In response to the implementation of this career ladder, HHSC, under its authority and responsibility to administer and implement rates, is amending §355.513 to implement a reimbursement methodology for Interveners I, II and III and to exclude these job classifications from the attendant compensation rate enhancement. HHSC is also amending Title 1, Part 15, Chapter 355, Subchapter A, §355.112, Attendant Compensation Rate Enhancement, to exclude Interveners I, II, and III from the definition of an attendant. The adopted amendment to §355.112 appears in this issue of the *Texas Register.*

Interveners I, II, and III are required to meet experiential and educational requirements significantly greater than those of a typical community care attendant and payment rates for these staff types are significantly greater than those for an Intervener and other community care attendants. Given these characteristics, the inclusion of Interveners I, II and III in the attendant compensation rate enhancement would not meet the intent of the enhancement program to incentivize increased wages and benefits for community care attendants.

The end result of this amendment will be that a reimbursement methodology will be put in place for Interveners I, II and III and DBMD providers will not be eligible to receive attendant compensation rate enhancements to the Intervener I, II or III rates. Providers will still be able to receive attendant compensation rate enhancements to the Intervener rate.

Comments

The 30-day comment period ended October 25, 2010. During this period, HHSC received no comments regarding the proposed amendment to this rule.

The amendment is adopted under the Human Resources Code, §32.021, which provides HHSC with the authority to adopt rules necessary to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; and the Texas Government Code §531.021(a), which authorizes the Executive Commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies and to adopt or approve rates of payment required by law to be adopted or approved by a health and human services agency.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 23, 2010.

TRD-201006726
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: December 13, 2010
Proposal publication date: September 24, 2010
For further information, please call: (512) 424-6900

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION

The Public Utility Commission of Texas (commission) adopts the repeal of §§26.101 - 26.103, 26.107, 26.109, 26.111, 26.113 and 26.114 without changes to the proposal as published in the June 11, 2010, issue of the *Texas Register* (35 TexReg 4816) and adopts new §§26.101, 26.102, 26.107 and 26.111 with changes to the proposed text as published in the June 11, 2010, issue of the *Texas Register* (35 TexReg 4816).

This rulemaking project is a complete revision of Chapter 26, Subchapter E relating to Certification, Licensing and Registration. The commission repeals and replaces Subchapter E as follows: repeal and adopt new §§26.101, 26.102, 26.107, and 26.111; repeal §26.103 and incorporate it into new §26.101; and repeal §§26.109, 26.113, and 26.114 and incorporate provisions of these three rules into new §26.111. This rulemaking takes eight substantive rules and streamlines these rules into four new substantive rules. The rules will remove obsolete language, update reporting requirements, strengthen certification requirements, and consolidate the rules to omit redundant requirements. This repeal and adoption of new rules takes place in Project Number 35246.

The commission received comments from Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T), Level 3 Communications, LLC (Level 3), Verizon Wireless Texas, LLC (Verizon Wireless) and T-Mobile West Corporation (T-Mobile).

The commission posed three questions for comment, but did not receive any comments in response to the questions.

Section 26.101(d) - Name on Certification.

AT&T commented that the rule proposes that all local exchange telephone services (LETS), basic local telecommunications services (BLTS) and switched access service provided under a CCN be provided to consumers in the name under which the certificate is granted. AT&T stated that the one-size-fits-all approach is not realistic in today's environment and that an exception should be made for business customers with more than five access lines who contract for services. AT&T stated that business customers often want to receive services provided by regulated and non-

regulated affiliated telecommunications companies under one name and a single bill. AT&T stated that the name that a company receives service from may be different than the certificated name. AT&T provided an example of business customers that may want to contract with AT&T Texas and other affiliated companies simply under the name AT&T.

AT&T also commented that under §26.101(d)(3) as proposed that the Staff would review any name for which an applicant for certification proposes to use and would notify the applicant if a requested name may not be used. However, AT&T argued that this proposal denies the applicant an avenue for appeal. AT&T stated that if interim orders, including those dealing with standing and discovery rulings can be appealed to the commission, so should denial of a requested name.

Commission response

It is not the commission's intention to require CCN holders to provide service in only one name. The language in §26.101(d) has been revised to clarify that service provided under a CCN shall be provided in the names or assumed names under which certification is granted by the commission.

The commission finds that the rule should clarify that the commission determines whether an applicant may use a requested name. As with other certification requirements, Staff submits recommendations regarding whether the requested name is in compliance with commission requirements. Consequently, an applicant could respond to Staff's recommendation before an order on the merits. Additionally, an applicant could appeal an adverse order. The language in subsection (d)(3) is revised to more closely reflect the actual certification review process: "Any name in which the applicant proposes to do business will be reviewed for compliance with paragraph (2) of this subsection. If the presiding officer determines that any requested name does not meet the requirements of paragraph (2) of this subsection, the presiding officer shall notify the applicant that the requested name may not be used by the applicant. The applicant will be required to amend its application to provide at least one suitable name in order to be certificated."

Section 26.101(e) - Affiliate Guidelines for CCN Holders.

AT&T stated that §26.101(e) could be eliminated altogether. The wording repeats that language of PURA §54.102, applicants are responsible for knowledge of that provision, and in reality this requirement only currently applies to AT&T because of the five million regulated access line restriction. AT&T also stated that application of this provision to AT&T will likely end in the next year or two as more access lines are lost to non-regulated competitive alternatives and AT&T drops below the five million access line threshold.

Commission response

The commission agrees with AT&T that the proposed language essentially repeats language in PURA §54.102 and is not necessary. The commission has removed §26.101(e) from the rule as adopted.

Section 26.101(f)(2) - Amending a CCN.

AT&T commented that §26.101(f)(2)(G) proposes that an application for an amendment for a minor service area boundary change must contain "published notice." AT&T stated that it is not clear whether this refers to the notice that the commission directs be published in the *Texas Register* or something else. Moreover, the reference to P.U.C. Procedural Rule §22.52(b) only further confuses the issue because the rule includes the phrase, "except for minor boundary changes," thereby directly excluding minor service area boundary changes from the rule's notice requirements. AT&T requests that the first sentence of §26.101(f)(2)(G) be deleted.

Commission response

Pursuant to P.U.C. Procedural Rule §22.52, published notice is not required for minor service area boundary changes. The commission agrees with AT&T's suggestion to delete the sentence that references published notice and has removed that sentence from the rule.

Section 26.101(h)(2) - Reporting Requirements.

AT&T commented that subsection (h)(2) proposes that CCN holders must file in a commission project within two business days a copy of the termination/disconnection notice sent to certified telecommunications providers (CTPs). AT&T stated that two business days is insufficient time and requested that this be changed to five working days. AT&T requested changing the phrase "certified telecommunications providers" to certificated telecommunications utilities" to better track the statutory language in PURA §51.002(10) and existing §26.5(36).

Commission response

The commission agrees that it is appropriate to extend the requirement for filing a termination or disconnection notice to five business days and has revised what is now subsection (g)(2) to reflect that change.

The commission disagrees with AT&T's suggestion to replace "Certified Telecommunications Providers (CTPs)" with the term "Certified Telecommunications Utilities (CTUs)" because CTP is a broader term and AT&T's proposed change would reduce the number of companies that are reported to the commission that receive a termination or disconnection notice. Leaving the term as "certificated telecommunications providers" will help ensure that the commission is kept informed of all companies that receive a termination or disconnection notice.

Section 26.101(h)(3) - Bankruptcy Notification.

AT&T commented that §26.101(h)(3) requiring CCN holders to file a notice of bankruptcy in a project established for that purpose is simply not needed and should be deleted. AT&T stated that in Texas, only ILECs are CCN holders and AT&T is not aware of a single ILEC that has filed for bankruptcy since PURA was first enacted and the commission was created in 1975.

Commission response

The commission concludes that the bankruptcy notification requirement should remain in the rule. PURA §54.305 provides that the commission, upon written notice that a certified telecommunications utility has filed a petition in bankruptcy court, may inform the appropriate court and parties of the commission's interest in obtaining notice of proceedings, and that the commission may intervene and participate in any bankruptcy proceedings that affect customers or providers of telecommunications service in Texas. The commission concludes that the notification requirement in §26.101(h)(3) will assist the commission in carrying out its responsibilities under PURA §54.305. Therefore, the commission finds that the bankruptcy notification requirement in this rule is appropriate.

Section 26.101(h)(4) - Required Reports.

AT&T proposed that §26.101(h)(4) is unnecessary and should be deleted. AT&T argued that PURA and other existing rules already require CCN holders to file all required reports. CCN holders are already charged with knowledge of the requirements of PURA and commission rules.

Commission response

While the commission agrees that PURA and other Substantive Rules contain reporting requirements, the commission has attempted to list the major reporting requirements in one location for the convenience of CCN holders to facilitate compliance with commission rules. Therefore, the commission declines to make the change suggested by AT&T.

Section 26.101(i) - Revocation or Suspension.

AT&T noted that the only express authority in PURA for revocation or amendment of a CCN is in §54.008 ("if the commission finds that the certificate holder has never provided service or is no longer providing service in all or any part of the certificated area"). AT&T stated that to the extent that subsection (i) repeats language already in PURA, such language is unnecessary and should be deleted. Further, AT&T stated that there is no basis in PURA for the remainder of the conditions set forth in subsection (i) with respect to CCN holders. AT&T commented that the Legislature has made clear several times that a CCN (for telecommunications) may only be revoked or suspended in accordance with PURA §54.008 and that although it may be in the public interest for the commission to have broader authority to suspend or revoke certificates such authority must come from the Legislature and cannot be implied.

Commission response

The commission agrees that PURA §54.008 addresses the requirements for revocation of CCNs for telecommunications utilities; therefore, subsection (i) is not necessary and has been removed from the rule as adopted.

Section 26.107 - Registration of Interexchange Carriers (IXCs), Prepaid Calling Services Companies (PPC), and Other Non-dominant Telecommunications Carriers.

Verizon Wireless Texas LLC (Verizon Wireless) and T-Mobile West Corporation (T-Mobile) filed comments seeking to clarify that proposed rule §26.107 would not be applicable to commercial mobile radio services (CMRS) providers. Verizon Wireless and T-Mobile noted that the commission's authority over CMRS providers is limited and that when this set of rules was last reviewed and modified in 2000 that the commission at that time reiterated in its preamble that the intention was that the rules would not apply to CMRS providers. Verizon Wireless and T-Mobile requested that the commission once again make clear that §26.107 is not intended to apply to CMRS providers, consistent with the historical commission practice. Verizon Wireless and T-Mobile stated that CMRS service is explicitly exempted from regulation in PURA §51.003, which defined the applicability of the act and reads, "Except as otherwise expressly provided by this title, this title does not apply to:...(5) a provider of commercial mobile radio service as defined by Section 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66), other than conventional rural radio-telephone services provided by a wire-line telephone company under the Public Mobile Service rules of the Federal Communications Commission (47 C.F.R. Part 22)."

Commission response

The commission agrees that PURA §51.002(10)(A)(iv) states that CMRS is a "telecommunications provider" but the law specifically exempts these entities from regulated entities for the purpose of Chapters 17 (Customer Protection), 55 (Regulation of Telecommunications Services) or 64 (Customer Protection). The commission agrees that CMRS providers are not subject to §26.107.

AT&T commented upon concerns with using the terminology of "telecommunications provider" versus "telecommunications utility" throughout substantive rule §26.107 because it believes that the use of the term telecommunications utility unlawfully enlarges the Commission's authority. AT&T also noted that PURA §52.101 uses the term "telecommunications utility."

Commission response

The commission agrees that PURA §52.101 uses the term "telecommunications utility" and that Substantive Rule §26.107 should be revised to reflect this terminology. The commission has changed references of "telecommunications provider" and "nondominant carrier" to "telecommunications utility" or "registrant" throughout §26.107.

Section 26.107(b)(1) - Registered Name.

AT&T stated its concern that subsection §26.207(b)(1) contains the requirement that a nondominant carrier may register in only one name. AT&T argued that there is no support for this limitation in PURA §§52.101 - 52.112. AT&T stated that the rule as proposed appeared to be contrary to PURA §52.102's directive that the commission's jurisdiction over nondominant carriers is limited by Chapter 52, Subchapter C, except as provided by Chapter 52, Subchapters D and K, Chapter 55 and PURA §55.011. AT&T stated that the requirement that the registration name shall not be deceptive, misleading, etc. has no basis in PURA Subchapter C and would more appropriately within the scope of the duties of the Texas Secretary of State.

Commission response

The commission disagrees with AT&T on this point. The commission concludes that the requirement in §26.207(b)(1) that registrants may register in only one name is appropriate, and that the requirement that the name shall not be deceptive, misleading, etc. is within the jurisdiction of the commission. PURA §52.102(a) provides that Subchapter K of Chapter 55 applies to non-dominant telecommunication utilities. PURA §55.307, which is a part of Subchapter K of Chapter 55, authorizes the commission to prohibit deceptive or fraudulent practices. Additionally, the commission notes that the "one name" requirement for carriers subject to §26.107 has existed for more than ten years.

Section 26.107(b)(1)(C) - Registered Name.

AT&T commented that subsection §26.107(b)(1)(C), which proposes that the Staff will review any name which an applicant for certification proposes to use and notify the applicant if a requested name. may not be used effectively denies the applicant an avenue for appeal of Staff's decision. AT&T stated that if interim orders, including those dealing with standing and discovery rulings can be appealed to the commission, so should denial of a requested name.

Commission response

The commission's rules provide a method of recourse for denial of a requested name. Section 22.2(14) of the commission's procedural rules states that a complainant is a "person...who files

a complaint intended to initiate a proceeding with the commission regarding any act or omission by the commission or any person subject to the commission's jurisdiction." Accordingly, a person may file a complaint regarding a denial of a requested name as an act by the commission. The last sentence of subsection (b)(1)(C) has been revised to remove the reference to an application to clarify that this section pertains to registrations - which are informational filings - which do not have an amendment application process.

Section 26.107(b)(5) - Telecommunications Affiliates.

AT&T was concerned that the requirement in subsection (b)(5), that a registrant must provide a list of all telecommunications affiliates that operate in Texas with a description of the relationship to the registrant and an organizational chart if available, does not appear to have a statutory basis in Chapter 52, Subchapter C. AT&T questioned whether this proposed requirement really serves a useful purpose and stated its belief that subsection (b)(5) should be deleted.

Commission response

The commission disagrees with AT&T's suggestion to delete this requirement. PURA §52.103(b)(3) requires nondominant registrants to provide "other registration information the commission directs." The commission believes that affiliate information is useful to Staff in determining company affiliates and whether such affiliates are in compliance with commission rules. Therefore, affiliate information should be required of registrants subject to §26.107.

Section 26.107(e)(2) - Reporting Requirements.

AT&T commented on §26.107(e)(2), which reminds registrants to comply with all reporting requirements in PURA and applicable substantive rules, including several that are listed. AT&T stated that since registrants are already charged with knowledge of PURA's requirements and all applicable rules, subsection could be deleted in its entirety; however, since some registrants do not deal with regulatory requirements daily as do ILECs, keeping this subsection may be helpful to some. AT&T further commented that the reference to HUB Report and Gross Receipts Assessment Report should be deleted because per PURA §12.252 it only applies to entities that are "utilities," and as that term is defined in PURA §11.004 and §51.002(8) a "utility" is a dominant carrier. AT&T stated that this would exclude all telecommunications utilities except for ILECs. By contrast, in PURA §52.256, which requires the Workforce Diversity Report, the Legislature used the term "telecommunications utility", a term which has its own more expansive definition in PURA §51.002(11), and which includes interexchange carriers (IXCs) and other specifically delineated non-dominant carriers. AT&T stated that similarly the reference to Gross Receipts Assessment Report should be deleted because per PURA §16.001 it only applies to public utilities *(i.e.,* ILECs) and IXCs and does not apply to all nondominant carriers, telecommunications utilities, or telecommunications providers.

Commission response

The commission has attempted to list the major reporting requirements in one location for the convenience of registrants to facilitate compliance through awareness. The commission agrees that PURA §12.252 (HUB Report), §52.256 (Workforce Diversity Report), and §16.001 (Gross Receipts Assessment Report) apply only to telecommunications utilities. Therefore, the references to HUB, Workforce Diversity, Gross Receipt Assessment Report requirements have been removed from subsection (e)(2) as adopted.

Section 26.107(f) - Revocation or Suspension.

AT&T commented that among the reasons listed as a basis for revocation or suspension of registration is that the registrant has been found to be in violation of the rules of the Federal Communications Commission and that there does not appear to be a statutory basis for this requirement and hence, it should be deleted.

Commission response

The commission agrees that it is appropriate to remove the reference to the Federal Communications Commission, and has removed such language.

Section 26.111 - Certificate of Operation Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria.

General Comments

The commission posed three questions for comment, but did not receive any comments in response to the questions. However, portions of the rule have been revised and clarified to be consistent with similar provisions in the recently amended §25.107 in Project No. 37685, *Rulemaking to Amend Subst. R. §25.107 Regarding Certification of Retail Electric Providers (REPs).*

AT&T stated that is has similar concerns with this proposed rule that is has with §26.101 in that it repeats provisions already in PURA and is longer than is necessary. AT&T commented that, on the other hand, it recognizes that it is in this area (not with ILEC-CCN holders) where there have been problems. AT&T stated that a few CLECs have "simply walked away" without complying with PURA §54.253 (relating to disconnection of service - a CLEC only provision), and some have engaged in business practices that have resulted in customer dissatisfaction, customer complaints and fraudulent activities. AT&T stated that it is possible that some of the problems that have arisen to date could be eliminated or lessened considerably by requiring more information of applicants on the front end of the certification process, which may allow the commission to more readily recognize non-qualified or high-risk applicants and deny certification. AT&T stated that even though there are several CLECs within the AT&T family of companies that would be affected by the proposed rule, AT&T is willing to live with unnecessary aspects of this proposed rule "as is" to see if it produces fewer customer complaints and better results overall. However, AT&T suggested that the commission should revisit this rule again in 2011 or 2012 in the event that it proves unnecessarily burdensome for the majority of CLECS who do comply with PURA and the commission's rules.

Commission response

The commission appreciates AT&T's recognition that the commission is attempting to alleviate past concerns with this rule revision. The commission agrees with AT&T that some of the proposed disclosure requirements may unnecessarily burden the CLECs that comply with PURA and commission rules. In Project No. 37685, *Rulemaking to Amend Subst. R. §25.107 Regarding Certification of Retail Electric Providers (REPS),* the commission declined to adopt similar additional disclosure requirements for REPs because they would be unduly burdensome to REPs. Similarly, the commission concludes that the disclosure requirements proposed in §26.111 would be too burdensome for the

vast majority of CLECs that do comply with PURA and commission rules. Therefore, the commission has revised the managerial and technical requirements to mirror, to the extent appropriate for COAs and SPCOAs, §25.107 as amended in Project No. 37685.

Section 26.111(i)(3) - Amendment of a COA or SPCOA Certificate.

Level 3 commended the commission for moving beyond the initial Level 3 streamlining proposal and proposing a post merger notice process that applies when two certificated entities are parties to a merger or acquisition. Level 3 stated that the competitive marketplace has resulted in the bankruptcy of non-dominant carriers while at the same time it has created opportunities for non-dominant carriers to consolidate assets or expand lines of business. However, Level 3 contended that legacy regulatory pre-approval requirements constrain nondominant carriers from acting quickly to changing market demands. Level 3 stated that prior approval requirements expose businesses to substantial and unnecessary risks during the time that it may take to process an application process, but that the post merger approval language in subsection (i)(3) ensures that the commission and the state of Texas remain in the forefront of promoting a competitive marketplace. Level 3 commented that the commission does not waive jurisdiction over certificated entities with adoption of the post merger approval process proposed in subsection (i)(3), and that the commission maintains jurisdiction over post-merger certificated entities as long as they provide services in Texas under commission-issued certificates of authority. Level 3 commented that an even more compelling argument for the post merger process envisioned by subsection (i)(3) is the fact that certain merger and acquisition transactions involving public utilities that have market power are not subject to a commission pre-approval process (ILECs subject to Chapter 58 of PURA, *see* PURA §14.101). Level 3 commented that unlike ILECs, nondominant carriers do not posses market power or control over local exchange bottleneck facilities and should be subject to less stringent procedures than ILECs. Level 3 also commented that the post merger language in subsection (i)(3) is not controversial, no opposition was raised in comments or at the rulemaking workshop, and should be approved. Finally, Level 3 requested that "may" be changed to "shall" in the sentence that reads, "[I]f the commission Staff has not filed. within 10 business days, a request to docket the proceeding and determination that a full amendment application is required, a notice of approval may be issued."

Commission response

The commission appreciates Level 3's commendation for its efforts in streamlining the process concerning the acquisition or merger of two certificated CLECs. The commission does not agree with Level 3's suggestion to change in subsection (i)(3) the word "may" to "shall." Subsection (d)(5) states "[e]xcept where good cause exists to extend the time for review, the commission will enter an order approving, rejecting, or approving with modifications a new or amendment application for a COA or SPCOA not later than the 60th day after the date the application for the certificate is filed." The substantive rule requires the commission to approve, reject, or approve with modifications a new or amendment application for a COA or COA not later than the 60th day after the application is filed. Because the rule requires action on a COA or SPCOA application or amendment application, the commission believes that changing subsection (i)(3) to state "shall" rather than "may" is unnecessary. However, to be consistent with subsection (d)(5) the commission has changed the word "may" to "will" which addresses Level 3's concern and is consistent with the requirement of subsection (d)(5).

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

16 TAC §§26.101 - 26.103, 26.107, 26.109, 26.111, 26.113, 26.114

These repeals are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2009 and Supplement 2010) (PURA), which requires the commission to adopt rules reasonably required in the exercise of its powers and jurisdiction; specifically PURA §52.001 which grants the commission the authority to implement rules to protect the public interest and provide equal opportunity to each telecommunications utility in a competitive marketplace.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.101, 17.051, 17.052, 17.053, 51.002, 51.010, 52.102, 52.103, 52.152, 52.207, 52.256, 54.001, 54.002, 54.003, 54.008, 54.051, 54.052, 54.053, 54.054, 54.101, 54.102, 54.103, 54.105, 54.151, 54.152, 54.153, 54.154, 54.155, 54.156, 54.201, 54.251, 54.253, 54.255, 54.258, 55.171 - 55.180, 55.302, and 55.307.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 23, 2010.

TRD-201006748
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: June 11, 2010
For further information, please call: (512) 936-7223

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16 TAC §§26.101, 26.102, 26.107, 26.111

These new sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2009 and Supplement 2010) (PURA), which requires the commission to adopt rules reasonably required in the exercise of its powers and jurisdiction; specifically PURA §52.001 which grants the commission the authority to implement rules to protect the public interest and provide equal opportunity to each telecommunications utility in a competitive marketplace.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.101, 17.051, 17.052, 17.053, 51.002, 51.010, 52.102, 52.103, 52.152, 52.207, 52.256, 54.001, 54.002, 54.003, 54.008, 54.051, 54.052, 54.053, 54.054, 54.101, 54.102, 54.103, 54.105, 54.151, 54.152, 54.153, 54.154, 54.155, 54.156, 54.201, 54.251, 54.253, 54.255, 54.258, 55.171 - 55.180, 55.302, and 55.307.

§26.101. Certificate of Convenience and Necessity Criteria.

(a) Scope and Purpose. The commission may grant a certificate of convenience and necessity (CCN) to provide local exchange telephone service, basic local telecommunications service or switched access service pursuant to Public Utility Regulatory Act (PURA), Chapter 54, Subchapter B.

(b) Certificates of Convenience and Necessity for new service areas and facilities.

(1) The commission may issue a CCN only if it finds that the CCN is necessary for the service, accommodation, convenience, or safety of the public and complies with the requirements in PURA §54.054 (relating to Grant or Denial of Certificate).

(2) The commission may grant a CCN as requested, refuse to grant it, or grant it for the construction of a portion of the requested system, facility, or extension, or for the partial exercise of the requested right or privilege.

(c) Non-exclusivity of CCN. A CCN granted under this section shall not be construed to vest exclusive service or property rights in the area certificated. The commission may grant additional certification to another utility or utilities for all or any part of the area certificated under this section, upon a finding of public convenience and necessity.

(d) Name on Certification. All local exchange telephone service, basic local telecommunications service, and switched access service provided under a CCN shall be provided in the names or assumed names under which certification is granted by the commission.

(1) The applicant must provide the following information from its registration with the Office of the Secretary of State or from its corporate registration in another state or county, as applicable:

(A) Form of business being registered *(e.g.,* corporation, limited liability company, partnership, sole proprietorship, etc.);

(B) Any assumed names;

(C) Certification/file number; and

(D) Date business was registered.

(2) The requested certificate names shall not be deceptive, misleading, vague, inappropriate, confusing or duplicative of an existing Certificated Telecommunications Utility (CTU).

(3) Any name in which the applicant proposes to do business will be reviewed for compliance with paragraph (2) of this subsection. If the presiding officer determines that any requested name does not meet the requirements of paragraph (2) of this subsection, the presiding officer shall notify the applicant that the requested name may not be used by the applicant. The applicant will be required to amend its application to provide at least one suitable name in order to be certificated.

(e) Amending a CCN. The commission may amend any certificate issued under this section if it finds that the public convenience and necessity requires such amendment.

(1) Pursuant to PURA Chapter 54 Subchapter B, CCNs holders must amend their certificates for:

(A) A change in the name of the holder of the CCN, including a change of the corporate name or assumed name of the certificate holder.

(B) A change in the boundary of a service area.

(C) CCNs for Non-Chapter 58 utilities are not transferable without approval of the commission and continue in force except as ordered by the commission. The CCN amendment must be filed jointly by the utilities involved and comply with the requirements set forth in PURA §14.101 and §51.010 (relating to Report of Certain Transactions; Commission Consideration and Commission Investigation of Sale, Merger, or Certain Other Actions).

(2) Minor service area boundary amendment applications are applications that involve less than 5% of the customers of an exchange. An application for an amendment for a minor service area boundary change must be jointly filed by the affected CCN holders and, at a minimum, contain the following information:

(A) Legal name and all assumed names under which the applicant conducts its business;

(B) Business office address, primary telephone number, fax number, website address and primary email address;

(C) Business regulatory contact(s), including business address, primary phone number and primary email address;

(D) Reason(s) for the proposed amendment;

(E) Clear and concise written description of the geographic location of the proposed amendment;

(F) Maps (minimum size of 8 1/2" x 11") of the proposed amendment identifying the existing and proposed boundaries clearly and conspicuously. At a minimum, the applicant must provide a county map and expanded view(s) that clearly and conspicuously identifies the boundary change. Each map must clearly and conspicuously illustrate the location of the area for which the amendment is being requested, including but not limited to, geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area. The maps of the proposed amendment must be submitted in hard copy and, upon request by Staff, in compatible electronic format; and

(G) Notice of the proceeding and notice to customers. Customers being transferred from one utility to another shall be given notice in accordance with §26.130(k) of this title (relating to Selection of Telecommunications Utilities).

(f) Sale, transfer, merger. A notice must be filed for the sale, transfer, or merger (STM) of at least 50% of the utility, or sale, acquisition or lease of facilities as an operating unit or system for a total consideration of more than $100,000.

(1) Chapter 58 electing utilities must file a written notification with the commission no later than 30 days after the STM has closed.

(2) Chapter 59 electing utilities must comply with the requirements set forth in PURA §14.101 and §51.010.

(g) Reporting requirements.

(1) Contact Information. Each CCN holder must maintain accurate contact information with the commission. At a minimum, the CCN holder is required to report a current regulatory contact person, complaint contact person, primary and secondary emergency contact, operation and policy migration contact, business physical address, primary business telephone number, toll-free customer service number, and primary email address. Additional information for tertiary emergency contact, separate mailing address, and additional company contact information is optional.

(A) After January 1st and before April 30th of each year, a CCN holder must electronically submit its current contact information to the commission, in the manner established by the commission.

(B) Contact information must be updated not later than the 30th day after the date of any change to the required information in paragraph (1) of this subsection, in the manner established by the commission.

(2) Termination/Disconnection Notice. CCN holders must file a copy of the termination/disconnection notice sent to certified telecommunications providers (CTP) within five business days following the issuance of the notice. The service termination/disconnection notice must be filed in the project established for this purpose.

(3) Bankruptcy Notification. CCN holders that have filed a petition of bankruptcy must file a notice of bankruptcy in a project established for this purpose. The notice must be filed not later than the fifth business day after the filing of a bankruptcy petition. The notice of bankruptcy must include, at a minimum, the following information:

(A) The name of the certificated company filing for bankruptcy, date and state in which the bankruptcy proceeding was filed, type of bankruptcy *(e.g.*, Chapter 7, 11, 13), the bankruptcy case number; and

(B) The number of affected customers, the type of service being provided to the affected customers, and name of the provider(s) of last resort associated with the affected customers.

(4) Required Reports. A certificate holder shall file all reports required by PURA and other sections in this title, including but not limited to: §26.51 of this title (relating to Reliability of Operations of Telecommunications Providers); §26.73 of this title (relating to Annual Earnings Report); §26.76 of this title (relating to Gross Receipts Assessment Report); §26.80 of this title (relating to Annual Report on Historically Underutilized Businesses); §26.81 of this title (relating to Service Quality Reports), §26.85 of this title (relating to Report of Workforce Diversity and Other Business Practices); §26.465 of this title (relating to Methodology for Counting Access Lines and Reporting Requirements for Certified Telecommunications Providers); and §26.467 of this title (relating to Rates, Allocation, Compensation, Adjustments and Reporting).

§26.102. Registration of Pay Telephone Service Providers (PTS).

(a) Scope and Purpose. This section applies to the registration of pay telephone service (PTS) providers pursuant to Public Utility Regulatory Act (PURA) Chapter 55, Subchapter H, §§55.171 - 55.180 (relating to Pay Telephones) and Chapter 26, Subchapter N, §§26.341 - 26.347 of this title (relating to Pay Telephone Services).

(b) Registration Requirement. All PTS providers (except CCN holders) must submit a PTS registration before providing pay telephone services in the State of Texas. If the PTS registration holder has any change to the information provided in the registration, then the PTS registration holder must update its registration information within 30 days of the change.

(c) Re-registration. PTS registrations expire on August 1st of each year. Each PTS provider must renew its registration with the commission by electronically submitting the required form in the manner established by the commission. A registration that is renewed during the period from January 1 to July 31 is extended one year. A registration that is not renewed is no longer valid.

(d) Disclosure of location. Registration requires disclosure of the location of each of the registrant's pay telephones by county. If a registrant asserts confidentiality of information related to the physical location of pay telephones, it must file this information in accordance with §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Material).

(e) Network access. Certificated Telecommunications Utilities (CTUs) shall provide pay telephone access service (PTAS) to a PTS provider that provides its commission-issued PTS registration number to the CTU.

(f) Revocation or suspension. If the commission finds that a PTS provider is in violation of PURA, commission rules, or rules of the Federal Communications Commission, the commission may suspend or revoke the PTS registration and may direct all CTUs to discontinue provision of pay telephone access service to the PTS provider.

(g) Reporting requirements. Each PTS provider must maintain accurate contact information.

§26.107. Registration of Interexchange Carriers (IXCs), Prepaid Calling Services Companies (PPC), and Other Nondominant Telecommunications Carriers.

(a) Scope and Purpose. This section applies to the registration of telecommunications utilities *(i.e.*, providers of intralata and interlata long distance telecommunications services, prepaid calling services companies pursuant to §26.34 of this title (relating to Telephone Prepaid Calling Services), and other telecommunications services that do not require certification pursuant to the Public Utility Regulatory Act (PURA) Chapter 54, Subchapter C (relating to Certificate of Operating Authority); except as noted in PURA §51.002(10) (relating to Definitions)).

(b) Registration Requirement. Each telecommunications utility not holding a certificate of operating authority (COA) or service provider certificate of operating authority (SPCOA) shall file with the commission the information set forth in paragraphs (1) - (5) of this subsection no later than the 30th day after commencing service in the State of Texas. A registered telecommunications utility must report to the commission any changes to the information provided in its registration within 30 days of the change.

(1) Registered Name. A telecommunications utility may register in only one name:

(A) The applicant shall provide the date the requested name was accepted, the certification/file number assigned to the applicant and any assumed names registered with the Office of the Secretary of State or the registration of assumed names in another state or county, as applicable.

(B) The requested name shall not be deceptive, misleading, vague, or duplicative of an existing certificated telecommunications utility (CTU) or other existing registrants.

(C) Commission staff will review any name in which the applicant proposes to do business. If staff determines that any requested name does not meet the requirements of subparagraph (B) of this paragraph, it shall notify the applicant that the requested name may not be used by the applicant. The applicant will be required to provide at least one suitable name in order to be registered.

(2) Registration Number. The commission will assign a PUC registration number to each new registrant upon completion of the registration process;

(3) Contact Information. Contact information must include, but not be limited to: business office information (contact's name, contact's title, business and mailing address, primary phone number, fax number and primary email address), complaint contact, regulatory contact, primary and secondary emergency contacts and a toll-free customer service number;

(4) Federal Carrier Identification. Registrant must provide the FCC Carrier Identification Code (CIC) or National Exchange Carri-

ers Association (NECA) Operating Carrier Numbers (OCNs), if available; and

(5) Telecommunications Affiliates. Registrant must provide a list of all telecommunications affiliates that operate in Texas with a description of the relationship to the registrant, and an organizational chart, if available.

(c) Re-Registration. Registrations subject to this section expire on May 1st of each odd-numbered year. Each registrant subject to this section must re-register with the commission between January 1st and April 30th of each odd-numbered year by electronically submitting the required form in the manner established by the commission. A registration that is renewed during the period from January 1 to April 30 of an odd-numbered year is extended for another two years. A registration that is not renewed is no longer valid.

(d) Amendments to Registration.

(1) Name change. If a registrant proposes to change its name, it must file a written notification and provide at a minimum: its current registered name and registration number, the new registered name, and an explanation for the requested name change.

(2) Cancellation of a Registration. If a registrant proposes to cancel its registration it must file a written notification and provide at a minimum: its current registered name, registration number, and explanation of the requested cancellation. The explanation of the cancellation must include the disposition of all affected customers, whether notice was provided to customers, a copy of the notice provided to customers, whether any credits or deposits are outstanding, and the disposition of credits or deposits.

(e) Required Reports.

(1) Updates to contact information. All registrants subject to this section shall annually submit updated contact information in the manner established by the commission.

(2) All registrants subject to this section shall comply with the reporting requirements in PURA and other sections of this title, including but not limited to: §26.89 of this title (relating to Information Regarding Rates and Services of Nondominant Carriers).

(f) Revocation or Suspension. The commission may suspend or revoke the registration pursuant to PURA Chapter 17, if the commission finds that a registrant is in violation of PURA or commission rules.

§26.111. Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria.

(a) Scope and Purpose. This section applies to the certification of persons and entities to provide local exchange telephone service, basic local telecommunications service, and switched access service as holders of certificates of operating authority (COAs) and service provider certificates of operating authority (SPCOA) established in the Public Utility Regulatory Act (PURA), Chapter 54, Subchapters C and D.

(b) Definitions.

(1) Affiliate--An affiliate of, or a person affiliated with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under the common control with, the person specified.

(2) Control--The term control (including the terms controlling, controlled by and under common control with) means the power, either directly or indirectly through one or more affiliates, to direct or cause the direction of the management or policies of a person, whether through ownership of voting securities, by contract, or otherwise.

(3) Executive officer--When used with reference to a person, means its president or chief executive officer, a vice-president serving as its chief financial officer, or a vice-president serving as its chief accounting officer, or any other officer of the person who performs any of the foregoing functions for the person.

(4) Facilities-based certification--Certification that authorizes the certificate holder to provide service using its own equipment, unbundled network elements, or E9-1-1 database management associated with selective routing services.

(5) Permanent employee--An individual that is fully integrated into the certificate holder's business. A consultant is not a permanent employee.

(6) Person--Includes an individual and any business entity, including and without limitation, a limited liability company, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, but does not include a municipal corporation.

(7) Principal--A person or member of a group of persons that controls the person in question.

(8) Shareholder--The term shareholder means the legal or beneficial owner of any of the equity in any business entity, including without limitation and as the context and applicable business entity requires, stockholders of corporations, members of limited liability companies and partners of partnerships.

(c) Ineligibility for certification.

(1) An applicant is ineligible for a COA or SPCOA if the applicant is a municipality.

(2) An applicant is ineligible for a COA if the applicant has not created a proper separation of business operations between itself and an affiliated holder of a certificate of convenience and necessity as required by PURA §54.102 (relating to Application for Certificate).

(3) An applicant is ineligible for a SPCOA if the applicant, together with its affiliates, has more than 6.0% of the total intrastate switched access minutes of use as measured for the most recent 12-month period.

(4) The commission will not grant an SPCOA to a holder of a:

(A) CCN for the same territory; or

(B) COA for the same territory.

(d) Application for COA or SPCOA certification.

(1) A person applying for COA or SPCOA certification must demonstrate its capability of complying with this section. A person who operates as a COA or SPCOA or who receives a certificate under this section shall maintain compliance with this section.

(2) An application for certification shall be made on a form approved by the commission, verified by oath or affirmation, and signed by an executive officer of the applicant.

(3) Except where good cause exists to extend the time for review, the presiding officer shall issue an order finding whether the application is deficient or complete within 20 days of filing. Deficient applications, including those without necessary supporting documentation, will be rejected without prejudice to the applicant's right to reapply.

(4) While an application for a certificate or certification amendment is pending, an applicant shall inform the commission of

any material change in the information provided in the application within five working days of any such change.

(5) Except where good cause exists to extend the time for review, the commission will enter an order approving, rejecting, or approving with modifications, a new or amendment application within 60 days of the filing of the application.

(6) While an application for COA or SPCOA certification or certification amendment is pending, an applicant shall respond to a request for information from commission staff within ten days after receipt of the request by the applicant.

(e) Standards for granting certification to COA and SPCOA applicants. The commission may grant a COA or SPCOA to an applicant that demonstrates that it is eligible under subsection (c) of this section, has the technical and financial qualifications specified in this section, has the ability to meet the commission's quality of service requirements, and it and its executive officers and principals do not have a history of violations of rules or misconduct such that granting the application would be inconsistent with the public interest. In determining whether to grant a certificate, the commission shall consider whether the applicant satisfactorily provided all of the information required in the application for a COA or SPCOA.

(f) Financial requirements. To obtain COA or SPCOA certification, an applicant must demonstrate the shareholders' equity required by this subsection.

(1) To obtain facilities-based certification, an applicant must demonstrate shareholders' equity of not less than $100,000. To obtain resale-only or data-only certification, an applicant must demonstrate shareholders' equity of not less than $25,000.

(2) For the period beginning on the date of certification and ending one year after the date of certification, the certificate holder shall not make any distribution or other payment to any shareholders or affiliates if, after giving effect to the distribution or other payment, the shareholders' equity of the certificate holder is less than the amount required by this paragraph. The restriction on distributions or other payments contained in this paragraph includes, but is not limited to, dividend distributions, redemptions and repurchases of equity securities, or loans or loan repayments to shareholders or affiliates.

(3) Shareholders' equity shall be documented by an audited or unaudited balance sheet for the applicant's most recent quarter. The audited balance sheet shall include the independent auditor's report. The unaudited balance sheet shall include a sworn statement from an executive officer of the applicant attesting to the accuracy, in all material respects, of the information provided in the unaudited balance sheet.

(g) Technical and managerial requirements. To obtain COA or SPCOA certification, an applicant must have and maintain the technical and managerial resources and ability to provide continuous and reliable service in accordance with PURA, commission rules, and other applicable laws.

(1) To obtain facilities-based certification, an applicant must have principals, consultants or permanent employees in managerial positions whose combined experience in the telecommunications industry equals or exceeds five years. To obtain resale-only or data-only certification, an applicant must have principals or permanent employees in managerial positions whose combined experience in the telecommunications industry equals or exceeds one year.

(2) To support technical qualification, applicants must provide the following documentation: the name, title, number of years of telecommunications or related experience, and a description of the experience for each principal, consultant and/or permanent employee that the applicant will rely upon to demonstrate the experience required by paragraph (1) of this subsection.

(3) An applicant shall include the following in its initial application for COA or SPCOA certification:

(A) Any complaint history, disciplinary record and compliance record during the 60 months immediately preceding the filing of the application regarding: the applicant; the applicant's affiliates that provide utility-like services such as telecommunications, electric, gas, water, or cable service; the applicant's principals; and any person that merged with any of the preceding persons;

(i) The complaint history, disciplinary record, and compliance record shall include information from any federal agency including the U.S. Securities and Exchange Commission; any self-regulatory organization relating to the sales of securities, financial instruments, or other financial transactions; state public utility commissions, state attorney general officers, or other regulatory agencies in states where the applicant is doing business or has conducted business in the past including state securities boards or commissions, the Office of the Secretary of State, Texas Comptroller's Office, and Office of the Texas Attorney General. Relevant information shall include the type of complaint, status of complaint, resolution of complaint, and the number of customers in each state where complaints occurred.

(ii) The applicant may request to limit the inclusion of this information if it would be unduly burdensome to provide, so long as the information provided is adequate for the commission to assess the applicant's and the applicant's principals' and affiliates' complaint history, disciplinary record, and compliance record.

(iii) The commission may also consider any complaint information on file at the commission.

(B) A summary of any history of insolvency, bankruptcy, dissolution, merger, or acquisition of the applicant or any predecessors in interest during the 60 months immediately preceding the application;

(C) A statement indicating whether the applicant or the applicant's principals are currently under investigation or have been penalized by an attorney general or any state or federal regulatory agency for violation of any deceptive trade or consumer protection laws or regulations; and

(D) Disclosure of whether the applicant or applicant's principals have been convicted or found liable for fraud, theft, larceny, deceit, or violations of any securities laws, customer protection laws, or deceptive trade laws in any state.

(4) Quality of service and customer protection.

(A) The applicant must affirm that it will meet the commission's quality-of-service standards as listed on the quality of service questionnaire contained in the application. The quality-of-service standards include E9-1-1 compliance and local number portability capability. Data-only providers are not subject to the requirements for E9-1-1 and local number portability compliance as applicable to switched voice services.

(B) The applicant must affirm that it is aware of and will comply with the customer protection rules and disclosure requirements as set forth in Chapter 26, Subchapter B, of this title (relating to Customer Service and Protection).

(5) Limited scope of COAs and SPCOAs. If, after considering the factors in this subsection, the commission finds it to be in the public interest to do so, the commission may:

(A) Limit the geographic scope of the COA.

(B) Limit the scope of an SPCOA's service to facilities-based, resale-only, data-only, geographic scope, or some combination of the preceding list.

(h) Certificate Name. All local exchange telephone service, basic local telecommunications service, and switched access service provided under a COA or SPCOA must be provided in the name under which certification was granted by the commission. The commission shall grant the COA or SPCOA certificate in only one name.

(1) The applicant must provide the following information from its registration with the Office of the Secretary of State or registration with another state or county, as applicable:

(A) Form of business being registered *(e.g.,* corporation, company, partnership, sole proprietorship, etc.);

(B) Any assumed names;

(C) Certification/file number; and

(D) Date business was registered.

(2) Business names shall not be deceptive, misleading, inappropriate, confusing or duplicative of existing name currently in use or previously approved for use by a Certificated Telecommunications Provider (CTP).

(3) Any name in which the applicant proposes to do business will be reviewed for compliance with paragraph (2) of this subsection. If the presiding officer determines that any requested name does not meet the requirements of paragraph (2) of this subsection, the presiding officer shall notify the applicant that the requested name may not be used by the applicant. The applicant will be required to amend its application to provide at least one suitable name in order to be certificated.

(i) Amendment of a COA or SPCOA Certificate.

(1) A person or entity granted a COA or SPCOA by the commission shall file an application to amend the COA or an SPCOA in a commission approved format in order to:

(A) Change the corporate name or assumed name of the certificate holder.

(i) Name change amendments may be granted on an administrative basis, if the holder is in compliance with applicable commission rules and no hearing is requested.

(ii) Commission staff will review any name in which the applicant proposes to do business. If staff determines that any requested name is deceptive, misleading, vague, inappropriate, or duplicative, it shall notify the applicant that the requested name may not be used by the applicant. The applicant will be required to provide at least one suitable name or the amendment may be denied.

(B) Change the geographic scope of the COA and SPCOA.

(C) Sell, transfer, assign, or lease a controlling interest in the COA or SPCOA or sell, transfer or lease a controlling interest in the entity holding the COA or the SPCOA. An application for this type of amendment must:

(i) be filed at least 60 days prior to the occurrence of the transaction;

(ii) be jointly filed by the transferor and transferee;

(iii) comply with the requirements for certification; and

(iv) comply with applicable commission rules.

(D) Change Type of Provider from resale-only, facilities-based only or data-only restrictions on a SPCOA certificate.

(E) Discontinuation of service and relinquishment of certificate, or discontinuation of optional services. Such an application is subject to subsections (m) and (n) of this section.

(2) If the application to amend is for corporate restructuring, a change in internal ownership, or an internal change in controlling interest, the applicant may file an abbreviated amendment application, unless the ownership or controlling interest involves an uncertificated company, significant changes in management personnel, or changes to the underlying financial qualifications of the certificate holder as previously approved. If the commission staff cannot make a determination of continued compliance based on the applicable substantive rules from the information provided on the abbreviated amendment application, then a full amendment application shall be filed.

(3) When a certificate holder acquires or merges with another certificate holder (other than a CCN holder), the acquiring entity must file a notice within 30 days of the closing of the acquisition or merger in a project established by staff. Staff shall have 10 business days to review the notice and determine whether a full amendment application will be required. If staff has not filed, within 10 business days, a request to docket the proceeding and determination that a full amendment application is required, a notice of approval may be issued. Notice to the commission shall include but not be limited to:

(A) A joint filing statement;

(B) Certificated entity names, certificate numbers, contact information, and statements of compliance; and

(C) An affidavit from each certificated entity attesting to compliance of COA or SPCOA certification requirements.

(4) No later than five working days after filing an amendment application or amendment notice with the commission, the applicant must provide a copy of the amendment application or notice to all affected 9-1-1 entities and the Commission on State Emergency Communications.

(5) If the application to amend requests any change other than a name change, the factors as set forth in subsections (c) and (d) of this section may be considered by the commission in determining whether to approve an amendment to a COA or SPCOA.

(j) Non-use of certificates. Applicants shall use their COA or SPCOA certificates expeditiously.

(1) A certificate holder that has discontinued providing service for a period of 12 consecutive months after the date the certificate holder has initially begun providing service must file an affidavit on an annual basis attesting that it continues to possess the required technical and financial resources necessary to provide the level of service proposed in its initial application.

(2) A certificate holder that has not provided service within 24 months of being granted the certificate by the commission may have its certificate suspended or revoked.

(k) Reporting Requirements.

(1) Each COA or SPCOA holder must provide and maintain accurate contact information. At a minimum, the COA or SPCOA holder shall maintain a current regulatory contact person, complaint contact person, primary and secondary emergency contact, operation and policy migration contact, business physical and mailing address, primary business telephone number, toll-free customer service num-

ber, and primary email address. The COA or SPCOA holder shall the required information in the manner established by the commission.

(2) Contact information must be updated between January 1st and April 30th of each year. The COA or SPCOA holder must electronically submit the required information in a manner established by the commission.

(3) When terminating or disconnecting service to another CTP, COA and SPCOA holders shall file a copy of the termination/disconnection notice with the commission not later than two business days after the notice is sent to the CTP. The service termination/disconnection notice shall be filed under a project number established for that purpose.

(4) COA and SPCOA holders shall file a notice of the initiation of a bankruptcy in a project number established for that purpose. The notice must be filed not later than the fifth business day after the filing of the bankruptcy petition. The notice of bankruptcy must also include, at a minimum, the following information:

(A) The name of the certificated company that is the subject of the bankruptcy petition, the date and state in which bankruptcy petition was filed, type of bankruptcy *(e.g.,* Chapter 7, 11, or 13, and whether it is voluntary or not), the bankruptcy case number; and

(B) The number of affected customers, the type of service being provided to the affected customers, and the name of the provider(s) of last resort associated with the affected customers.

(5) A certificate holder shall file all reports required by PURA and this title, including but not limited to: §26.51 of this title (relating to Reliability of Operations of Telecommunications Providers); §26.76 of this title (relating to Gross Receipts Assessment Report); §26.80 of this title (relating to Annual Report on Historically Underutilized Businesses); §26.85 of this title (relating to Report of Workforce Diversity and Other Business Practices); §26.89 of this title (relating to Information Regarding Rates and Services of Nondominant Carriers); §26.465 of this title (relating to Methodology for Counting Access Lines and Reporting Requirements for Certified Telecommunications Providers); and §26.467 of this title (relating to Rates, Allocation, Compensation, Adjustments and Reporting).

(l) Standards for discontinuation of service and relinquishment of certification. A COA or SPCOA holder may cease operations in the state only if commission authorization to cease operations has been obtained. A COA or SPCOA holder that ceases operations and relinquishes its certification shall comply with PURA §54.253 (relating to Discontinuation of Service by Certain Certificate Holders).

(1) Before the certificate holder ceases operations, it must give notice of the intended action to the commission, each affected customer, the Commission on State Emergency Communications, each wholesale provider of telecommunications facilities or services from which the certificate holder purchased facilities or services, the Texas Universal Service Fund, and the Office of Public Utility Counsel (OPC).

(A) The notification letter shall clearly state the intent of the certificate holder to cease providing service.

(B) The notification letter shall give customers a minimum of 61 days notice of termination of service, and the date of termination of service shall be clearly stated in the notification letter.

(C) The notification letter shall inform customers of the carrier of last resort or make other arrangements to provide service as approved by the customers.

(2) A COA or SPCOA holder that intends to cease operations shall file with the commission an application to cease operations and relinquish its certificate, which shall provide the following information:

(A) Name, address, and phone number of certificate holder;

(B) COA or SPCOA certificate number being relinquished;

(C) The commission docket number in which the COA or SPCOA was granted;

(D) A description of the areas in which service will be discontinued and whether basic service is available from other certificate holders in these areas;

(E) A description of any contractual arrangements with customers that will not be honored, as a consequence of the cessation of operations; and

(F) A statement regarding the disposition of customer credits and deposits, and a sworn statement stating the authority to relinquish certification, that proper notice of the relinquishment has been provided to all customers, and that the information provided in the application is true and correct.

(3) All customer deposits and credits shall be returned within 60 days of notification to cease operations and relinquish certification.

(4) Any switchover fees that will be charged to affected customers as a consequence of the cessation of operations shall be paid by the certificate holder relinquishing the certificate.

(5) Commission approval of the cessation of operations does not relieve the COA or SPCOA of obligations to its customers under contract or law.

(m) Standards for discontinuing optional services. A COA or SPCOA holder discontinuing optional services shall comply with PURA §54.253.

(1) The COA or SPCOA holder shall file an application with the commission to discontinue optional services, which shall provide the following information:

(A) Name, address, and phone number of certificate holder;

(B) COA or SPCOA certificate number being amended;

(C) The commission docket number in which the COA or SPCOA was granted;

(D) A description of the optional services that will be discontinued and whether such services are available from other certificate holders in the areas served by the certificate holder;

(E) A description of any contractual arrangements with customers that will not be honored, as a consequence of the discontinuation of optional services; and

(F) A sworn statement stating the authority to discontinue service options, that proper notice of the discontinuation of service has been provided to all customers, and that the information provided in the amended application is true and correct.

(2) Notification to each customer receiving optional services is required, consisting of the following information:

(A) The notification letter shall clearly state the intent of the certificate holder to cease an optional service and a copy of the letter shall be provided to the commission and OPC.

(B) The notification letter shall give customers a minimum of 61 days notice of discontinuation of optional services.

(3) All customer deposits and credits affiliated with the discontinued optional services shall be returned within 30 days of discontinuation.

(4) The certificate holder shall maintain the optional services until it has obtained commission authorization to cease the optional services.

(5) Commission approval of the discontinuation of an optional service does not relieve the certificate holder of obligations to its customers under contract or law.

(n) Revocation or suspension. A certificate granted pursuant to this section is subject to amendment, suspension, or revocation by the commission for violation of PURA or commission rules or if the holder of the certificate does not meet the requirements under this section to operate as a COA or SPCOA. A suspension of a COA or SPCOA certificate requires the cessation of all COA or SPCOA activities associated with obtaining new customers in the state of Texas. A revocation of a COA or SPCOA certificate requires the cessation of all COA or SPCOA activities in the state of Texas, pursuant to commission order. The commission may also impose an administrative penalty on a person for violations of law within its jurisdiction. The commission staff or any affected person may bring a complaint seeking to amend, suspend, or revoke a COA or SPCOA's certificate. Grounds for initiating an investigation that may result in the suspension or revocation include the following:

(1) Non-use of approved certificate for a period of 24 months, without re-qualification prior to the expiration of the 24-month period;

(2) Providing false or misleading information to the commission;

(3) Bankruptcy, insolvency, failure to meet financial obligations on a timely basis, or the inability to obtain or maintain the financial resources needed to provide adequate service;

(4) Violation of any state law applicable to the certificate holder that affects the certificate holders' ability to provide telecommunications services;

(5) Failure to meet commission reporting requirements;

(6) Engaging in fraudulent, unfair, misleading, deceptive, or anti-competitive practices or unlawful discrimination in providing telecommunications service;

(7) Switching, or causing a customer's telecommunications service to be switched, without first obtaining the customer's permission;

(8) Billing an unauthorized charge, or causing an unauthorized charge to be billed, to a customer's telecommunications service bill;

(9) Failure to maintain financial resources in accordance with subsection (f)(1) of this section;

(10) A pattern of not responding to commission inquiries or customer complaints in a timely fashion;

(11) Suspension or revocation of a registration, certification, or license by any state or federal authority;

(12) Conviction of a felony by the certificate holder, a person controlling the certificate holder, or principal employed by the certificate holder, or any crime involving theft, fraud, or deceit related to the certificate holder's service;

(13) Failure to serve as a provider of last resort if required to do so by the commission;

(14) Failure to provide required services to customers under the federal or Texas Universal Service Fund;

(15) Failure to comply with the rules of the federal or Texas Universal Service Fund; and

(16) Violations of PURA or any commission rule or order applicable to the certificate holder.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 23, 2010.

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Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: June 11, 2010
For further information, please call: (512) 936-7223

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 83. COSMETOLOGISTS

16 TAC §§83.22, 83.71, 83.80

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 83, §§83.22, 83.71, and 83.80, regarding the cosmetologists program. The amendments to §83.22 and §83.80 are adopted without changes to the proposed text as published in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6421) and will not be republished. The amendments to §83.71 are adopted with changes to the proposed text as published in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6421) and are republished. The adoption takes effect December 15, 2010.

The adopted amendments create a temporary beauty salon, specialty salon, and dual shop license and eliminate square footage requirements for salons. The amendments were recommended by the Cosmetology Advisory Board at its meeting on June 21, 2010, and October 25, 2010.

The amendments to §83.22 add new subsections (d) - (g) which set out the eligibility requirements for a temporary beauty salon, specialty salon, or dual shop license. An applicant who currently holds a cosmetology operator license, specialty license, or certificate will be eligible for a temporary, sixty-day, non-renewable shop license. This rule facilitates the business model of licensees who annually travel to different locations throughout the state of Texas to provide services at Renaissance Fairs, Medieval Fairs and other types of "theme" festivals.

It is not cost effective for these licensees to spend $106 to purchase a two-year salon license in order to work at a fair scheduled for only one or two weekends of the year, therefore, the creation of a temporary license with a term of sixty days and an application fee of $20 will allow licensees to obtain a salon license for a shorter length of time and at a significantly lower cost.

The amendments to §83.71 eliminate subsection (c) which requires that any alteration of a cosmetology establishment's floor plan must comply with the cosmetology rules and statutes. This recommendation is made in conjunction with the amendment to §83.71(d) which eliminates the square footage requirement for salons. Elimination of square footage requirements will result in lower overhead costs for owners of smaller salons who may not be utilizing all of the square footage they currently lease or own and, as a result, may choose to occupy smaller spaces.

In addition, the elimination of the minimum square footage requirement will also assist licensees who perform services at "theme" festivals where space is at a premium and where temporary facilities may not meet the current square footage requirement. Licensees who provide services at kiosks which operate with less square footage than what is currently required will also benefit from the amendment. The elimination of the square footage requirements will also mean that review of any alterations of a cosmetology establishment's floor plan currently required in subsection (c) will no longer be necessary. The editorial changes in §83.71(e) and (g) correct the cites to the subsections as listed in the text of the rule.

The amendment to §83.80 sets a temporary beauty salon, specialty salon, or dual shop license application fee in the amount of $20. A minimal application fee of $20 for the temporary license will reduce licensees' overhead costs.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed amendments were published in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6421). The 30-day public comment period closed on August 23, 2010. The Department received public comments from two licensed cosmetologists. Both commenters were in favor of eliminating the square foot requirement and believe that the ability to own or lease a smaller space will help reduce overhead costs.

The amendments are adopted under Texas Occupations Code, Chapters 51 and 1602, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 1601, 1602, and 1603. No other statutes, articles, or codes are affected by the adoption.

§83.71. Responsibilities of Beauty Salons, Specialty Salons, Dual Shops, and Booth Rentals.

(a) Each establishment must have a copy of the current law and rules book.

(b) Each establishment is responsible for compliance with the health and safety standards of this chapter.

(c) Salons may lease space to an independent contractor who holds a booth rental (independent contractor) license. The lessor to an independent contractor must maintain a list of all renters that includes the name of renter and the cosmetology license number of the renter. The lessor must supply the department inspector with a list of renters upon request.

(d) Each salon shall comply with the following requirements:

(1) a sink with hot and cold running water;

(2) an identifiable sign with the salon's name;

(3) a suitable receptacle for used towels/linen;

(4) one wet disinfectant soaking container;

(5) a clean, dry, debris-free storage area;

(6) a minimum of one covered trash container; and

(7) if providing manicure or pedicure nail services, a department-approved sterilizer.

(e) In addition to the requirements of subsection (d):

(1) beauty salons shall provide the following equipment for each licensee present and providing services:

(A) one working station;

(B) one styling chair;

(C) a sufficient amount of shampoo bowls; and

(D) one hand-held hair dryer or hood hair dryer, with or without chair.

(2) manicure salons shall provide the following equipment for each licensee present and providing services:

(A) one manicure table with light;

(B) one manicure stool; and

(C) one professional client chair for each manicure station.

(3) facial salons shall provide the following equipment for each licensee present and providing services:

(A) one facial couch/chair; and

(B) one mirror.

(4) combination manicure/facial salons shall provide the following equipment:

(A) the requirements for manicure salon; and

(B) the requirements for facial salon.

(5) wig salons shall provide the following equipment for each licensee present and providing services:

(A) one mannequin table, station, or styling bar to accommodate a minimum of 10 hairpieces;

(B) one wig dryer; and

(C) two canvas wig blocks.

(6) hair weaving salons shall provide the following equipment for each licensee present and providing services:

(A) one work station;

(B) one styling chair;

(C) a sufficient amount of shampoo bowls for licensees providing hair weaving services; and

(D) one chair dryer/handheld dryer for each three licensees providing hair weaving services.

(7) hair braiding salons shall provide the following equipment for each licensee present and providing services:

(A) one work station; and

(B) one styling chair.

(8) Dual shops shall:

(A) comply with all requirements of the Act and this chapter applicable to beauty salons;

(B) comply with all requirements of Texas Occupations Code, Chapter 1601, and 16 TAC Chapter 82 applicable to barbershops; and

(C) if the shop is without the services of at least one licensed barber (or cosmetologist) for a period of 90 days or more:

(i) not place any advertisement or display any sign or symbol indicating that the shop offers barbering (or cosmetology) services; and

(ii) remove any existing sign or symbol indicating that the shop offers barbering (or cosmetology) services.

(f) All booth rental (independent contractor) licensees must have the following items:

(1) one wet disinfectant soaking container;

(2) a clean, dry, debris-free storage area;

(3) a suitable receptacle for used towels/linen; and

(4) a current law and rules book.

(g) In addition to the requirements in subsection (f), booth rental (independent contractor) licensees must have the following items.

(1) If practicing in a beauty salon, one work station and one styling chair.

(2) If practicing in a facial salon, one facial couch or facial chair and one mirror, wall hung or hand held.

(3) If practicing in a manicure salon, one manicure table with a light, one manicure stool, and one chair, professional in appearance.

(h) Booth rental (independent contractor) licensees must comply with all state and federal laws relating to independent contractors.

(i) A booth rental (independent contractor) licensee may provide the cosmetology service(s) authorized by the independent contractor's cosmetology license.

(j) Cosmetology establishments shall display in the establishment, in a conspicuous place clearly visible to the public, a copy of the establishment's most recent inspection report issued by the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 19, 2010.

TRD-201006661

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Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348

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TITLE 22. EXAMINING BOARDS

PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

The Texas State Board of Examiners of Marriage and Family Therapists (board) adopts amendments to §§801.18, 801.142, 801.143, 801.234, 801.235, 801.291, and 801.296, and new §801.19, concerning the licensure and regulation of marriage and family therapists. Section 801.142 is adopted with changes to the proposed text as published in the July 9, 2010, issue of the *Texas Register* (35 TexReg 6016). Amendments to §§801.18, 801.143, 801.234, 801.235, 801.291, and 801.296, and new §801.19 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments and new section modify requirements for experience needed for licensure; supervisor requirements, including new fees for board approved supervisor status; licensure renewal; late renewal; and complaints and violations. The new section and amendments also set out procedures for issuing criminal history evaluation letters, as required by House Bill 963, 81st Legislature, 2009, which amended Occupations Code, Chapter 53, Subchapter D, Preliminary Evaluation of License Availability, relating to the eligibility of certain applicants for occupational licenses.

SECTION-BY-SECTION SUMMARY

The amendments to §801.18 establish a $50 fee for the issuance of criminal history evaluation letters, a $20 application fee for board-approved supervisor status, and a $50 biennial renewal fee for board-approved supervisor status, to more accurately reflect costs associated with administration of board approved supervisory status and criminal history evaluation letters.

The new §801.19 establishes the procedures for the issuance of criminal history evaluation letters.

The amendments to §801.142 clarify the experience requirements for licensure, related to supervised clinical experience. The amendments also establish new procedures for the submission and approval of supervision contracts. The amendments to §801.143 modify the supervisor requirements, including the submission of application and renewal fees for supervisors, the qualifications and required licensure for supervisor approvals, and ethical requirements and responsibilities of supervisors. The amendment to §801.234 clarifies that a license holder is responsible for complying with license renewal requirements. The amendment to §801.235 improves section clarity related

to late renewal. The amendments to §801.291 provide that the board may take disciplinary action if a license holder violates a board order or engages in conduct that discredits the profession of marriage and family therapy. The amendments to §801.296 provide an administrative mechanism for closure of certain complaints.

COMMENTS

The board has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period. The seven commenters were individuals, associations, and/or groups, including the Texas Association of Marriage and Family Counselors and the Texas Association for Marriage and Family Therapists. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments. Commenters were generally in favor of rules.

Comment: Concerning §801.142(1)(A)(i)(I), the proposal to reduce the number of hours of direct clinical services provided to couples and families from 750 to 500 received five comments. Four supported the reduction, and one opposed on the grounds that it would dilute the specialization of the licensed marriage and family therapist (LMFT). One individual recommended modification by allowing an LMFT Associate who is also a licensed professional counselor intern to count supervised experience hours accrued under the licensed professional counselor intern license, which were provided by a board-approved supervisor for both boards, prior to becoming an LMFT Associate towards the 750 hour requirement.

Response: The board determined that there should be no change to the rule as originally written due to the comments. The proposed amendment to reduce the number of hours from 750 to 500 was not adopted and will remain at 750 hours.

Comment: Concerning other amendments to §801.142, one commenter supported the changes.

Response: The board agrees and adopted the proposed amendments, with the exception of proposed amendment to §801.142(1)(A)(i)(I), as stated in the previous comment and response.

Comment: Concerning §801.143(a)(1), in which the board clarifies that the license required to become a board-approved supervisor is the LMFT license, one commenter disagrees that all individuals must be LMFTs in order to provide board-approved supervision towards licensure. The individual requests modified language to allow for grandfathering of individuals who were previously approved by the board but who are not licensed as an LMFT.

Response: The board disagrees. The board has determined that the public is best protected by requiring board-approved supervisors to be licensees of the board. No change was made as a result of the comment.

Comment: One commenter recommended creation of an "Emeritus" status for LMFT licensure, similar to the one outlined in the rules for licensed social workers.

Response: This proposal is unrelated to the proposed amendments. The board may consider it in the future. No change was made as a result of the comment.

Comment: Concerning §801.291(1)(L), the inclusion of "conduct that discredits or tends to discredit the profession of marriage and family therapy" as grounds for denial, revocation, probation, or suspension of a license, reprimand of a license, or imposition of an administrative penalty, two commenters expressed concerns about ambiguous and possibly problematic wording. One commenter offered modified language.

Response: The board disagrees. Another mental health licensing board utilizes the proposed language, and it has not proven to be ambiguous or problematic. No change was made as a result of comments.

SUBCHAPTER B. THE BOARD

22 TAC §801.18, §801.19

STATUTORY AUTHORITY

The amendment and new rule are adopted under the Texas Occupations Code, §53.105, which authorizes the adoption of a rule regarding fees for criminal history evaluation letters; Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties; as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sandra DeSobe
Chair
Texas State Board of Examiners of Marriage and Family Therapists
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For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER G. EXPERIENCE REQUIREMENTS FOR LICENSURE

22 TAC §801.142, §801.143

STATUTORY AUTHORITY

The amendments are adopted under the Texas Occupations Code, §53.105, which authorizes the adoption of a rule regarding fees for criminal history evaluation letters; Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties; as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

§801.142. Supervised Clinical Experience Requirements and Conditions.

The following supervised clinical experience requirements and conditions shall apply.

(1) Supervised clinical experience accrued in Texas may only be accrued under licensure as a Licensed Marriage and Family Therapist Associate (with the exception noted in subparagraph (A)(i)(III) and (ii)(III) of this paragraph).

(A) The applicant must have completed a minimum of two years of work experience in marriage and family therapy services that:

(i) includes at least 3,000 hours of marriage and family therapy practice acceptable to the board:

(I) of which at least 1,500 hours must be direct clinical services, of which 750 hours shall be provided to couples or families;

(II) the remaining 1,500 hours may come from related experiences that may include but not be limited to workshops, public relations, writing case notes, consulting with referral sources, etc.;

(III) of the 3,000 hours, no more than 500 hours may be transferred from a Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) accredited doctoral program; and

(ii) the applicant must be supervised in a manner acceptable to the board, including:

(I) at least 200 hours of supervision;

(II) of the 200 hours, at least 100 hours must be individual supervision;

(III) of the 200 hours, no more than 100 hours may be transferred from the graduate program;

(IV) at least 50 hours of the post-graduate supervision must be individual supervision.

(B) An associate may practice marriage and family therapy in any setting under supervision, such as a private practice, public or private agencies, hospitals, etc.

(C) During the post graduate supervision, both the supervisor and the associate may have disciplinary actions taken against their licenses for violations of the Act or rules.

(D) Supervision must be conducted under a supervision contract, which must be submitted to the board on the official form within 60 days of the initiation of supervision. The supervision contract submitted to the board must be approved by the board. Fees charged by a supervisor during the course of supervision, which occurred without a board-approved supervision contract in place and subsequently resulted in the supervised experience hours of the supervisee being denied by the board solely on the basis that there was no board approved supervision contract in place within 60 days of the initiation of supervision, must be reimbursed to the supervisee.

(E) Group supervised experience of an associate may count toward an associate's supervision requirement only if the supervision group consisted of a minimum of three and no more than six associates during the supervision hour.

(F) Individual supervised experience of an associate may count toward the associate's supervision requirement only if the supervision consisted of no more than two associates.

(G) The 200 hours of supervision must be face-to-face. The associate must receive a minimum of one hour of supervision every two weeks. A supervision hour is 45 minutes. Up to 50 hours of the 200 hours of face-to-face supervision may occur via telephonic or other electronic media, as approved by the supervisor.

(H) An associate may have no more than two board-approved supervisors at a time, unless given prior approval by the board or its designee.

(I) The associate may receive credit for up to 500 clock hours toward the required 3,000 hours of supervised clinical services by providing services via telephonic or other electronic media, as approved by the supervisor.

(2) Supervision and supervised clinical experience accrued toward licensure as a Licensed Marriage and Family Therapist in another jurisdiction are accepted by endorsement only (except as noted in paragraph (1)(A)(ii)(III) of this section).

(A) It is the applicant's responsibility to ensure that supervision and supervised experience accrued in another jurisdiction is verified by the jurisdiction in which it occurred and that the other jurisdiction provides verification of supervision to the board.

(B) If an applicant has been licensed as a marriage and family therapist in a United States jurisdiction for the 5 years preceding the application, the supervised clinical experience requirements will be considered to have been met. If licensed for any other period of 5 years, the board will determine whether clinical experience requirements have been met.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas State Board of Examiners of Marriage and Family Therapists
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SUBCHAPTER J. LICENSE RENEWAL AND INACTIVE STATUS

22 TAC §801.234, §801.235

STATUTORY AUTHORITY

The amendments are adopted under the Texas Occupations Code, §53.105, which authorizes the adoption of a rule regarding fees for criminal history evaluation letters; Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties; as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER L. COMPLAINTS AND VIOLATIONS

22 TAC §801.291, §801.296

STATUTORY AUTHORITY

The amendments are adopted under the Texas Occupations Code, §53.105, which authorizes the adoption of a rule regarding fees for criminal history evaluation letters; Texas Occupations Code, §502.152, which authorizes the board to adopt rules necessary for the performance of its duties; as well as under the Texas Occupations Code, §502.153, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER D. RISK-BASED CAPITAL AND SURPLUS AND OTHER REQUIREMENTS

28 TAC §§7.402 - 7.404

The Commissioner of Insurance (Commissioner) adopts amendments to §7.402, concerning risk-based capital and surplus requirements for insurers and health maintenance organizations (HMOs); new §7.403, concerning a transition period for certain county mutual insurance companies to comply with new minimum surplus requirements; and new §7.404, concerning a transition period for stipulated premium insurance companies to comply with new minimum capital and surplus requirements. The amendments and new sections are adopted without changes to the proposed text published in the October 8, 2010, issue of the *Texas Register* (35 TexReg 9045).

REASONED JUSTIFICATION. The amendments to §7.402 are necessary to implement and update the risk-based capital and surplus requirements for year-end 2009 and for year-end 2010 for property and casualty insurers, life insurance companies, fraternal benefit societies, stipulated premium insurance companies, HMOs, and insurers filing the National Association of Insurance Commissioners (NAIC) Health blank by (i) adopting the 2009 NAIC risk-based capital formulas and instructions to be used for year-end 2009; (ii) adopting the 2010 NAIC risk-based capital formulas and instructions to be used for year-end 2010; (iii) adding stipulated premium insurance companies only doing business in Texas and certain county mutual insurance companies to the list of defined "carriers" which must comply with the section; and (iv) specifying the filing requirements for the 2009 and 2010 risk-based capital reports and supplemental reports and forms. Insurers and HMOs subject to §7.402 are referred to collectively as "carriers" in this adoption. New §7.403 is necessary to implement the Insurance Code §912.056(f), as added by House Bill (HB) 2449, 81st Legislature, Regular Session, which provides a transition period for certain county mutual insurance companies to comply with the new minimum surplus requirements. New §7.404 is necessary to implement the Insurance Code §884.054(a) and (c), as amended by HB 2570, 81st Legislature, Regular Session, which provides a transition period for stipulated premium insurance companies to comply with the new minimum capital and surplus requirements.

The amendments to §7.402 are necessary to regulate risk-based capital and surplus requirements for carriers. The risk-based capital requirement is a method of ensuring that a carrier has an appropriate level of policyholder surplus after taking into account the underwriting, financial, and investment risks of a carrier. The updated NAIC risk-based capital formulas provide the Department with a widely used regulatory tool to identify the minimum amount of capital and/or surplus appropriate for a carrier to support its overall business operations in consideration of its size and risk exposure. The amendments are necessary to adopt by reference the 2009 NAIC risk-based capital formulas to be used for year-end 2009. These formulas include the 2009 NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies, the 2009 NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies, the 2009 NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies, and the 2009 NAIC Health Risk-Based Capital Report including Overview and Instructions for Companies. Specifically, the amendments to §7.402(d), in paragraphs (1) - (4), replace the date "2008" with "2009." The amendments also are necessary to adopt by reference the 2010 NAIC risk-based capital formulas to be used for year-end 2010. These formulas include the 2010 NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies, the 2010 NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies, the 2010 NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies, and the 2010 NAIC Health Risk-Based Capital Report including Overview and Instructions for Companies. Specifically, the amendments to §7.402(d) add new paragraphs (5) - (8).

The amendments to §7.402 are also necessary to add stipulated premium insurance companies only doing business in Texas to the list of defined "carriers" which must comply with the section. Under the amendments to §7.402(b)(1) and (e)(3), stipulated premium insurance companies only doing business in Texas will be subject to the section's risk-based capital requirements for

life insurance companies and will be required to file an electronic version of the 2010 risk-based capital report and any supplemental forms and reports with the NAIC in accordance with and by the due date specified in the RBC instructions. Specifically, the amendments to §7.402(b)(1): (i) add the word "insurance" after the phrase "stipulated premium" and before the word "companies;" (ii) delete the phrase "doing business in other states;" and (iii) delete the sentence specifying "This section does not apply to stipulated premium companies only doing business in Texas." New §7.402(e)(3) requires stipulated premium insurance companies only doing business in Texas to file the 2010 risk-based capital report and any supplemental forms and reports. However, new §7.402(e)(3) does not require these type of carriers to file the 2009 risk-based capital report.

The amendments to §7.402 are also necessary to add certain county mutual insurance companies to the list of defined "carriers" which must comply with the section. Under the amendments to §7.402(b)(2) and (e)(4), county mutual insurance companies that do not meet the express criteria contained in the Insurance Code §912.056(f) will be subject to the section's risk-based capital requirements for property and casualty companies and will be required to file an electronic version of the 2010 risk-based capital report and any supplemental forms and reports with the NAIC in accordance with and by the due date specified in the RBC instructions. Specifically, the amendments to §7.402(b)(2) clarify the scope of the rule's application to property and casualty companies by adding the phrase "including county mutual insurance companies that do not meet the express criteria contained in the Insurance Code §912.056(f), but..." and at the end of the sentence adds the phrase "subject to the Insurance Code §822.205." The amendments to §7.402(b)(2) also delete the phrase "that write business only in this state and are not required to have capital stock". New §7.402(e)(4) requires county mutual insurance companies that do not meet the express criteria contained in the Insurance Code §912.056(f) to file the 2010 risk-based capital report and any supplemental forms or reports. However, new §7.402(e)(4) explicitly provides that these type of carriers are not required to file the 2009 risk-based capital report.

Also, the amendments to §7.402(e)(1) and (2) clarify the filings requirements for all other types of carriers subject to the section. Specifically, the amendments to §7.402(e)(1) clarify that all companies subject to this section, except fraternal benefit societies, stipulated premium companies doing business only in Texas, and county mutual insurance companies that do not meet the express criteria contained in the Insurance Code §912.056(f), are required to file electronic versions of the 2009 and the 2010 RBC reports and any supplemental RBC forms and reports with the NAIC in accordance with and by the due dates specified in the RBC instructions. The amendments to §7.402(e)(2) clarify that fraternal benefit societies are required to (i) prepare, maintain, and file a paper copy of the 2009 RBC report and any supplemental RBC forms and reports with the Department whenever requested by the Department; and (ii) to prepare and maintain a paper copy of the 2010 RBC report and any supplemental RBC forms and reports by March 1, 2011, and make the reports and forms available for review whenever requested by the Department. Additionally, the amendments to §7.402 include new subsection (g)(7) which imposes a new substantive requirement for year-end 2009, and each calendar year thereafter, that subjects health insurers to a trend test if their total adjusted capital to authorized control level risk-based capital is between 200 percent and 300 percent. In that case, and if the result of the trend test as determined by the formula is "YES", the health insurer will be subject to the company action level requirements and will need to file additional reporting with the Department as a result of the trend test. This new requirement is necessary because it will allow for early identification of insurers that are likely to reach a company action level in the following year. This is based on research by the NAIC's Health Risk-Based Capital (E) Working Group that showed a strong correlation between the trend test's criteria and the triggering of at least the company action level in the following year. By triggering a company action level sooner, insurers can plan better for their capital needs and the Department will receive information related to its solvency regulatory duties which is necessary to protect the interests of the public. Specifically, the amendments to §7.402(g) add new paragraph (7) containing the new testing requirement that subjects health insurers to a trend test if their total adjusted capital to authorized control level risk-based capital is between 200 percent and 300 percent.

Copies of the documents adopted in §7.402 are available for inspection in the Financial Analysis Division of the Texas Department of Insurance, William P. Hobby Jr. State Office Building, Tower Number III, Third Floor, Mail Code 303-1A, 333 Guadalupe, Austin, Texas.

The Department also adopts new §7.403 to provide a transition period for certain county mutual insurance companies to comply with the new surplus minimums required by the Insurance Code §912.056(f), as amended by HB 2449, 81st Legislature, Regular Session. In part, HB 2449 amended the Insurance Code §912.056 by adopting new §912.056(f), which requires that certain specified county mutual insurance companies maintain a higher minimum unencumbered surplus. House Bill 2449 also enacted new Insurance Code §912.056(g), which requires the Commissioner to adopt a transition period for these specified county mutual insurance companies to meet the requirements of §912.056(f) and for the pro rata elimination of any deficiencies in the amounts required under §912.056(f) over a period of not less than five years. Specifically, new §7.403(a) states that the new section applies to county mutual insurance companies that cede 85 percent or more of the their direct and assumed risks to one or more nonaffiliated reinsurers, and further provides that such companies are otherwise required to comply with the Insurance Code §912.056(f) relating to the new surplus minimums required by the Insurance Code §912.056(f), as amended by HB 2449. New §7.403(b) provides that a county mutual insurance company shall comply with §7.402 unless the company meets the express criteria contained in the Insurance Code §912.056(f). In accordance with the prescriptive requirements of the Insurance Code §912.056(g), new §7.403 requires the pro rata elimination of any deficiencies in the amounts required under §912.056(f) over a period of not less than five years. Specifically, new §7.403(c) sets out a five-year graduated transition period for the county mutual insurance companies subject to the section.

The Department further adopts new §7.404 to provide a transition period for stipulated premium insurance companies to comply with the new minimum capital stock and surplus rules required by the Insurance Code §884.054 as amended by HB 2570, 81st Legislature, Regular Session. In part, HB 2570 amended the Insurance Code §884.054, which specifies the minimum capital and surplus requirements for stipulated premium insurance companies. SECTION 12 of HB 2570 requires that a stipulated premium insurance company shall increase its capital stock and surplus as required under the Insurance Code Chapter 884, as amended, not later than a date prescribed

by rule by the Commissioner in connection with a schedule of intermediate increases adopted by the Commissioner to provide for a 10-year phase-in of the requirements. In accordance with the prescriptive requirements of SECTION 12 of HB 2570, new §7.404 requires a stipulated premium insurance company to increase its capital stock and surplus as required under the Insurance Code Chapter 884, as amended, in connection with a reasonable schedule of intermediate increases adopted by the Commissioner to provide for a 10-year phase-in of the requirements. New §7.404(a) provides that a stipulated premium insurance company shall comply with §7.402. New §7.404(b) sets out a 10-year graduated transition period for stipulated premium insurance companies to comply with the new minimum capital stock and surplus rules required by the Insurance Code §884.054 as amended by HB 2570.

Additionally, the new amendment to the title of Subchapter D that adds the phrase "and other" after the phrase "Risk-based Capital and Surplus" is necessary to reflect the expanded scope of Subchapter D as a consequence of the new amendments to §7.402 and new §7.403 and §7.404.

HOW THE SECTIONS WILL FUNCTION.

§7.402. Risk-Based Capital and Surplus Requirements for Insurers and HMOs. The amendments to §7.402(b) expand the scope of the section to include stipulated premium insurance companies only doing business in Texas and certain county mutual insurance companies. Under the amendments to §7.402(b)(1) and (e)(3), stipulated premium insurance companies only doing business in Texas will be subject to the section's risk-based capital requirements for life insurance companies and will be required to file an electronic version of the 2010 risk-based capital report and any supplemental forms and reports with the NAIC in accordance with and by the due date specified in the RBC instructions. Under the amendments to §7.402(b)(2) and (e)(4), county mutual insurance companies that do not meet the express criteria contained in the Insurance Code §912.056(f) will be subject to the section's risk-based capital requirements for property and casualty companies and will be required to file an electronic version of the 2010 risk-based capital report and any supplemental forms and reports with the NAIC in accordance with and by the due date specified in the RBC instructions. The amendments to §7.402(d) adopt by reference the 2009 and 2010 NAIC risk-based capital formulas, replacing the year-end 2008 formulas. Insurers and health maintenance organizations will use the 2009 and 2010 formulas to comply with the Department's regulatory requirements pertaining to minimum amounts of capital and policyholder surplus appropriate for carriers to support their overall business operations in consideration of their size and risk exposure. The NAIC formulas provide the insurance industry and the Department with a widely used regulatory standard for this purpose. The amendments to §7.402(e) update the risk-based capital filing requirements for the various types of carriers. The amendment to §7.402(g) updates the remedial actions that the Commissioner of Insurance may take depending on the results computed by the risk-based capital formula by adding the new subsection (g)(7) requirement that subjects health insurers to a trend test if their total adjusted capital to authorized control level risk-based capital is between 200 percent and 300 percent. In that case, and if the result of the trend test as determined by the formula is "YES", the health insurer will be subject to the company action level requirements and will need to file additional reporting with the Department as a result of the trend test.

§7.403. Transition Period for Certain County Mutual Insurance Companies. New §7.403(a) states that the new section applies to county mutual insurance companies that cede 85 percent or more of the their direct and assumed risks to one or more nonaffiliated reinsurers, and further provides that such companies are otherwise required to comply with the Insurance Code §912.056(f) relating to the new surplus minimums required by the Insurance Code §912.056(f), as amended by HB 2449. New §7.403(b) provides that a county mutual insurance company shall comply with §7.402 unless the company meets the express criteria contained in the Insurance Code §912.056(f). New §7.403(c) sets out a five-year graduated transition period for the county mutual insurance companies subject to the section.

§7.404. Transition Period for Stipulated Premium Insurance Companies. New §7.404(a) provides that a stipulated premium insurance company shall comply with §7.402. New §7.404(b) sets out a 10-year graduated transition period for stipulated premium insurance companies to comply with the new minimum capital stock and surplus rules required by the Insurance Code §884.054 as amended by HB 2570.

SUMMARY OF COMMENTS. The Department did not receive any comments on the published proposal.

STATUTORY AUTHORITY. The amendments and new sections are adopted under SECTION 12 of HB 2570, as enacted by the 81st Legislature, Regular Session, effective September 1, 2009, and the Insurance Code Chapters 404 and 441 and §§822.210, 841.205, 884.054, 884.206, 843.404, 885.401, 912.056, 982.105, 982.106, and 36.001. SECTION 12 of HB 2570 requires that a stipulated premium insurance company shall increase its capital stock and surplus as required under the Insurance Code Chapter 884, as amended, not later than a date prescribed by rule by the Commissioner in connection with a schedule of intermediate increases adopted by the Commissioner to provide for a 10-year phase-in of the requirements. Chapter 404 addresses the duties of the Department when an insurer's solvency is impaired. Section 404.004 provides that the Commissioner's authority to increase any capital and surplus requirements prevails over the general provisions of the Insurance Code relating to specific companies, and §404.005 authorizes the Commissioner to set standards for evaluating the financial condition of an insurer. Chapter 441 addresses the prevention of insurer delinquencies and insolvencies. Under §441.005, the Commissioner may adopt reasonable rules as necessary to implement and supplement the purposes of Chapter 441. Section 441.051 specifies "the circumstances in which an insurer is considered insolvent, delinquent, or threatened with delinquency" and includes certain statutorily specified conditions, including if an insurer's required surplus, capital, or capital stock is impaired to an extent prohibited by law. Section 822.210 authorizes the Commissioner to adopt rules or guidelines to require an insurer to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of insurers for the protection of policyholders and insurers. Section 841.205 authorizes the Commissioner to adopt rules or guidelines to require an insurer that writes life or annuity contracts or assumes liability on or indemnifies one person for any risk under an accident and health insurance policy, or a combination of these policies, in an amount that exceeds $10,000 to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of insurers for the protection of policyholders and insurers. Section 884.206 authorizes the Commissioner to adopt rules to require an insurer that writes or assumes life insurance, annuity contracts or acci-

dent and health insurance for a risk to one person in an amount that exceeds $10,000 to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of insurers for the protection of policyholders and insurers. Section 843.404 authorizes the Commissioner to adopt rules to require a health maintenance organization to maintain capital and surplus levels in excess of statutory minimum levels to ensure financial solvency of health maintenance organizations for the protection of enrollees. Section 884.054 specifies the capital stock and surplus requirements for stipulated premium insurance companies. Section 885.401 requires each fraternal benefit society to file an annual report on the society's financial condition, including any information the Commissioner considers necessary to demonstrate the society's business and method of operation, and authorizes the Department to use the annual report in determining a society's financial solvency. Section 912.056 authorizes the Commissioner to adopt rules to provide a transition period for certain county mutual insurance companies to comply with the new surplus minimums required by the Insurance Code §912.056(f). Section 982.105 specifies the capital, stock, and surplus requirements for foreign or alien life, health, or accident insurance companies. Section 982.106 specifies the capital, stock, and surplus requirements for foreign or alien insurance companies other than life, health, or accident insurance companies. Section 36.001 authorizes the Commissioner to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 17. TAX RELIEF FOR PROPERTY USED FOR ENVIRONMENTAL PROTECTION

The Texas Commission on Environmental Quality (commission or TCEQ) adopts the amendments to §§17.2, 17.10, 17.12, 17.14, 17.17, and 17.25 *with changes* to the proposed text as published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6255). Sections 17.1, 17.6, and 17.20 and the repeal of §17.15 are adopted *without changes* to the proposed text, and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The program for providing tax relief for pollution control property (tax relief program) was established under a constitutional amendment through the approval of Proposition 2 on the state ballot on November 2, 1993. This amendment added §1-1 to the Texas Constitution, Article VIII. The 73rd Legislature, 1993, added Texas Tax Code, §11.31, Pollution Control Property, and Texas Tax Code, §26.045, Rollback Relief for Pollution Control Requirements, to implement the constitutional provision. The commission adopted 30 TAC Chapter 277 on September 30, 1994, to establish the procedures for obtaining a tax exemption under Proposition 2. In 1998, Chapter 277 was moved to Chapter 17 to be consistent with the commission's policy of placing general or multimedia rules within 30 TAC Chapters 1 - 100. In 2001, the legislature enacted House Bill (HB) 3121 during the 77th Legislative Session. HB 3121 amended Texas Tax Code, §11.31 in several respects. First, HB 3121 required that the commission adopt specific standards for considering applications to ensure that use determinations are equal and uniform and to allow for partial determinations. Second, HB 3121 created a process for appealing a use determination from the executive director by the applicant or the chief appraiser of the appraisal district for the county in which the property is located. Third, HB 3121 required the commission's executive director to provide a copy of the use determination to the chief appraiser of the appraisal district for the county in which the property is located.

In 2007, the legislature enacted HB 3732 during the 80th Legislative Session. HB 3732 amended Texas Tax Code, §11.31 by adding three subsections. Texas Tax Code, §11.31(k) required the commission to adopt, by rule, a list of pollution control properties that must include 18 categories of items listed in the statute. Texas Tax Code, §11.31(l) required the commission to adopt a procedure to review the list at least once every three years and allowed the removal of items from the list when there is compelling evidence that the item does not provide pollution control. Finally, Texas Tax Code, §11.31(m) required the executive director to review applications containing items on the adopted list and to issue a determination without regard to the information provided in response to Texas Tax Code, §11.31(c)(1) within 30 days of receipt of the required information.

The existing rules contain a two-part Equipment and Categories List (ECL) codified in §17.14(a). Part A of the ECL is intended to cover property that is normally used consistently for pollution control at a listed average percentage of use. This part was adopted under Texas Tax Code, §11.31(g). Texas Tax Code, §11.31(k) required the TCEQ to adopt a list containing the 18 categories of equipment. This list was adopted as Part B of the ECL. However, Texas Tax Code, §11.31(k) did not provide the pollution control percentage for each of the 18 categories of equipment. Staff reviewed these items and determined that the pollution control percentage varies depending upon many different factors, including the type of facility where the property is located and the function of the property. Under the existing rules, applicants have been required to calculate an application-specific use percentage for each piece of equipment, subject to executive director review and approval, but with this rule change, the applicant is required to use of the Cost Analysis Procedure (CAP) in §17.17(c). The inclusion of a piece of equipment on the Tier I Table or on the table in §17.17(b) or the assertion that a piece of equipment falls under a category set forth on either list does not mean that the equipment would receive a positive use determination in all circumstances. A partial use percentage must be calculated for each piece of property on an application-by-application basis.

Prior to the 81st Legislature, 2009, the Legislative Budget Board (LBB) prepared a report including recommendations to the legislature on the tax relief program. The report recommended that the TCEQ use the CAP contained in its rules for all partial determinations, including applications for property located on the list in Texas Tax Code, §11.31(k). The LBB report acknowledged that the CAP took into account the economic benefit of property to the property owner and further recommended the creation of a permanent advisory committee for the program. Both HB 3206 and HB 3544 from the 81st Legislature, contain language requiring the standards and methods established in the rules to be uniformly applied to all applications for determinations, including applications for property listed in Texas Tax Code, §11.31(k), which with this rule adoption, is codified as the Expedited Review List in §17.17(b) in these revised rules. The legislation specifically does not apply to applications filed prior to January 1, 2009, or to applications filed after January 1, 2009, that received final determinations prior to September 1, 2009.

To implement the uniformity requirements in HB 3206 and HB 3544, the adopted rulemaking applies the CAP to all partial use determinations for property that do not meet the fixed use percentage criteria established by the commission under the Tier I Table in §17.14(a) of the rules. The adopted rulemaking eliminates Tier IV applications. To apply the CAP to all partial use determinations, Tier III applications are required for all partial determination requests, including use of the CAP to calculate the percentage of use of the property for pollution control. Adoption and implementation of this amendment will require items that were formerly on Part A of the ECL at less than 100% or used partially for pollution control to be filed as Tier III applications. Additionally, items listed in the table in §17.17(b) that are used partially for pollution control must be filed as Tier III applications. Although some items that were on Part A of the ECL had use percentages below 100%, the executive director could not validate that the listed percentages are appropriate. In most cases, the percentage was an average of the actual partial use from various applications. Items that were on Part A of the ECL with a percentage less than 100% were removed from the Tier I Table because the executive director did not have information verifying that the use percentage can be consistently applied to every piece of equipment in a specific category. Other items on Part A of the ECL were listed at 100% pollution control although in some cases the equipment could be used for production purposes as well. Therefore, Tier III applications are now required for all of these items to ensure review consistency and to calculate the actual use percentage for each item until the commission has sufficient information to establish partial use percentages appropriate to all property within a category of equipment. When sufficient information is available to determine a fixed partial use percentage for a category of property, the commission will consider addressing through a future rulemaking whether to add that property to the Tier I Table with the appropriate partial use percentage.

The change to Tier III applications for items on the former Part B of the ECL that are used partially for pollution control changes the way that applicants calculate the partial use percentage. The former provision of allowing applicants to choose their own method for calculating a use percentage for these properties resulted in applications for the same types of property with widely varying calculated use percentages. HB 3206 and HB 3544 specifically require that the standards and methods established in the rules be uniformly applied to all applications for determinations, including applications for property listed in Texas Tax Code, §11.31(k), which is now codified in the table in §17.17(b). For these partial use items, a Tier III application with the calculation of an actual use percent is required in all cases until the commission determines that a specific item is always used for pollution control at the same use percentage within a category of use. In these cases, the item will be added to the Tier I Table. The higher fees for the Tier III applications are appropriate for the partial items removed from the ECL because of the greater review needed for applications for partial determinations and in evaluating whether a fixed partial use percentage is applicable to various categories of use.

To allow the CAP to provide a better calculation of the production benefits of property used partially for pollution control and partially for production, the equation is modified by replacing the term "by-product" with "marketable product." The term "by-product" is limited to waste material. However, the more expansive term "marketable product" allows the CAP to factor in other products from particular types of equipment (for example, equipment that results in energy production). Formerly, the calculation of by-product value only subtracted costs for transportation and storage, but the calculation of a marketable product value subtracts all costs associated with the production of the marketable product, which more accurately determines the product value produced by pollution control property. Based on a recommendation from the Tax Relief for Pollution Control Property Advisory Committee (advisory committee), the CAP is modified to replace the prime lending rate factor in the net present value of the marketable product (NPVMP) calculation with a capitalization rate of 10%. This change is discussed in the discussion section of this preamble.

Additionally, HB 3544 allows the commission the use of electronic means of transmission of information. As part of the implementation of this legislation, the commission adopts provisions for staff to send letters and use determinations to appraisal districts and applicants electronically.

As required by HB 3206 and HB 3544, the commission established a permanent advisory committee to provide input on the implementation of Texas Tax Code, §11.31. The advisory committee provided several recommendations for this rulemaking.

SECTION BY SECTION DISCUSSION

In addition to the amendments discussed in this section of the preamble, the commission also makes various stylistic non-substantive changes to update rule language to current *Texas Register* style and format requirements, as well as establish more consistency in the rules. These changes are non-substantive and generally are not specifically discussed in this preamble.

§17.1, Scope and Purpose

The commission makes a non-substantive change to correct a grammatical error.

§17.2, Definitions

The commission adds 30 TAC Chapter 3 to the list of laws with definitions pertinent to this chapter in the introductory paragraph. Chapter 3 contains general definitions that are applicable to all commission rules, and the addition is only for clarity.

The commission deleted the definition of "Byproduct." This term was used as a factor in the CAP in §17.17, but the commission replaces this factor with "Marketable product," as discussed elsewhere in this section. Subsequent paragraphs are renumbered.

To address comments of the advisory committee, the definition of "Capital cost old" is changed at adoption to incorporate by reference the methods for calculating this variable in the equation in §17.17(c)(1). The definition was proposed with a change to include cases where old pollution control property is replaced with new pollution control property. When a piece of equipment is not replacing previous equipment, instead of zero, capital cost old is the cost of a comparable piece of equipment without the pollution control feature. Changes are made at adoption to the standards for the capital cost old variable in the equation in §17.17(c)(1) to address the advisory committee's concern about the possible impact to facilities that are replacing equipment that already has a use determination with new pollution control property. Because the standards are changed at adoption and to avoid any confusion because of differences between the definition and the standards, the definition is changed at adoption to reflect the standards.

The commission deletes the definition of "Decision flow chart" because of the deletion of the two flow charts as discussed elsewhere in this section.

At the request of the advisory committee, the rule provides a definition of "Environmental benefit." The definition approved by the advisory committee and adopted in the rule links environmental benefit to the actions of a person to control pollution but excludes pollution control or reductions achieved through the use of a product, good, or service. The definition further states that environmental benefit means the same as pollution control within the context of this chapter.

The revisions to the rule delete the definition "ePay" because the use of the term is clear in the rules.

The commission is deleting the definition "Equipment and categories list." Because the list required to be adopted by Texas Tax Code, §11.31(k) will be moved with revisions to the table in §17.17(b) and Part A of the ECL is renamed to the "Tier I Table," this definition is no longer needed.

The revisions to the rule delete the definition of "Installation" as the use of the term is consistent with the standard dictionary definition making the inclusion of the definition in this section unnecessary.

As stated elsewhere in this section, the commission includes a definition of "Marketable product." This definition is broader than the existing definition of by-product, which is deleted, because of inclusion of things other than wastes recovered and sold (for example, co-products or electricity). The new definition includes anything produced or recovered from pollution control property that is sold or traded, accumulated for later use by the producer, or used in a manufacturing process, with the exception of emissions credits and emissions allowances. Since the production of valuable assets by pollution control property is a type of production, the value of these assets should be considered in determining the percentage of environmental use of the property. The value of a marketable product is used in the CAP for Tier III applications.

The commission deletes the definition "Part B decision flow chart" because the corresponding flow chart located in §17.15(b) is deleted. Therefore, this definition is no longer needed.

The commission deletes the definition "Production capacity factor." This term is defined within the variables for the equation in the CAP in §17.17(c), and therefore a separate definition in this section is unnecessary.

The commission adopts changes to the definitions to Tier I, Tier II, and Tier III for consistency with the change renaming Part A of the ECL to the Tier I Table as discussed in this section for §17.14(a). Additional rewording of these definitions for clarity is made. For the Tier III definition, the rewording is intended to mean that Tier III includes, but is not limited to, property used partially for pollution control that is similar to items on the Tier I Table but that is used in a different manner, such as generation of a marketable product, or at a different use percentage than shown on the Tier I Table.

The commission deletes the definition of Tier IV because this level of applications is eliminated. All partial use determinations will be submitted as a Tier III for uniformity. Applications for property used wholly for pollution control will be submitted as a Tier I if the equipment is on the Tier I Table or as Tier II for other property. Therefore, this term is no longer needed in the rules.

The commission deletes the definition "Use determination letter." The meaning of the term is clear, and a definition is unnecessary.

§17.6, Property Ineligible for Exemption from Taxation

Consistent with the recommendations of the advisory committee, the commission adopts the amendment to §17.6(1). Paragraph (1) is amended to specify three circumstances that make property ineligible to receive a positive use determination. The three circumstances are the following: 1) the only use of the property is to produce a good or service; 2) the property is not used at all for pollution control; or 3) the only environmental benefit arises from the use or characteristics of the good or service.

The commission revises the term "Tax Code" to "Texas Tax Code" in §17.6(2) for clarity and uniformity.

§17.10, Application for Use Determination

The commission amends §17.10(a)(1) to add "completed and signed" before "application form" to clarify that the applications must be complete when submitted. Additionally, "completed and signed" is added before "copy" to ensure that a completed and signed copy is available to send to the appraisal district.

The commission revises §17.10(b) by deleting the wording "facility consisting of" before "group of integrated units" for clarity. The use of "facility" could be interpreted as meaning that all environmental property at any site can be placed in a single application resulting in applications covering very large amounts of property and where property has little relation to one another. However, because the program is statutorily required to recover review costs through application fees, the size of applications needs to be limited to reasonable amounts of property. This revision is to clarify the intent of the existing language that property that works together or sequentially to control pollution from one or more specific emission points can be put into the same application. Additionally, "have" is changed to "has" to emphasize that it is the group of units that serve a common purpose rather than the individual units. As an example of what is intended by the rule, a series of air control devices for a specific vent gas stream are an integrated unit although the devices may treat different pollutants (such as volatile organic compounds, nitrogen oxides, particulates, etc.), but a baghouse is not an integrated unit with a vacuum truck even though both are used to control particulates at a facility. The revisions do not change applicants' ability to include multiple identical units or systems in a single application.

The commission revises §17.10(c) to delete the word "not" and substitute "as a lower priority than" for "until after review of all."

This revision removes the implication that all applications postmarked before January 31 must be completely processed before applications postmarked after January 31 are started. The change avoids delays from a strict interpretation of the plain rule language in the start of processing of later applications while waiting for response to requests for additional information on applications that were postmarked before January 31st. Therefore, the change allows more efficient processing of applications. Based on a recommendation from the advisory committee, an additional change is made at adoption to the language in §17.10(c): The wording "of the following year" at the end of the first sentence is changed to "of the same tax year." This change clarifies that use determinations must be requested before the tax roll is certified for the year in which a tax exemption is sought.

The commission deletes the wording "except for paragraph (1) of this subsection" in §17.10(d) and the wording "for Tier I, II, and III use determination applications" in §17.10(d)(1) to make the rule consistent with Texas Tax Code, §11.31(c)(1). In addition, the rulemaking revises §17.10(d) to replace the word "shall" with "must" to be consistent with the rule drafting standards in the *Texas Legislative Council Drafting Manual* (September, 2010). The word "must" applies to objects and establishes a condition precedent (i.e., in this case, the items listed in this subsection must be present for a submission to be an application), while the word "shall" is used to establish an obligation for a person.

The revisions replace "that is pollution control property" with "that is for pollution control" in §17.10(d)(3) to clarify that the executive director, rather than the applicant, determines whether equipment is pollution control property. Additionally, the commission adopts the addition of "such as a detailed description of the pollution source and a detailed and labeled process flow diagram that clearly depicts the pollution control property and the processes and equipment that generate the pollutant(s) being controlled" to clearly list what is normally expected for most property in an application without establishing a requirement for all possible entries in an application. For example, a process flow diagram may not be appropriate for certain pollution control equipment, such as a waste container. Based on a recommendation from the advisory committee, an additional change is made at adoption to §17.10(d)(3) by adding the wording "if deemed by the executive director to be relevant and essential to the use determination," after "such as" in the second line. This change was requested by the advisory committee to emphasize that process flow diagrams are not required for all applications. For clarity, the language suggested by the advisory committee is changed to reflect that applications are processed by staff of the executive director.

In §17.10(d)(4), the commission adopts the addition of "sections of" to clarify that citations requiring use of the equipment should be section specific. In addition, the rulemaking revises "law, rules, or regulations" to "law(s), rule(s), or regulation(s)" to emphasize that there may be more than one requirement for the use of a specific piece of equipment. An application must show at least one law, rule, or regulation requiring the use of each piece of property listed.

The commission amends §17.10(d)(5) to change the phrase "Equipment and Categories List" to "Tier I Table" and to modify the citation for the CAP. This paragraph continues to require applicants to provide a worksheet showing how they determined the appropriate applicable percentage of partial use pollution control equipment through the use of the CAP.

The commission adopts the deletion of §17.10(d)(6) as a separate worksheet for Tier IV applications because it is not necessary due to the elimination of the Tier IV applications. The subsequent paragraphs are renumbered. The commission deletes §17.10(d)(10) because it is not necessary due to the elimination of the two decision flow charts as discussed in this preamble concerning §17.15, Review Standards.

§17.12, Application Review Schedule

The commission adds the wording "or electronic mail" to §17.12(1) to fulfill the HB 3544 requirement that the commission encourage the utilization of electronic information transmission.

The commission revises §17.12(2) to replace "within three days of" with "as soon as practicable after" to allow sufficient time for the review of applications while still allowing payment processing of application fees to occur. The short time period was not practical in the period around January 31st when large numbers of applications are received. The word "mail" is replaced with "send" to allow transmittal of the notices by electronic means as allowed by HB 3544.

Revisions to §17.12(2)(A) modify the process that the commission uses to resolve administrative deficiencies in applications. The revised process allows 30 days for the applicant to provide the requested deficient information. By changing the word "will" to "may" and adding at adoption "decide to," the adopted rules give the executive director the option to continue processing an application. Revisions to §17.12(2)(B) also modify the procedures through which the executive director requests additional technical information and removes direct references to Tier levels I, II, and III as they are no longer applicable. The word "will" is changed to "may" and "decide to" is added at adoption for the same reasons as in subparagraph (A). Revisions to §17.12(2)(C) are adopted to maintain program consistency with the application process revisions adopted under subparagraphs (A) and (B) while retaining the applicant's ability to re-file an application.

Revisions to §17.12(3) reflect the elimination of Tier IV applications while still requiring the statutory deadline and information requirements for processing applications for property listed in Texas Tax Code, §11.31(k). Additionally, the word "documents" is changed to "information" for consistency with the statutory provision in Texas Tax Code, §11.31(m) specifying that the 30-day period begins when all required information has been received by the commission rather than on the submittal date of the original application form. At adoption, the wording "the table in" is inserted before the reference to §17.17(b) because of the items listed in that section being changed to a table at adoption.

The commission revises for clarity §17.12(4) to replace the phrase "some or all" with "the portion." By statute, the executive director is authorized to grant positive use determinations for the portion of the property used for pollution control. Under §17.12(4)(C), the wording "or electronic" is added to fulfill the requirement of HB 3544 that the commission encourage the utilization of electronic information transmission.

§17.14, Tier I Pollution Control Property

The commission revises §17.14 to rename the section, to reorganize the application tier structure, to add property that has been found to be used wholly for pollution control, and to eliminate the two-part ECL. Under the revisions, Part A of the ECL is replaced with a Tier I Table of properties used for pollution control at a standard use percentage. Former Part B of the ECL list is relocated to §17.17 and properties formerly in Part B are listed there.

The commission revises §17.14(a) to delete the references to the ECL. The new wording for subsection (a) specifies that Tier I applications are only for property that is used for pollution control at a standard use percentage and that a Tier III application is required for any property that is used at a non-standard use percentage, including items on the Tier I Table from which a marketable product is generated.

The commission removes the pollution control property list under §17.14(a), formerly labeled the "Equipment Categories List," and replaces it with a revised Tier I Table. The adopted Tier I Table in §17.14(a) is a table of the properties determined by the executive director to be used for pollution control purposes at a standard use percentage and with no associated marketable product. Pollution control properties previously included in the Part B section of the ECL are deleted. Because the use percentages in the old ECL could not be confirmed to be accurate for all facilities, all properties with partial use percentages are deleted; the items on the old ECL that are deleted for this reason include the following: A-43, Refrigerant Recycling Equipment; A-93, High-Pressure Fuel Injection System; A-200, Perchloroethylene (Perc) Closed-Loop Dry Cleaning Machines; A-201, Cartridge and Spin Disc Filtration Systems; A-202, Petroleum Dry-to-Dry Cleaning Machines; A-203, Petroleum Re-claimers; and A-204, Refrigerated Vapor Condenser (includes only the components that recover the vapors). Additionally, the following equipment that generates a marketable product are deleted: A-184, Vapor/Liquid Recovery Equipment for Fugitive Emissions; A-186, Paint Spray Booth Attached to a Final Control Device (Replacement which provides increased pollution prevention or control); A-188, Powder Coating System - Installed to replace an existing paint booth; A-189, Powder Coating System - New construction; and A-206, Direct Coupled Solvent Delivery Systems. Additionally, the following items from the old ECL are deleted because they are obsolete: A-86, Burners Out of Service; A-87, Lean-Burn Gas-Fired Compressor Engines; and A-90, Low Emissions Conversion Kit for Internal Combustion Reciprocating Compressor Engines.

For the introductory paragraph to the Tier I Table and for some items on the Tier I Table, changes are made to correct grammar, punctuation, and spelling and to remove unnecessary wording as needed throughout the table. Because of removed items and to provide a consistent numbering pattern throughout the list, the items on the Tier I Table are renumbered as needed.

The following changes are made to the introductory paragraph. The first sentence is changed to specify that a Tier I application is only appropriate if the equipment is used as shown in the description column of the table at the use percentage shown and if there is no marketable product that arises from the use of the property. The fourth sentence is changed to provide examples of when items would not be used in a standard manner. The former fifth sentence is removed because applications would be reviewed based on the information that they contain. The former sixth through eighth sentences are removed because the provisions for reviewing and amending the table are covered in the rules. The former ninth and tenth sentences are removed because they are not relevant to a table that contains items used for pollution control. For clarity, the fifth sentence (the former eleventh sentence) is reordered so that the property on applications is mentioned first. The sixth sentence (the former twelfth sentence) is changed to remove the reference to "Part A" of the list.

The following significant changes are made to specific items retained on the Tier I Table. In the description section of item A-65, Predictive Emissions Monitors, the word "solely" is added because use of the monitors for production has a percentage of use that varies by facility; this amendment was suggested by the advisory committee. In the description section of item A-80, Selective Catalytic and Non-catalytic Reduction Systems, the wording "engines/boilers" is changed to "combustion sources" to allow Tier I applications for this type of pollution control property on other types of equipment, and the word "non-selective" in the description is changed at adoption to "non-catalytic" to avoid any confusion. As requested by the advisory committee, the description section of renumbered item A-86, Low nitrogen oxides (NO_x) burners, is changed to cover use of this equipment in a new installation rather than only as replacement burners. Former item A-89, Over-Fire Air Systems, is deleted because the equipment is covered under item A-85, Over-fire Air and Combination of asymmetric over-fire air with the injection of anhydrous ammonia or other pollutant-reducing agents. Former items A-110, Activated Carbon Systems, and A-115, Carbon Absorber, are combined into a single A-110, Carbon Absorption Systems. In the description section of item renumbered A-134, Photochemical Oxidation, a sentence, "These units are only eligible if mercury is removed from flue gas." is added because these systems only provide an environmental benefit if mercury emissions are reduced. A typographic error in the proposed category header "Sulfur Dioxide Controls" is corrected at adoption. For renumbered item A-185, Paint Spray Booth Attached to a Final Control Device (New Construction), the name is changed to clarify that the item only covers the control devices attached to a paint booth. Former item A-205, Secondary Containment, is deleted because this equipment is also covered under item S-6, Secondary Containment. In the description section of item W-59, Wastewater Treatment Facility/Plant, wording is added to clarify that this item includes septic systems. For item S-1, Stationary Mixing and Sizing Equipment, the phrase "or in-house recycling" is deleted from the description because this part pertains to a marketable product. The titles of item S-7, Liners (Noncommercial Landfills or Impoundments), and renumbered item S-16, Noncommercial Injection Wells (Including Saltwater Disposal Wells) and Ancillary Equipment, are amended to clarify that these items do not pertain to commercial landfills or injection wells because of the statutory prohibition for commercial waste operations. For renumbered item S-22, Double-Hulled Barge, the description is changed to require that the incremental cost of the second hull be calculated, rather than specifying 30% use for pollution control for all of these barges. Because the equipment is used for worker protection rather than pollution control, the phrase "safety equipment" is deleted from the description of item M-1, Spill Response/Cleanup Equipment Pre-positioned and Stored for Addressing Future Emergencies, and the phrase "personal protection" is deleted from the description of item M-2, Hazardous Air Pollutant Abatement Equipment - required removal material contaminated with asbestos, lead, or some other hazardous air pollutant. The name of item M-5 is changed to Solvent Recovery Systems to increase the scope of the item to cover all types of systems that allow the reuse of a solvent within a facility; to be covered on a Tier I application, a system could not provide production benefits or create a marketable product. In the description section of renumbered item M-7, Environmental Paving located at Industrial Facilities, wording is added to specify that this item does not apply to storm water control, which is covered under item W-57, Conveyances, Pumps, Sumps, Tanks, Basins, nor does it include dirt or gravel paving, which do not

control dust; based on a suggestion from the advisory committee, item M-7 also has the phrase "environmental rule, regulation, or law" in the description column changed to "air quality rule, regulation, or law." For renumbered item M-11, Structures, Enclosures, Containment Areas, Pads for Composting Operations, the wording "for Composting Operations" is added to the title to specify better the property to which the item applies. In the description section of renumbered item M-12, Methane Capture Equipment, the scope of the item is increased to allow Tier I applications used to capture methane resulting of decomposition of wastes that were not generated on site, and a punctuation error is corrected at adoption. Because the use percentage is specified as 100%, the item only applies to methane capture equipment used to capture methane that is sent to a control device without providing any production benefits. The changes to item M-12 allow landfills and other facilities to submit Tier I applications for methane capture equipment when the methane is routed to a flare or other environmental control device. For clarity in item M-17, Low NO_x Combustion System for drilling rigs, the specification that the item applies to drilling rigs is moved from the description to the title; based on a recommendation from the advisory committee, the word "solely" is added to the description and the wording "components of" is changed to "equipment on." Additionally, three items (A-115, External Floating Roofs; A-161, Selective Catalytic and Non-catalytic Reduction Systems, under the Sulfur Oxides Control category; and S-28, Landfill fencing for control of windblown trash or access control) are added to the table because the equipment has been found to be consistently used wholly for pollution control. Additionally, for A-161, the word "non-selective" in the description is changed at adoption to "non-catalytic" to avoid any confusion.

Unless exactly matching the criteria for an item on the Tier I Table, any equipment used partially for pollution control is covered under the Tier III application process under §17.17. In addition to the changes, property and descriptions included in the Tier I Table under §17.14(a) are updated from the existing ECL Part A list of equipment to remove duplications and outdated technology, to revise for clarity, and to include updated pollution equipment and pollution control device descriptions.

Based on a recommendation from the advisory committee, three items from Part B of the ECL are added at adoption to the Tier I Table with use percentages of 100%: A-187, Amine or Chilled Ammonia Scrubber - Installed to provide post combustion capture of pollutants (including carbon dioxide upon the effective date of a final rule adopted by the United States Environmental Protection Agency (EPA) regulating carbon dioxide as a pollutant); A-188, Catalyst-based Systems - Installed to allow the use of catalysts to reduce pollutants in emission streams; and A-189, Enhanced Scrubbing Technology - Installed to enhance scrubber performance, including equipment that promotes the oxidation of elemental mercury in the flue gas prior to entering the scrubber. In A-188, a wording change from the advisory committee's recommendation is made for this item. The suggested wording for the description "Installed to allow the use of catalysts to reduce emissions" is changed to "Installed to allow the use of catalysts to reduce pollutants in emission streams." The reason for this change is that catalysts are used in equipment other than pollution control property, including some production equipment, and that the suggested wording could be interpreted as allowing a 100% use determination for such production equipment if said equipment reduces emissions in any way. The adopted language is meant to clarify that only the wholly pollution control equipment is eligible at this time via a Tier I application, while catalyst-based production equipment that reduces emissions would need to apply as a partial-use Tier III application. Although these items are added to the Tier I Table, the fact that they and item A-83, Flue Gas Recirculation, are also on the Expedited Review List demonstrates that they are entitled to an expedited review. The advisory committee also recommended the inclusion of a new item M-23, Coal Combustion or Gasification By-product and Co-product Handling, Storage, and Treatment Facilities, but this item was not added to the table because the property is used in producing marketable products, which is not consistent with the new Tier I Table.

The commission revises §17.14(b) such that the designation "ECL" is changed to "Tier I Table" to reflect the changes to the list as described previously in this preamble. For clarity and for consistency with the rule drafting standards in the *Texas Legislative Council Drafting Manual*, §17.14(b)(1) and (2) are amended to state that the commission may add or remove items from the Tier I Table.

§17.15, Review Standards

The commission repeals §17.15. The two decision flow charts are not necessary for establishing the eligibility criteria for property because these are provided in §17.6, Property Ineligible for Exemption from Taxation. The main flow chart is moved to guidance. The Part B decision flow chart will not be retained in guidance because of the deletion of the Tier IV level of applications.

§17.17, Partial Determinations

The commission revises §17.17(a) to specify that all requests for partial use determinations must be made through the submittal of a Tier III application.

The items listed in §17.17(b) are changed at adoption into a table named the Expedited Review List. The new table in §17.17(b) is adopted to itemize the list of pollution control facilities, devices, or methods included in Texas Tax Code, §11.31(k), as amended based on recommendations from the advisory committee. In §17.17(b) before the new table, wording changes are made at adoption to reflect the change of the proposed list into a table called the Expedited Review List and to show that the statutorily required list is adopted with changes. Based on recommendations from the advisory committee, the following changes to this subsection are also made at adoption: 1) the proposed list is changed to a table; 2) the property description for each item from the program guidelines is incorporated into the table, as well as the item numbers from Part B of the old ECL list; and 3) item B-15 is divided into six parts (B-15a - B-15f) to clarify that the items are separate. The recommendation from the advisory committee to expand item B-16 to include greenhouse gases other than carbon dioxide and any method of sequestration is not incorporated. The recommended changes are not appropriate because they go beyond the scope of the category of equipment listed at Texas Tax Code, §11.31(k)(16). The commission is familiar with the method of geologic sequestration. The commission does not have sufficient experience with various alternative methods of sequestration that would make an expedited review warranted or even feasible at this time. There is not compelling evidence to expand the category of equipment from capturing and geologically sequestering carbon dioxide to equipment capturing all greenhouse gases and sequestering them in any manner. Limiting the item to carbon dioxide that is geologically sequestered will not preclude applicants from filing applications for other greenhouse gases or types of sequestration, should the EPA adopt final regulations controlling greenhouse gases, it only

means that these applications will not be processed in an expedited manner. The recommendation from the advisory committee to list 100% use percentages for certain items on this table is not incorporated because this section is not intended to identify 100% use items. Instead, where appropriate, the same items are listed as 100% on the Tier I Table.

Amended §17.17(c) is relettered from the former §17.17(b) and revised to reflect the elimination of Tier IV applications.

New §17.17(c)(1) codifies the modified CAP. This paragraph applies to applications where there is no marketable product produced by the property used partially for pollution control. The change adopted for the CAP is that the former variable for by-product is changed to a variable for the NPVMP. Because the former definition of by-product covers only recovered waste materials, the former CAP did not account for some production benefits provided by certain property used partially for pollution control, such as production of co-products and power generation. The change to marketable product, as discussed in this preamble for §17.2, allows for implementation of HB 3206 and HB 3544 that require that the standards and methods established in the rules apply uniformly to all applications for determinations, including applications relating to facilities, devices, or methods for the control of air, water, or land pollution as listed in Texas Tax Code, §11.31(k). Another change adopted for the revised CAP requires that applicants submit copies of any information received from the manufacturer on their pollution control property if that information is used in the CAP calculation. Because of the general use of the CAP equation, the variable NPVMP is defined in item 4 as being calculated using the equation in the figure in §17.17(c)(2), although this paragraph covers applications where there is no marketable product and the value of NPMVP is zero. The next paragraph covers applications where a marketable product is generated and provides the equation for calculating NPVMP. In response to concerns expressed by the advisory committee, changes are made at adoption to the standards for calculating Capital Cost Old (CCO) in the equation in §17.17(c)(1). The advisory committee recommended that the new definition of CCO proposed in §17.2 not be adopted because the definition could impact facilities that replace pollution control property that has already received a positive use determination with new property for which they would also seek a use determination. The advisory committee assumed that the definition change would limit the value of CCO that could be calculated, but the effect arises from the methods for calculating the CCO variable, which are under the CAP equation in §17.17(c)(1). The definition change was proposed to be consistent with the calculation methods. To address the advisory committee's concern, a new standard for this situation is added at adoption and the subsequent standards are renumbered and have minor changes to accommodate the new standard. The new standard will allow facilities that replace equipment with a use determination to use the CCO value from the application for the replaced equipment in the CAP equation in the application for the new equipment. This change ensures that the facility does not lose the use percentage from the original equipment when that equipment is replaced.

The commission adds new §17.17(c)(2) for applications that include property that produces a marketable product. In this paragraph, the new equation for calculating NPVMP is codified. This equation is similar to the former equation for calculating the by-product value, except for the change from by-product to marketable product and a change for production costs, both as discussed previously. Under the former equation for by-product, only costs for storage and transportation are subtracted from the retail value of the by-product in the numerator of the equation. In the adopted equation for NPVMP, production costs are defined as "costs directly attributed to the production of the product, including raw materials, storage, transportation, and personnel, but excluding non-cash costs such as overhead and depreciation," and these costs are subtracted from the retail value of the marketable product in the numerator of the equation. Based on a recommendation from the advisory committee, the variable "interest rate" is changed at adoption from being the prime lending rate to 10%. Wording is added at adoption to clarify that the value calculated for NPVMP is used in the CAP for calculating the partial use percentage if the pollution control property generates a marketable product.

The commission deleted former §17.17(d) due to the elimination of the Tier IV applications and revised §17.17(d), formerly §17.17(e), to delete reference to alternate methods for determining the use determination percentage.

§17.20, Application Fees

Revisions to §17.20(a)(1) and (2) amend the reference to the former ECL to reference the Tier I Table for rule consistency. In addition, former §17.20(a)(4) is deleted to remove references to Tier IV applications.

The revisions to §17.20(b) replace the phrase "which are sent back" with "on which the executive director will take no further action" to maintain consistency with the revisions to application processing in §17.12(2). In addition, language is added to codify the process for requiring payment of additional fees when appropriate, including a provision that previously paid fees may be forfeited if an applicant fails to respond within 30 days of receiving a request for additional fees.

The commission revises §17.20(c) to reference both of the commission's systems for electronic payment of fees and to move the word "or" to clarify that both electronic funds transfers and the commission's ePay system are available.

§17.25, Appeals Process

Revisions to §17.25(a) replace the existing language as it applies to appeals of applications that were administratively complete after September 1, 2001, with the word "all" to clarify that any application processed under the amended rules can be appealed. The existing rule language accommodated the effective date of Texas Tax Code, §11.31(e), which provided for appeals of use determinations after September 1, 2001. Because the period for filing an appeal is 20 days after issuance of a use determination, reference to the date on which appeals became an option is no longer needed. Section 17.25(a)(2) is revised to delete the phrase "Persons who may appeal a determination by the executive director" for consistency with the rule drafting standards in the *Texas Legislative Council Drafting Manual*.

Revisions to §17.25(b) add the word "must" to the first sentence to clarify that both listed requirements are conditions precedent for appeals.

Adopted §17.25(d) is added to provide a mechanism for the general counsel to remand appeals back to the executive director without formal action by the commission when the action is requested by the executive director or the public interest counsel. Subsequent subsections are relettered.

At adoption, the phrase "in district court" is added to the end of §17.25(d)(3) to clarify how a decision of the commission can be appealed.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of "major environmental rule" as defined in the statute. Under Texas Government Code, §2001.0225, a "major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, the adopted rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) was adopted solely under the general powers of the agency instead of under a specific state law. The adopted rulemaking amends the Tax Relief for Pollution Control Property rules. Because the adopted rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure but to implement a tax incentive program, this rulemaking is not a major environmental rule and does not meet any of the four applicability requirements. The adopted rulemaking does not result in any new environmental requirements and should not adversely affect in a material way the economy, a sector or the economy, productivity, competition, or jobs. The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No public comments were received.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The commission determined that Texas Government Code, Chapter 2007 does not apply to these adopted rules. Enforcement of these adopted rules would be neither a statutory nor constitutional taking of private real property. Specifically, the adopted rules do not affect a landowner's rights in private real property, because this rulemaking action does not burden, restrict, or limit the owner's rights to property or reduce its value by 25% or more beyond which would otherwise exist in the absence of the adopted regulations.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rulemaking is not subject to the Texas Coastal Management Program.

PUBLIC COMMENT

Public hearings on this proposal were held on August 9, 2010, at 1:00 p.m. in Houston, Texas, at the Houston Galveston Area Council Offices, Conference Room A, 3555 Timmons; August 10, 2010, at 9:00 a.m. in Beaumont, Texas, at the TCEQ Region 10 Offices, Conference Room, 3870 Eastex Freeway; August 10, 2010, at 2:00 p.m. in Austin, Texas, at the TCEQ complex located at 12100 Park 35 Circle, Building E, Room. 201S; August 12, 2010, at 2:00 p.m. in Corpus Christi, Texas, at the NRC Building at Texas A&M University - Corpus Christi, 6300 Ocean Drive; and August 13, 2010, at 1:00 p.m. in Fort Worth, Texas, at the TCEQ Region 4 Offices, Public Meeting Room, 2309 Gravel Drive. Question and answer sessions were held 30 minutes prior to the hearings. The hearing scheduled for 2:00 p.m. on August 11, 2010, in Austin, Texas, was not officially opened because no party indicated a desire to provide comment. Oral comments were provided by seven persons at the public hearing in Houston, three persons in Beaumont, four persons in Corpus Christi, and one person in Fort Worth. Oral comments were provided by the advisory committee; Texas City Independent School District (Texas City ISD); Deer Park Independent School District (DPISD); Harris County Appraisal District (HCAD); two representatives of Thompson and Horton, L.L.P.; the City of Houston; Houston Independent School District (HISD); College of the Mainland; two representatives of Goose Creek Independent School District (Goose Creek ISD); Lee College; Corpus Christi Independent School District (CCISD); Del Mar College; and Gregory-Portland Independent School District (Gregory-Portland ISD). The comment period opened on July 16, 2010, and closed on August 16, 2010.

Written comments were accepted via mail, fax, and through the eComments system. There were 38 written comments received. The commission received written comments from the advisory committee; the Association of Electric Companies of Texas, Inc. (AECT); Aransas Pass Independent School District (Aransas Pass ISD); Beeville Independent School District (Beeville ISD); College of the Mainland; CCISD; the Center for Public Policy Priorities (CPPP); City of Houston; the Clean Coal Technology Foundation of Texas (CCTFT); DPISD; Del Mar College; Goose Creek ISD; Gregory-Portland ISD; the Gulf Coast Lignite Coalition (GCLC); HCAD; Harris County Attorney's Office; HISD; Henrietta Independent School District (Henrietta ISD); Ingleside Independent School District (Ingleside ISD); Lee College; Lone Star Sierra Club (Sierra Club); NRG Texas, L.L.C. (NRG); the Texas Commission on Environmental Quality's Office of Public Interest Counsel (OPIC); Polley-Kane and Associates, Inc. (Polley-Kane); Ricardo Independent School District (Ricardo ISD); Royal Independent School District (Royal ISD); the Texas Association of School Administrators (TASA); the Texas Association of Counties; the Texas Chemical Council (TCC); Texas City ISD; the Texas Conference of Urban Counties (TCUC); Thompson and Horton, L.L.P.; the Texas Taxpayers and Research Association (TTARA); West Sabine Independent School District (West Sabine ISD); and four individuals.

RESPONSE TO COMMENTS

General Comments

General comments in support of the rule package, as proposed, were received from CPPP and OPIC. AECT commented that it supports the advisory committee's recommendations and comments submitted on the proposed rules. AECT commented that it appreciates the efforts of the advisory committee and TCEQ staff in supporting the advisory committee's work. CCTFT, GCLC, and TTARA commented that they fully endorse the recommendations of the advisory committee both before the proposed rules were released and during the public comment period. CCTFT also supported the comments submitted by

TTARA and AECT. CCTFT commended the commission for developing the proposed rules through an open process and for the commission's willingness to receive feedback from the advisory committee, taxing authorities, and the regulated community. GCLC joined in and supported the written comments of CCTFT, TTARA, and AECT. AECT, TCC, and TTARA commended the agency for the very open and inclusive rule revision process and the manner in which the advisory committee has operated. With the exception of the advisory committee's recommendation to add item M-23 to Tier I and making item B-12 100% exempt, Aransas Pass ISD, Gregory-Portland ISD, Ingleside ISD, Sierra Club, and TCUC supported the advisory committee's recommendations and comments. Gregory-Portland ISD asked whether the recommendations made by the advisory committee since the publication of the proposed rules would be subject to public review in the *Texas Register*. HCAD supported the comments submitted by TCUC, HISD, City of Houston, and the Harris County Attorney's Office. Harris County Attorney's Office was generally supportive of the proposed rules and recommendations made by the advisory committee at its July 30, 2010, meeting. Harris County Attorney's Office supported the comments submitted by the TCUC and incorporated them by reference into their comment letter. Henrietta ISD and Ricardo ISD commented that they support the advisory committee's recommendations regarding property eligibility. An individual commented in favor of granting tax exemptions for pollution control equipment located at refineries. Sierra Club was generally supportive of the provisions contained in the proposed rulemaking. NRG recommended that the commission improve the tax relief program through consensus-based methods that allow for thorough review by affected interests. NRG commented that it believes, to the extent possible, the commission should defer changing the tax relief program until the advisory committee has reached consensus on an issue. NRG supported the comments and recommended changes proposed by the advisory committee, AECT, and CCTFT. TASA commended the advisory committee and TCEQ staff for their work on the proposed rules. Based on their understanding that the proposed rule changes would more clearly define the long standing practices of the TCEQ and not expand the exemptions granted, TASA supported the proposed rules. Texas Association of Counties encouraged the TCEQ to sustain a narrow and legally sound approach in its administration of the tax relief program and to continue to employ a thorough and cautious review process before granting an exemption. TCC endorsed the advisory committee's recommendations on the condition that the TCEQ remain open to the consideration of alternative methodologies rather than mandating the use of the CAP formula.

The commission appreciates these comments. In response to Gregory-Portland ISD's question regarding *Texas Register* publication, recommendations that the advisory committee has made in their written and oral comments are included in the RESPONSE TO COMMENTS section of this preamble. Consistent with its statutory role of advising the commission on the implementation of Texas Tax Code, §11.31, all of the advisory committee's recommendations will be made available to the commissioners during the public meeting where the rule adoption will be considered. In response to NRG's comment, while the commission agrees that consensus-based revisions to the tax relief program are ideal, in order to timely implement the requirements of HB 3206 and HB 3544 the commission has decided to adopt the rule revisions. The commission notes that the advisory committee will continue to advise the commission on the commission's implementation of these rule revisions. In response to TCC's comment, while the commission remains open to considering alternative methodologies instead of the CAP calculation, no alternatives have been suggested that would work as well as the CAP for calculating partial use percentages. If a better method is developed, the commission will consider it as a replacement or alternative to the CAP in future rulemaking. No changes were made in response to these comments.

HCAD commented that the tax relief program may no longer be in the public interest and that, while initially incentives were afforded to the regulated community to support clean or cleaner air, water, and land through the use of qualified pollution control equipment, the manner in which the TCEQ administers the program is in need of greater review and reform. An individual requested that the commission not grant further tax relief. OPIC believed the rulemaking serves the public interest and supported its adoption. Royal ISD and West Sabine ISD commented that the removal of taxable properties from tax rolls should be postponed until a more stable economic climate exists in Texas.

The commission appreciates these comments. As discussed in the BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES section of this preamble, the tax relief program was established under a constitutional amendment through the approval of Proposition 2 on the state ballot on November 2, 1993, adding §1-1 to the Texas Constitution, Article VIII. The 73rd Legislature, 1993, added Texas Tax Code, §11.31, Pollution Control Property, to implement the constitutional provision. The legislature amended Texas Tax Code, §11.31 in 2001, 2007, and 2009. The commission has implemented the statute, as amended, through rules. The commission is required by statute to administer the tax relief program in a manner that is consistent with Texas Tax Code, §11.31. No changes were made in response to these comments.

Fiscal Note Comments

Aransas Pass ISD, Gregory-Portland ISD, and Ingleside ISD requested that the TCEQ enhance the predictability, transparency, and consistency related to the issuance of use determinations by formulating the most conservative rules possible, thereby minimizing the impact on property values. Aransas Pass ISD, Gregory-Portland ISD, and Ingleside ISD commented that officials at the Texas Education Agency indicate that if aggregate tax rolls are significantly reduced by this rulemaking, this would reduce local school districts' abilities to raise revenue. Aransas Pass ISD, Gregory-Portland ISD, and Ingleside ISD commented that while the state can buffer reductions in value and revenue to school districts for one budget cycle, beyond that school districts statewide would likely experience proration. Aransas Pass ISD, Gregory-Portland ISD, and Ingleside ISD commented that shortfalls in local and state funding would lead to a dramatic reduction in programs and services to students. Finally, Aransas Pass ISD, Gregory-Portland ISD, and Ingleside ISD commented that with reduction of state aid due to the current budget deficit, the aggregate loss in property value due to TCEQ decision-making and rulemaking, and the state's inability to offset those losses, school districts will be at significant financial risk beginning in the fall of 2010. Beeville ISD urged the commission to "apply stricter, not broader, rules regarding pollution control devices." Beeville ISD commented that further reduction in revenue for schools will devastate already "strapped" school districts. CPPP commented that the proposed rules, as amended, would establish a fair process of defining pollution control equipment that would

carry out the intended purpose of the tax exemption without unduly reducing the amount of property tax revenue available to support public education and other public services. Deer Park ISD commented that while it appreciates the economic impact that industry has on its finances, it also understands that losses in the industrial valuation category have to be augmented and offset by all the other taxpayers of the district. OPIC commented that, due to the modifications to the CAP formula and the requirement that applicants cite the specific regulation or statute that requires the pollution control equipment, it believes the rulemaking will minimize reductions in property tax revenue from equipment that is not used solely for pollution control and that does not provide an environmental benefit in the jurisdiction losing tax revenue. Polley-Kane commented that, while some may fear that local taxing units will lose revenue when a business avoids a portion of its property tax, the local economy and local environment are the principal beneficiaries of every piece of pollution control equipment installed. Royal ISD commented that the proposed rulemaking will adversely affect the state's already difficult budget situation and therefore, adversely affect all public schools that are also struggling with budget shortfalls. TASA opposed any changes that would expand the exemptions granted and take additional property off the tax rolls. TASA commented that with the state facing an estimated $18 billion shortfall next session, it is unlikely that the state will be in a position to make up the lost revenue to school districts. West Sabine ISD commented that the removal of taxable property from the tax rolls would hinder its ability to raise local tax dollars needed to meet the increasing costs of providing educational services to the state's children.

The commission appreciates these comments and is mindful of the potential property tax revenue impacts associated with the amendments to these rules. The amended rules do not reflect an expansion of the tax relief program. The tax exemption process for pollution control property is a two-step process. The first step requires the TCEQ to review the property to determine if it qualifies as pollution control property. Once this has occurred, the applicant files an exemption request with the appropriate appraisal district. Except in cases where a partial determination is being calculated, the dollar value of the property does not play a part in the use determination process. In cases where the executive director makes partial determinations, the final determination is expressed as a percentage of the total value of the equipment and not as a dollar amount. Texas Tax Code, §11.31 does not authorize the commission to consider, and the commission does not consider, the actual dollar amount of tax exemptions received by applicants. Appraisal districts make this determination after the executive director's final decision on whether the equipment is used wholly or partly to control air, water, or land pollution. The commission is aware that tax exemptions are to be narrowly construed. However, when drafting regulations the commission is limited to implementing the language in the statute and relying upon legislative intent in cases of ambiguity. No changes were made in response to these comments.

Beeville ISD commented that the commission's decision in the pending Valero use determination appeals (Appeal of the Executive Director's Use Determinations Issued to Valero Refining - Texas, L.P.; Diamond Shamrock Refining Company, L.P.; and the Premcor Refining Group, Inc.; TCEQ Docket Numbers 2007-0724-MIS-U; 2007-0732-MIS-U; 2007-0733-MIS-U; 2007-0734-MIS-U; 2007-0735-MIS-U; 2007-0736-MIS-U; 2007-0737-MIS-U; 2007-0738-MIS-U; 2007-0739-MIS-U; 2007-0740-MIS-U) will negatively affect school districts. Beeville ISD commented that allowing Valero to receive a positive use determination would deny children in Texas opportunities to learn. HCAD commented that statements made during the commission's consideration of the Valero use determination appeals at its January 13, 2010, Agenda meeting indicate that the commission has decided to broadly interpret Texas Tax Code, §11.31. HCAD commented that there has not been a definitive assessment of what impact this new interpretation would have as far as expanding the number of industries eligible to receive a positive use determination. HCAD recommended that the commission should not abandon on the eve of the next session of the legislature all previous TCEQ practices, policies, and procedures under the guise of a new interpretation of long-ago legislative intent. City of Houston commented that granting positive use determinations for hydrotreaters is not permissible under the Texas Constitution. An individual commented that they are against the commission's approval of Valero's use determination applications and that hydrotreaters make cleaner burning fuel for cars, but do not reduce pollution at refineries. Another individual commented that Valero should not receive a tax exemption for complying with federal regulations. The Texas Association of Counties expressed concern, given the narrow scope of the tax relief program, about the request by some industry representatives for an exemption of property used for producing a cleaner product, such as equipment installed to produce low sulfur diesel and gasoline. Thompson and Horton, L.L.P. commented that, while the rulemaking does not directly relate to current pending applications for property tax exemptions of hydrotreater equipment, the potential impact of those existing applications should be assessed as part of the fiscal note if the proposed rules would result in more equipment being exempted from the tax rolls.

The commission appreciates these comments; however, pending appeals of use determinations are outside the scope of this rulemaking. No changes were made in response to these comments. Additionally, the proposed rulemaking does not expand the rules.

HCAD commented that the TCEQ should return to its prior practice of publishing annual reports of all tax relief applications, whether they were granted or denied, and the county affected. HCAD commented that appraisal districts and taxing units cannot adequately ascertain the fiscal impact of this category of exemptions without such a report.

The commission appreciates these comments. Publishing annual reports of all applications is outside the scope of this rulemaking. No changes were made in response to these comments, but the commission is considering this request outside of the rulemaking process.

Deer Park ISD commented that, under the current target revenue system prescribed by the legislature for school districts, much of the loss of local maintenance and operations revenue due to property tax exemptions will have to be replaced by state funds. Deer Park ISD commented that the fiscal note does not disclose or allude to the fact that there would be a direct and immediate impact on the state budget should the TCEQ grant exemptions for hydrotreating equipment. Goose Creek ISD and HCAD commented that the proposed rules did not contain a meaningful fiscal note. Goose Creek ISD asked if the rule revisions would expand the eligibility of property tax exemptions. HCAD also commented that the TCEQ has absolved itself of any obligation to consider the fiscal impact of its decisions. Harris County Attorney's Office commented that it does not agree with the statement that "the effect on revenue collected by a local government

depends on the policies of local taxing authorities and appraisal districts." Thompson and Horton, L.L.P. commented that if there is any reason to believe that property that would be denied a positive use determination under the existing rules would be eligible for a positive use determination under the new rules (all else being equal), then TCEQ has an obligation under Texas Government Code, §2001.024(a)(4) to issue a fiscal note that provides a reasonable estimate of the impact on local governments, state government, and local taxpayers from increased exemptions.

The amended rules do not represent an expansion of the tax relief program. HB 3206 and HB 3544 added two new subsections to Texas Tax Code, §11.31. Texas Tax Code, §11.31(g-1) requires that the standards and methods established in Chapter 17 are applied uniformly to all use determination applications. Texas Tax Code, §11.31(n) requires the commission to establish a permanent advisory committee to provide advice on how Texas Tax Code, §11.31 should be implemented. HB 3544 also amended Texas Tax Code, §11.31(d) to allow the executive director to send notices and determinations to appraisal districts electronically. The specific purpose of the rule amendments is to implement the recent revisions to Texas Tax Code, §11.31, clarify existing program practices, and resolve outstanding programmatic issues in a manner consistent with the legislative intent of Texas Tax Code, §11.31. The commission does not anticipate that property currently considered ineligible would become eligible to receive a positive use determination as a result of these amendments.

The fiscal note contained in the rule proposal complies with Texas Government Code, §2001.024(a)(4). Texas Government Code, §2001.024(a)(4)(C) requires notice of a proposed rulemaking to include a fiscal note stating, for the first five years that the rules will be in effect, the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rules. In the proposal, the commission provided a fiscal note that contained the following language: "The proposed rules are not expected to a have a fiscal impact on other state agencies, nor are the proposed rules expected to have a direct fiscal impact on local governments. However, determination that property is used for pollution control can exempt property from property tax rolls, and taxing authorities may experience a change in the amount of property that can be taxed. This in turn could affect the amount of tax revenue collected. The effect on revenue collected by a local government depends on the policies of local taxing authorities and appraisal districts."

Texas Tax Code, §11.31 establishes a two-step process for securing a property tax exemption for pollution control property. First, the applicant must receive a use determination from the TCEQ that the property is used for pollution control. This determination includes the percentage of property use that pertains to pollution control. Second, the application submits the use determination to the local appraisal district to obtain the property tax exemption. The local appraisal district determines the value of the property. The commission does not believe that this rule constitutes an expansion or that additional property would become subject and consequently affect the amount of taxes collected. However, changes to the amount of a property tax exemption are not calculable by the commission because the valuation of pollution control property is outside the scope of the commission's review under Chapter 17. Therefore, no changes were made in response to these comments.

HCAD commented that the TCEQ should include a provision that the financial information submitted as part of an applicant's use determination application must be consistent with the financial information submitted to the appraisal district where the subject property is located.

Section 17.10(d)(2) and Texas Tax Code, §11.31(c)(2) require an applicant to submit the estimated cost of the pollution control property on the applicant's application. Information required by appraisal districts for property valuation purposes are outside the scope of this rulemaking. No changes were made in response to this comment.

Comments on the Cost Analysis Procedure

At its July 30, 2010, meeting, the advisory committee advised that the existing definition of "Capital Cost Old" be retained, which was included in the committee's written comments. AECT commented that the proposed definition should not be adopted and agreed with the unanimous recommendation of the advisory committee to retain the existing definition. AECT commented that the proposed definition of "capital cost old" may be interpreted to exclude from a positive use determination the cost of any qualifying pollution control property that is being replaced, a result that is contrary to the intent of Texas Tax Code, §11.31.

The commission understands the concern that the new definition could be interpreted in a way that would lead to lower positive use determination percentages for partial pollution control equipment if the equipment was installed to replace an existing piece of equipment that had already received a previous partial use determination. Under the existing rules, CCO is defined in §17.2(3), but the definition is not consistent with the three methodologies for calculating CCO listed under the proposed equation in §17.17(c)(1). The revised adopted definition removes this inconsistency by including new language that is consistent with method 3.2 for calculating CCO. Based on previous Tier III applications, most applications containing replacement equipment should be calculated using method 3.1, which is based on the cost of comparable equipment without pollution controls that is sold in the United States market. Only in cases when this comparable equipment is no longer manufactured in the United States would method 3.2 come into play. In method 3.2, the cost of the original equipment is adjusted for inflation and any change in production capacity, and the resulting value is used as CCO. If an applicant uses method 3.2 for equipment that already has a positive partial determination, the CAP would calculate only the value of the additional pollution control aspect of the new equipment. The determination would not include the pollution control portion of the equipment for which the previous determination had been issued. Under these adopted rules the value used for CCO would be the same value as that used in the original application for the first use determination. This adjustment will allow the new partial determination to take into account the full pollution control value of the property, rather than just the incremental pollution control value.

The CCTFT urged the commission to remove the definition of "marketable product" and all references to the term in the final regulations and in the CAP formula. In the alternative, if the commission does not wish to entirely remove the definition of "marketable product," the CCTFT recommended the following language be added to the definition: The term "marketable product" does not include byproducts that would be disposed of as a solid waste under the Texas Health and Safety Code, Chapter 361, or as an industrial discharge subject to regulation by permit issued in accordance with Texas Water Code, Chapter 26,

but for the sale or other use of the by-product through recycling or beneficial reuse. CCTFT and TTARA commented that neither Texas Tax Code, §11.31 nor the Texas Constitution requires a limitation on a use determination for pollution control property that produces a by-product. CCTFT and AECT commented that the value of a marketable by-product is relevant to a taxing authority's property valuation, not the commission's issuance of a use determination. CCTFT and TTARA objected to the concept of deducting the value of marketable products produced by pollution control property from an applicant's use determination percentage. AECT, CCTFT, and TTARA argued that such a deduction would negatively impact an applicant's incentive to recycle byproducts and co-products that would otherwise be disposed of in a landfill, which runs counter to the state's policy of encouraging waste minimization and recycling, particularly through the development of the markets for recycled materials. CCTFT commented that applicants for property listed on the Tier I Table would be required to file a Tier III application if the pollution control property produces a marketable product. CCTFT contended that this requirement is unnecessary and inappropriate because several types of pollution control property would produce marketable products with net present values that are negative under all foreseeable scenarios. CCTFT recommended that, if the commission retains the deduction for marketable products, the commission revise the definition of "marketable product" as follows: "Marketable product-Anything produced or recovered using pollution control property that is sold as product, is accumulated for later use, or is used as a raw material in a manufacturing process, and that has a positive net present value, as determined by the equation in . . . §17.17(c)(2). . ." AECT requested that the commission exclude from the adopted rules: 1) the proposed definition of "marketable product" and the existing definition of "byproduct," along with all references to these terms, and 2) any requirement to calculate NPVMP, or any other by-product value adjustment, for inclusion in any partial use determination equation. AECT commented that it does not support the inclusion of a "marketable product" variable in the Tier III partial use determination evaluation. AECT argued that discounting a partial use determination based upon the value of incidental byproducts is not contemplated by the Texas Constitution or Texas Tax Code, §11.31, and is wholly inappropriate when such byproducts are not the primary production or business purpose of the facility. AECT commented that a primary business purpose could be defined by those facility products listed under the respective facility's North American Industry Classification System (NACIS) Code. AECT commented that the definition of "marketable product" is not contemplated by Texas Tax Code, §11.31. City of Houston commented that it cannot determine the usefulness of definition changes in §17.2 relating to "byproduct" or "marketable product." NRG recommended that the commission postpone changing the definition of "marketable product" until the advisory committee has reached consensus on developing one or more formulas to be used to evaluate equipment that is used for both production and pollution control purposes. TTARA commented that the governing law does not require or contemplate a limitation on the use determination for pollution control property when its use results in a by-product of some sort.

The commission appreciates these comments, but will retain the proposed definition of "Marketable product." Texas Tax Code, §11.31(d) requires the executive director of the TCEQ to determine whether a facility, device, or method is used wholly or partly for the control of air, water, or land pollution. As set forth in Texas Attorney General's Letter Opinion Number 96-128, Texas Tax Code, §11.31 was intended to give tax relief to businesses compelled by law to install or acquire pollution control equipment that generates no revenue for such businesses. The rules have included, since January 9, 2002 (see 27 TexReg 185), provisions that require partial use percentages to be reduced by the net present value of the by-product generated by the pollution control equipment. As explained in the preamble to the proposed rules, the existing definition of by-product is limited to recovered waste materials. Using this definition as a variable in the CAP formula does not account for the production benefits provided by certain property used partially for pollution control, such as production of co-products and power generation. The definition of "marketable product" accounts for these production benefits, and its use in the CAP is consistent with the commission's mandate under Texas Tax Code, §11.31(d). The commission does not anticipate that the definition of "Marketable product" and its inclusion in the CAP formula will have a significant effect on an applicant's waste minimization or recycling practices.

The commission also respectfully disagrees with CCTFT's assessment of when a Tier III application is necessary and appropriate. A Tier III application is required when the subject property is used partially for the control of air, water, or land pollution and does not correspond exactly to an item on the Tier I Table. The introductory paragraph of the Tier I Table contains language specifying the items listed on the table are used wholly for pollution control purposes and produce no marketable product. The commission's rules require a Tier III application when any marketable product is generated. Market conditions dictate whether byproducts or co-products recovered or produced by pollution control property are sold, traded, accumulated for later use, recycled into the manufacturing process, or disposed of as a waste. When pollution control property generates a marketable product, the commission needs to account for that marketable product in order to fulfill its statutory mandate under Texas Tax Code, §11.31(d); regardless of whether the NPVMP generated is positive or negative. No changes were made in response to these comments.

AECT does not support the adoption of the equation proposed in §17.17(c)(2). AECT commented that, although a form of the equation may be appropriate in some circumstances, it objects to the universal application of the proposed methodology for all partial use determinations. CCTFT recommended that the commission include a provision to allow use of a different formula when an applicant can demonstrate that the CAP would yield an incorrect or unreasonable result. City of Houston commented that it is not taking a position on changes to the CAP formula due to the difficulty in analyzing the impact of the changes, that it has no position on the use of a single or multiple CAP formulas, and that it seeks a clear and fair CAP formula or formulas. City of Houston recommended that the partial use formula(s) result in a lower percentage when facilities violate emission laws and rules. Sierra Club commented that when equipment that has received a partial use determination is replaced with new equipment that is also used partly for pollution control, the proposed CAP does not work well. Sierra Club urged the commission to explore adjustments to the proposed CAP formula or to allow applicants to explain why the CAP formula is not appropriate and propose an alternative formula. NRG recommended that the commission postpone revising the CAP formula until the advisory committee has reached consensus on developing one or more formulas. TCC recommended that the commission consider other methodologies for calculating partial exemptions rather than mandating the use of the proposed CAP. TCC commented that examples

of other approaches include a partial exemption factor based on the quantity of emissions reduced by new equipment versus the replaced equipment.

The commission appreciates the concerns regarding the CAP. Prior to the 81st Legislature, the LBB prepared a report including recommendations to the legislature on the tax relief program. The LBB report recommended that the commission use the CAP contained in its rules for all partial determinations, including applications for property located on the list in Texas Tax Code, §11.31(k). The report acknowledged that the CAP takes into account the economic benefit of property to the owner. Texas Tax Code, §11.31(g-1) specifically requires the standards and methods established in the rules to be uniformly applied to all applications. In the rule proposal, the commission requested public comment on whether multiple formulas should be developed for calculating partial use percentages rather than just the method proposed in §17.17. The commission received alternative approaches during the public comment period, evaluated them, and decided not to adopt any of those approaches because they did not calculate the percent of environmental use of partial use property. Section 17.15(b) of the existing rules, relating to applications for the equipment listed in Texas Tax Code, §11.31(k), allows applicants to provide application-specific calculations of partial use percentages. This provision has led to applications with widely varying use determination percentages for the same categories of equipment. The commission interprets Texas Tax Code, §11.31(g-1) to require uniformity in the methods and standards used to review applications, not the use of one method to all partial use calculations. The proposed rule solicited comments or suggestions for alternative equations, but no workable methods were submitted. In the absence of other workable calculation methods, and due to the commission's belief that application-specific methodologies are contrary to the statutory uniformity requirement, the commission has decided to adopt the proposed CAP with the minor amendments discussed in the SECTION BY SECTION DISCUSSION section of this preamble. No changes were made in response to these comments.

During its August 4, 2010, teleconference, the advisory committee recommended that the commission modify the proposed formula for determining the NPVMP by replacing the prime lending rate with 10%, which was included in the committee's written comments. The advisory committee commented that it is confident the prime lending rate was not an appropriate discount rate and based their recommendation on "an abundance of appraisal experience and research indicating 10% is in the low range of discount rates for most business appraisals using the discounted cash flow income approach to value." The advisory committee commented that actual discount rates vary by industry and often by property and that its recommendation, while not ideal, is more reasonable than the prime lending rate in the proposed rule. NRG recommended that, if the commission decides to change the CAP formula, the commission use a realistic discount rate for the determination of NPVMP. NRG commented that the use of the prime lending rate as proposed will grossly overestimate the value of marketable product, especially with low interest rates. NRG recommended the use of applicant-specific weighted cost of capital rather than prime lending rate. NRG commented that the commission could specify in rule how the weighted cost of capital would be calculated or allow the advisory committee to work on this issue and have the methodology included in subsequently issued guidance materials.

The commission appreciates these comments and agrees that a facility's actual discount rate varies from the prime lending rate based on facility-specific issues, such as type of industry, location, specific project, and the risk associated with the project. The commission recognizes that the advisory committee, which consists of members representing various industries, appraisal districts, taxing units, and environmental groups, possesses extensive property appraisal and valuation experience. During the August 4, 2010, conference call, there was general agreement that capital rates vary from 8% to over 20% and that 2% is a reasonable property tax estimate. The commission agrees that the combined rate of 10% is a more reasonable discount rate than the prime lending rate. The commission agrees with the suggested revision and has modified the rules in response to the recommendation.

Comments on Environmental Benefit and Ineligibility Criteria

At its March 26, 2010, meeting, the advisory committee advised the commission to replace the "environmental benefit at the site" requirement with a requirement that "the portion of the property under consideration is: (a) not used, constructed, acquired, or installed solely to produce a good or service; and (b) being wholly or partly used, constructed, acquired or installed to meet or exceed an adopted environmental rule or regulation that requires the prevention, control, monitoring, or reduction of air, water, or land pollution that results from the actions of the applicant in the production of a good or service and not solely from the use or characteristics of the good or service produced or provided." The commission revised the advisory committee's recommendation and included this revised language in the proposed amendment to §17.6. The advisory committee commented that the proposed rule language reflects its intent and included the recommendation in their written comments. AECT commented that it supports the additions and clarifications to the description of property ineligible for exemption from taxation contained in §17.6(1)(B) - (D). City of Houston commented that it favors the proposed changes to §17.6 and that these clarifications serve to solidify the intent of Section 1-l, Article VIII of the Texas Constitution and Texas Tax Code, §11.31. Ricardo ISD commented that it is extremely pleased that the TCEQ has accepted the advisory committee's recommended changes regarding property that is eligible for an exemption to exclude certain types of equipment and thereby, avoid adverse effects on school districts. The Texas Association of Counties supported the rule revisions that clarify that the portion of property used for the production of a good or service is not eligible for a tax exemption.

The commission appreciates these comments. No changes were made in response to these comments.

AECT commented that it supports the elimination of the existing flow charts and the "environmental benefit at the site" requirement previously located at §17.15. AECT commented that the "environmental benefit at the site" requirement is not found in Section 1-l, Article VIII of the Texas Constitution or Texas Tax Code, §11.31, and has not proven to be a consistently reliable factor for identifying eligible pollution control equipment. Deer Park ISD commented that any pollution control exemption should be for equipment that provides a benefit on site or somewhere within the boundaries of the taxing jurisdiction from which the exemption is requested. HCAD supported the relocation of the definition of "benefit at the site" from the Decision Flow Chart to the rules themselves and expressed concern that there is no clarifying statement that the proposed rules do not substantively change the existing rules. HCAD commented that it is concerned that unless the commission makes it abundantly clear that there has not been a substantive change to the "benefit at the site" def-

inition, several pending use determination applications would be granted when they should not be. Absent such a clarifying statement, HCAD recommended that the phrase "benefit at the site" remain in the Decision Flow Chart in conjunction with the new proposed definition. Thompson and Horton, L.L.P. commented that its interpretation of the proposed rule changes (specifically replacing the "environmental benefit at the site" requirement with a new definition of "environmental benefit" in §17.2(4) and the additions to the list of properties that are ineligible for a positive use determination under §17.6) should not expand the exemptions granted. Thompson and Horton, L.L.P commented to the extent that its interpretation of the proposed rule changes is correct, they do not oppose the changes. Thompson and Horton, L.L.P. commented that if TCEQ staff has any reason to believe that property that would have been denied a positive use determination under the "benefit at the site" requirement would now qualify, it strongly opposes the proposed rules. Thompson and Horton, L.L.P. requested that the TCEQ review past applications to determine whether equipment that was previously denied a positive use determination based on the "benefit at the site" requirement would be eligible for a positive use determination under the new rules and that the results of this review be made a part of the rulemaking record.

The commission appreciates these comments. The commission does not believe that eliminating the existing flow charts and rule language located at §17.15, adding a definition of "environmental benefit" at §17.2(4), and modifying the eligibility requirements at §17.6 represent an expansion of the tax relief program. These changes stem from the advisory committee's recommendation, at its March 26, 2010, meeting and included in its written comments, that the commission remove the "environmental benefit at the site" requirement, define "environmental benefit," and modify the eligibility requirements in §17.6. Staff reviewed program files and found no use determination application that was denied solely on the basis of failure to meet the "environmental benefit at the site" requirement. Staff modified the advisory committee's recommendations to align them with governing law and the existing regulations and included these revisions in the commission's June 30, 2010, rule proposal. The commission believes that the rule language as proposed is consistent with the legislative intent of Texas Tax Code, §11.31 and provides additional guidance to applicants regarding the eligibility of certain types of equipment. No changes were made in response to these comments.

Comments on Processing and Deadlines

At its July 30, 2010, meeting, the advisory committee advised the commission to revise §17.10(c) to change "January 31 of the following year" to "January 31 of the same tax year." This advice was included in the committee's written comments. This revision is intended to align the rule language with current practice.

The commission appreciates this comment and agrees with the advisory committee's suggested revision. The rule language at §17.10(c) has been modified at adoption in response to the advisory committee's recommendation.

HCAD commented that the proposed rules lack clear guidelines for the timely processing of applications. HCAD also objected to TCEQ's current review process that allows applicants to amend their applications multiple times for several years. HCAD commented that it has grave concerns that the TCEQ allows applications to stay pending for several years, sometimes resulting in the refund of taxes that taxing units have already spent providing essential government services.

Section 17.12 sets out the time periods associated with use determination application review. In this adoption, the commission has revised §17.12(2)(A) and (B) outlining the Notice of Deficiency (NOD) process. After receiving an administrative or technical NOD, an applicant has 30 days to submit a revised application with the requested information. If the applicant does not provide a revised application with the requested information within 30 days, the executive director may decide to take no further action on the application, and the application fee may be forfeited pursuant to §17.20(b). When a final use determination is appealed, the appeal is scheduled to be considered at the commissioner's next regularly scheduled public meeting for which adequate notice can be given pursuant to Texas Tax Code, §11.31(e) and §17.25(c)(3). All of these provisions are designed to establish a timely use determination review and appeals process. No changes were made in response to these comments.

Comments on the Content of Applications

At its July 30, 2010, meeting, the advisory committee recommended that the commission revise proposed §17.10(d)(3) to read "the purpose of the installation of such facility, device, or method, and the proportion of the installation that is for pollution control, such as if deemed by TCEQ to be relevant and essential to the use determination, a detailed description of the pollution source and a detailed and labeled process flow diagram that clearly depicts the pollution control property and the processes and equipment that generate the pollutant(s) being controlled." The recommendation was included in the committee's written and oral comments. The advisory committee commented that members were concerned that the proposed rule language "such as" conflicts with "must" at the beginning of §17.10(d). Advisory committee members also expressed concern that the proposed language may create an unreasonable and unnecessary burden for some applications. Finally, members expressed proprietary and homeland security concerns surrounding the release of certain process flow diagrams.

The commission appreciates this comment and agrees with the advisory committee's suggested revision. The commission notes that Texas Tax Code, §11.31(c) sets out the minimal amount of information that an applicant is required to include in their permit application, including any financial or other data that the executive director requires by rule for determining the proportion of the installation that is pollution control property. In the SECTION BY SECTION DISCUSSION of the rule proposal, the commission acknowledged that requiring the submission of a detailed process flow diagram would not be appropriate for all applications. As part of administering the tax relief program, staff will use their discretion to determine when the submission of additional information is relevant and essential to the use determination. The commission does not anticipate that this rule revision will impose an unreasonable or unnecessary burden on applicants. Finally, use determination application information filed with the commission marked as containing proprietary or homeland security information will be maintained in accordance with 30 TAC §1.5, relating to Records of the Agency. The rule language in §17.10(d)(3) has been modified at adoption per the advisory committee's recommendation.

Comments on the Tier I Table and Expedited Processing List

At its July 30, 2010, meeting, the advisory committee advised the commission to revise the proposed property description for item A-83, Flue Gas Recirculation, on the Tier I Table located at §17.14(a) to add back "etc." to read as follows: "Ductwork, blowers, etc.-used to redirect part of the flue gas back to the

combustion chamber for reduction of NO_x formation. May include fly ash collection in coal fired units." This advice was included in the committee's written comments.

The use of "etc." was deleted throughout the new Tier I Table. The definition of "Tier I" at §17.2(8) states that these applications are for items listed on the Tier I Table or for property that is necessary for the installation of items on the table. No changes were made in response to this comment.

At its July 30, 2010, meeting, the advisory committee recommended that the commission revise the Tier I Table to include the following: item A-187, Amine or Chilled Ammonia Scrubbing-Installed to provide post combustion capture of pollutants (including carbon dioxide upon the effective date of a final rule adopted by the USEPA regulation carbon dioxide as a pollutant). This recommendation was included in the committee's written comments.

The commission appreciates this comment. The commission agrees that amine and chilled ammonia scrubbing equipment that is installed to provide post-combustion capture of pollutants is 100% pollution control equipment unless it is used to produce a marketable product, and as such, is adding this equipment under A-187 of the Tier I Table. The commission is also aware that amine scrubbers may be used as part of a production process, e.g., natural gas sweetening. The commission does not believe that such production processes that may use amines or chilled ammonia constitute post-combustion capture of pollutants. However, the commission reiterates that pollution control equipment associated with production processes requires a Tier III application for a partial use determination. The Tier I Table found at §17.14(a) has been modified in response to the advisory committee's recommendation.

At its July 30, 2010, meeting, the advisory committee recommended that the commission revise the Tier I Table to include the following: item A-188, Catalyst based Systems - Installed to allow the use of catalysts to control emissions. This recommendation was included in the committee's written comments.

The commission appreciates this comment. The Tier I Table currently includes a number of listings for catalyst-based systems for emission control. Specifically, A-21 (Catalytic Oxidizer), A-80 (Selective Catalytic and Non-Catalytic Reduction Systems), A-136 (Oxidation Systems), and A-81 (Selective Catalytic Converters for Stationary Sources) are on the Tier I Table. The commission is aware that catalysts can be used in many production processes, e.g., fluid catalytic cracking units in refinery operations. It is possible that some catalyst-based production-related equipment could also result in pollution control. The commission reiterates that pollution control equipment associated with production processes requires a Tier III application for a partial use determination. In order to make this distinction clearer, the commission is adding additional language to the recommendation of the advisory committee and adding A-188 to the Tier I Table to read, "Catalyst-Based Systems-Installed to allow use of catalysts to reduce pollutants within an emission stream." The Tier I Table found at §17.14(a) has been modified accordingly.

At its July 30, 2010, meeting, the advisory committee recommended that the commission revise the Tier I Table to include the following: item A-189, Enhanced Scrubbing Technology - Installed to enhance scrubber performance, including equipment that promotes the oxidation of elemental mercury in the flue gas prior to entering the scrubber. This recommendation was included in the committee's written comments.

The commission appreciates this comment and agrees that equipment installed to enhance scrubber performance, including equipment that promotes the oxidation of elemental mercury in the flue gas prior to entering the scrubber, may be 100% pollution control equipment. The oxidation of elemental mercury and scrubbers are already listed on the Tier I Table as A-136 and A-168, respectively, as 100% pollution control equipment when not used in the production of a marketable product. Accordingly, the commission is adding this item to the Tier I Table. The commission is aware that scrubbers may be used in certain industrial processes, e.g., process gas cleaning. It is possible that some scrubber-based production related equipment could also result in pollution control. The commission reiterates that equipment used for both production and pollution control requires a Tier III application for a partial use determination. The Tier I Table found at §17.14(a) has been modified in response to the advisory committee's recommendation.

On August 4, 2010, the advisory committee recommended the commission add item M-23, Coal Combustion or Gasification By-Product and Co-product Handling, Storage, and Treatment Equipment to the Tier I Table and change the "variable" use determination percentage for item B-12, Coal Combustion or Gasification By-Product and Co-product Handling, Storage, and Treatment Equipment to 100%. The advisory committee recommended that the property description for both items M-23 and B-12 read as follows: "Used for handling, storage, or treatment of byproducts or co-products produced (resulting) from the combustion or gasification of coal such as boiler and Gasifier slag, bottom ash, flue gas desulfurization (FGD) material, fly ash, and sulfur if such byproducts are either disposed as solid waste or would be disposed of as solid waste if not beneficially reused." This recommendation was included in the committee's written comments. AECT supported the advisory committee's recommendation that the commission add item M-23 to the Tier I Table and a use percentage of 100% for item B-12 to the table in §17.17(b) to clarify that property used for the handling, storage, or treatment of coal combustion byproducts that will or potentially will be disposed of as solid waste are entitled to a 100% use determination. Aransas Pass ISD Gregory-Portland ISD, Ingleside ISD, and TCUC commented that the advisory committee's recommendation to add item M-23 to the Tier I Table and to amend item B-12 on the table in §17.17(b), each with a predetermined 100% positive use determination percentage, lacks sufficient basis and should not be done without knowing how it would impact the tax relief program. Aransas Pass ISD, Gregory-Portland ISD, and Ingleside ISD commented that making such a dramatic change without justification is unwarranted and could lead to a negative impact on Texas taxpayers. Harris County Attorney's Office urged the commission to maintain the proposed rules without incorporating the advisory committee's recommendation to make item M-23 and item B-12 100% exempt. Harris County Attorney's Office commented that this is a significant change toward sidestepping the more rigorous Tier III review that allows staff the discretion to make technical assessments of whether particular equipment deserves partial or full exemption. Harris County Attorney's Office commented that adopting the advisory committee's recommendation could have unintended consequences by opening the door to other applicants to demand the same exemption for similar components not contemplated by this action. Harris County Attorney's Office commented that such substantive changes at this late stage would require a reevaluation of the fiscal analysis relating to the costs to local and state governments. The Sierra Club urged the commission to retain a variable use percentage for equipment re-

lated to coal combustion waste. The Sierra Club commented that some companies could potentially use the equipment to gather by-products or co-products and then sell them on the market, meaning the equipment could be considered production equipment. Sierra Club and the TCUC commented that there is nothing in the proposed rules that would prevent a coal company from seeking a 100% exemption when appropriate. NRG recommended adding category B-12 to the Tier I Table with the description set out in the preamble to the proposed rule. NRG did not support the addition of the phrase "if such by-products or co-products are either disposed as solid waste or would be disposed as solid waste if not beneficially reused" as recommended by the advisory committee. NRG commented that because the equipment described by this category is essential to the operation of pollution control equipment, it is immaterial whether the removed material is disposed of as waste or is used for some beneficial purpose. NRG commented that even if the subsequent use of the removed material was relevant to the determination of the value of the pollution control equipment, the materials handled by this equipment, such as fly ash, are not economically viable as products. NRG commented that to the extent that some of this material is recycled, it is recycled as a means of reducing disposal costs and conserving landfill space, not as a profit-generating activity. The TCUC commented that the argument that placing item M-23 on the Tier I Table would speed up the application process is flawed due to the fact that Coal Combustion or Gasification By-Product and Co-product Handling, Storage, and Treatment Equipment is eligible for expedited processing pursuant to Texas Tax Code, §11.31(m) and §17.12(3). The TCUC commented that it is a common business practice to seek out new uses for waste products to produce revenue, be a good corporate citizen, or reduce costs associated with waste disposal. The TCUC commented that the tax relief program was never intended to provide an exemption for these purposes.

The commission appreciates these comments and has decided not to add item M-23 to the Tier I Table or change the use determination percentage for item B-12 from "variable" to "100%" at this time. The proposed Tier I Table in §17.14(a) is a table of properties determined by the executive director to be used for pollution control purposes at a standard use determination percentage with no associated marketable product. Items M-23 and B-12 deal with equipment used to handle, store, and treat by-products and co-products produced from the combustion or gasification of coal. As set forth in Texas Attorney General's Letter Opinion Number 96-128, Texas Tax Code, §11.31 was intended to give tax relief to businesses compelled by law to install or acquire pollution control equipment that generates no revenue for such businesses. Byproducts and co-products from the combustion or gasification of coal may meet the definition of "marketable product" located at §17.2(5). If by-products or co-products from coal combustion or gasification are sold as a product, accumulated for later use, or used as a raw material in a manufacturing process, a Tier III review is necessary to account for the production of these materials. Therefore, the inclusion of item M-23 on the Tier I Table and changing the use determination percentage for item B-12 from "variable" to "100%" is not appropriate. A Tier III review allows the commission to determine whether a piece of equipment provides both production and pollution control benefits. If, after multiple Tier III reviews, it becomes evident that certain equipment associated with the handling, storage, or treatment of coal combustion or gasification by-product or co-products are used wholly for pollution control purposes, the commission could modify the listing of item B-12 and include that equipment on the Tier I Table during one of its triennial reviews. No changes were made in response to these comments.

At its May 21, July 30, and August 4, 2010, meetings, the advisory committee recommended that the commission: 1) include minor revisions to the property category headings on Part B of the ECL; 2) subdivide item B-15 into six separate categories of equipment; 3) revise Part B of the ECL to include property descriptions that are consistent with agency guidelines; 4) add the following sentence to the introductory paragraph of the table in §17.17(b): "A Tier I application may be filed for items which have a designated positive use determination percentage;" and 5) change the "variable" use determination percentage to "100%" for five categories of property (B-4, Flue-Gas Recirculation Components; B-12, Coal Combustion or Gasification By-product and Co-Product Handling, Storage and Treatment Facilities; B-15b, Amine or Chilled Ammonia Scrubbing; B-15c, Catalyst based Systems; and B-15d, Enhanced Scrubbing Technology) and add these categories to the Tier I Table. These recommendations were included in the committee's written comments. AECT supported the advisory committee's recommendations regarding the existing ECL Part A and Part B List. The CCTFT urged the commission to adopt the advisory committee's advice regarding the Part B List and include certain Part B items on the Tier I Table. The CCTFT commented that Coal By-product and Co-Product Handling, Storage and Treatment Facilities are entitled to a 100% positive use determination for two reasons. First, that the majority of the by-products produced by coal combustion or gasification are produced by the pollution control property itself, rather than the production process. Second, removing the incentive to recycle coal combustion by-products would have significant unintended consequences, such as overwhelming the existing supply of landfill space in Texas with coal combustion by-products. The CCTFT commented that to avoid potential ambiguity with the dual listing of items, the commission should add the following sentence to the introductory paragraph of the table in §17.17(b): "A Tier I application may be filed for items which have a designated positive use determination percentage." NRG supported the advisory committee's recommendation to expand the descriptions of equipment listed on Part B of the ECL. NRG supported the advisory committee's determination that five categories of property on Part B of the ECL are used for 100% pollution control purposes and should be added to the Tier I Table.

The commission appreciates these comments and made the following changes in response to these comments: 1) included the recommended minor revisions to the property category headings on the table in §17.17(b); 2) subdivided item B-15 into the six recommended categories of equipment; 3) added the recommended property descriptions with minor modifications for items other than carbon dioxide sequestration; and 4) added listings for items B-4, B-15b, B-15c, and B-15d to the Tier I Table. The commission did not make the following changes: 1) the addition of Coal Combustion or Gasification By-product and Co-Product Handling, Storage, and Treatment Facilities, to the Tier I Table as item M-23; 2) the adoption of the advisory committee's recommendation to expand item B-16, Carbon Dioxide Capture and Sequestration Equipment, to cover all types of greenhouse gases and any type of sequestration; 3) the addition of the recommended language to the introductory paragraph of the table in §17.17(b); or 4) the inclusion of fixed 100% use determinations on the table in §17.17(b).

The reasoning behind the commission's decision to not add item M-23 to the Tier I Table is discussed earlier in this RESPONSE

TO COMMENTS section. With regard to item B-16, the commission has determined that the advisory committee's recommended property description goes beyond the scope of the category of equipment listed at Texas Tax Code, §11.31(k)(16), which encompasses equipment that is "used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is geologically sequestered in this state." The advisory committee's proposed description would remove the requirement that carbon dioxide be geologically sequestered and expands the item to cover all greenhouse gases when the EPA adopts a regulation regulating carbon dioxide as a pollutant. Compelling evidence has not been provided to the commission that all greenhouse gases and types of sequestration should receive expedited reviews. The commission has determined that the advisory committee's recommended description is broader than that contained in Texas Tax Code, §11.31(k) and adopts the description without the changes recommended by the advisory committee. This response does not limit applicants from applying for use determinations for equipment associated with greenhouse gases other than carbon dioxide or with other methods of sequestration. Such applications would simply not be processed in an expedited manner, as required by Texas Tax Code, §11.31(m) and §17.12(3).

With regard to adding the recommended language to the introductory paragraph of the table in §17.17(b), the commission believes that this revision is unnecessary. The commission has traditionally granted 100% positive use determinations for items listed on Part B of the ECL used wholly for pollution control (e.g., Flue Gas Recirculation Components). The dual listing of items is necessary because of the statutory requirement to adopt by rule a nonexclusive list of equipment that must include the 18 categories of equipment listed at Texas Tax Code, §11.31(k) unless the commission has compelling evidence for removing any of the categories.

In the rule revisions, the commission is eliminating the Tier IV level of applications. In order to fulfill the uniformity requirement in Texas Tax Code, §11.31(g-1), the commission has determined to subject all property not used wholly for pollution control to a Tier III review. Depending upon how the equipment is being utilized in the manufacturing process, several items listed at Texas Tax Code, §11.31(k) may be used for both pollution control and production purposes. As such, a Tier III review is required to fulfill the uniformity requirement at Texas Tax Code, §11.31(g-1), and designated 100% use determinations are not appropriate in the table in §17.17(b).

CCTFT recommended that the commission remove the requirement that items may be added to the table in §17.17(b) only if there is "compelling evidence" to support the conclusion that the item provides pollution control benefits. CCTFT commented that there is no statutory basis requiring this showing before an item may be added to the list.

The commission appreciates this comment. In the 80th Legislative Session (2007), HB 3732 amended Texas Tax Code, §11.31 by adding subsections (k) - (m). Texas Tax Code, §11.31(k) required the commission to adopt by rule a nonexclusive list of pollution control property that must include the 18 categories of equipment listed. Texas Tax Code, §11.31(l) required the commission to adopt a procedure to review the list at least once every three years and to allow the removal of an item from the list when there is compelling evidence that it does not provide pollution control. On February 17, 2008, the commission amended Chapter 17 to implement HB 3732 and extended the compelling evidence standard to the addition of items to the nonexclusive list. The commission believes that this was an appropriate exercise of its rulemaking authority. No changes were made in response to this comment.

30 TAC §§17.1, 17.2, 17.6, 17.10, 17.12, 17.14, 17.17, 17.20, 17.25

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.120, which authorizes the commission to perform any acts authorized by the TWC or other laws that are necessary and convenient to the exercise of its jurisdiction and powers; and §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC. The amendments are also adopted under Texas Tax Code, §11.31, which authorizes the commission to adopt rules to implement the Pollution Control Property Tax Exemption.

The adopted amendments implement the legislative mandate under HB 3206 and HB 3544, 81st Legislature, 2009, which added new subsections (g-1) and (n) to Texas Tax Code, §11.31. Texas Tax Code, §11.31(g-1) requires uniform application to all applications of the standards and methods for processing; and §11.31(n) allows the executive director to use electronic mail for transmitting notices to appraisal districts.

§17.2. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA), the Texas Solid Waste Disposal Act (TSWDA), the Texas Water Code (TWC), the Texas Tax Code (TTC), or the Texas Health and Safety Code (THSC), or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the fields of pollution control or property taxation. In addition to the terms that are defined by Chapter 3 of this title (relating to Definitions), the TCAA, the TSWDA, TWC, TTC, and THSC, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Capital cost new--The estimated total capital cost of the equipment or process.

(2) Capital cost old--The cost of the equipment that is being or has been replaced by the equipment covered in an application. The value of this variable in the cost analysis procedure is calculated using one of the four hierarchal methods for this variable in the figure in §17.17(b)(1) of this title (relating to Partial Determinations).

(3) Cost analysis procedure--A procedure that uses cost accounting principles to calculate the percentage of a project or process that qualifies for a positive use determination as pollution control property.

(4) Environmental benefit--The prevention, monitoring, control, or reduction of air, water, and/or land pollution that results from the actions of the applicant. For purposes of this chapter, environmental benefit does not include the prevention, monitoring, control, or reduction of air, water, and/or land pollution that results from the use or characteristics of the applicant's goods or service produced or provided. For the purpose of this chapter, the terms "environmental benefit" and "pollution control" are synonymous.

(5) Marketable product--Anything produced or recovered using pollution control property that is sold as a product, is accumulated for later use, or is used as a raw material in a manufacturing process. Marketable product includes, but is not limited to, anything recovered or produced using the pollution control property and sold, traded, ac-

cumulated for later use, or used in a manufacturing process (including at a different facility). Marketable product does not include any emission credits or emission allowances that result from installation of the pollution control property.

(6) Partial Determination--A determination that an item of property or a process is not used wholly as pollution control.

(7) Pollution control property--A facility, device, or method for control of air, water, and/or land pollution as defined by TTC, §11.31(b).

(8) Tier I--An application containing property that is on the Tier I Table in §17.14(a) of this title (relating to Tier I Pollution Control Property) or that is necessary for the installation or operation of property located on the Tier I Table.

(9) Tier II--An application for property that is used wholly for the control of air, water, and/or land pollution, but is not located on the Tier I Table in §17.14(a) of this title.

(10) Tier III--An application for property used partially for the control of air, water, and/or land pollution and that does not correspond exactly to an item on the Tier I Table in §17.14(a) of this title.

(11) Use determination--A finding, either positive or negative, by the executive director that the property is used wholly or partially for pollution control purposes and listing the percentage of the property that is determined to be used for pollution control.

§17.10. Application for Use Determination.

(a) To be granted a use determination a person shall submit to the executive director:

(1) a completed and signed commission application form and one copy of the completed, signed form; and

(2) the appropriate fee, under §17.20 of this title (relating to Application Fees).

(b) An application must be submitted for each unit of pollution control property or for each group of integrated units that has been, or will be, installed for a common purpose.

(c) If the applicant desires to apply for a use determination for a specific tax year, the application must be postmarked no later than January 31 of the same tax year. Applications postmarked after this date will be processed as a lower priority than applications postmarked by the due date and without regard for any appraisal district deadlines.

(d) All use determination applications must contain at least the following:

(1) the anticipated environmental benefits from the installation of the pollution control property for the control of air, water, and/or land pollution;

(2) the estimated cost of the pollution control property;

(3) the purpose of the installation of such facility, device, or method, and the proportion of the installation that is for pollution control, such as, if deemed by the executive director to be relevant and essential to the use determination, a detailed description of the pollution source and a detailed and labeled process flow diagram that clearly depicts the pollution control property and the processes and equipment that generate the pollutant(s) being controlled;

(4) the specific sections of the law(s), rule(s), or regulation(s) being met or exceeded by the use, installation, construction, or acquisition of the pollution control property;

(5) if the installation includes property that is not used wholly for the control of air, water, and/or land pollution and is not on the Tier I Table, a worksheet showing the calculation of the Cost Analysis Procedure, §17.17(c) of this title (relating to Partial Determinations), and explaining each of the variables;

(6) any information that the executive director deems reasonably necessary to determine the eligibility of the application;

(7) if the property for which a use determination is sought has been purchased from another owner who previously used the property as pollution control property, a copy of the bill of sale or other information submitted by the person or political subdivision that demonstrates, to the satisfaction of the executive director, that the transaction involves a bona fide change in ownership of the property and is not a sham transaction for the purpose of avoiding tax liability; and

(8) the name of the appraisal district for the county in which the property is located.

§17.12. Application Review Schedule.

Following submission of the information required by §17.10 of this title (relating to Application for Use Determination), the executive director shall determine whether the pollution control property is used wholly or partly for the control of air, water, and/or land pollution. If the determination is that the property is used partly for pollution control, the executive director shall determine the proportion of the property used for pollution control.

(1) As soon as practicable, the executive director shall send notice by regular mail or electronic mail to the chief appraiser of the appraisal district for the county in which the property is located that the person has applied for a use determination under this chapter.

(2) As soon as practicable after receipt of an application for use determination, the executive director shall send written notification informing the applicant that the application is administratively complete or that it is deficient.

(A) If the application is not administratively complete, the notification will specify the deficiencies, and allow the applicant 30 days to provide a revised application with the requested information. If the applicant does not submit the requested information within 30 days, the executive director may decide to take no further action on the application and the application fee will be forfeited under §17.20(b) of this title (relating to Application Fees).

(B) The executive director may request additional technical information within 60 days of issuance of an administrative completeness letter. If additional information is requested, the applicant shall provide a revised application with the requested information. If the applicant does not provide the requested technical information within 30 days, the executive director may decide to take no further action on the application and the application fee will be forfeited under §17.20(b) of this title.

(C) An application where the executive director will take no further action under subparagraphs (A) or (B) of this paragraph, may be refiled by the applicant. In such cases, the applicant shall pay the appropriate fee as required by §17.20 of this title.

(3) For applications covering property listed in the table in §17.17(b) of this title (relating to Partial Determinations), the executive director will complete the technical review of the application within 30 days of receipt of the required application information without regard to whether the information required by §17.10(d)(1) of this title has been submitted.

(4) The executive director shall determine whether the property is or is not used wholly or partly to control pollution. The executive director is authorized to grant positive use determinations

for the portion of the property included in the application that is deemed pollution control property.

(A) If a positive use determination is made, the executive director shall issue a use determination letter to the applicant that describes the proportion of the property that is pollution control property.

(B) If a negative use determination is made, the executive director shall issue a denial letter explaining the reason for the denial.

(C) A letter enclosing a copy of the determination shall be sent by regular or electronic mail to the chief appraiser of the appraisal district for the county in which the property is located.

§17.14. Tier I Pollution Control Property.

(a) For the property listed in the Tier I Table located in this subsection that is used wholly for pollution control purposes, a Tier I application is required. A Tier I application must not include any property that is not listed in this subsection or that is used for pollution control purposes at a use percentage that is different than what is listed in the table. If a marketable product is recovered (not including materials that are disposed) from property listed in this subsection, a Tier III application is required.
Figure: 30 TAC §17.14(a)

(b) The commission shall review and update the Tier I Table at least once every three years.

(1) The commission may add an item to the table only if there is compelling evidence to support the conclusion that the item provides pollution control benefits and a justifiable pollution control percentage is calculable.

(2) The commission may remove an item from the table only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits.

§17.17. Partial Determinations.

(a) A Tier III application requesting a partial determination must be submitted for all property that is either not on the Tier I Table located in §17.14(a) of this title (relating to Tier I Pollution Control Property), or does not fully satisfy the requirements for a 100% positive use determination under this chapter. For all property for which a partial use determination is sought, the cost analysis procedure (CAP) described in subsection (c) of this section must be used.

(b) The Expedited Review List in this subsection is adopted as a nonexclusive list of facilities, devices, or methods for the control of air, water, and/or land pollution. This table consists of the list located in Texas Tax Code, §11.31(k) with changes as authorized by Texas Tax Code, §11.31(l). The commission shall review and update the items listed in this table only if there is compelling evidence to support the conclusion that the item provides pollution control benefits. The commission may remove an item from this table only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits.
Figure: 30 TAC §17.17(b)

(c) Consistent with subsection (a) of this section, the following calculation (cost analysis procedure) must be used to determine the creditable partial percentage for a property that is filed on a Tier III application:

(1) If no marketable product results from the use of the property, use the following equation and enter "0" for the net present value of the marketable product (NPVMP):
Figure: 30 TAC §17.17(c)(1)

(2) For property that generates a marketable product (MP), the net present value (NPV) of the MP is used to reduce the partial determination when used in the equation in the figure in paragraph (1) of this subsection. The value of the MP is calculated by subtracting the production costs of the MP from the market value of the MP. This value is then used to calculate the NPV of the MP (NPVMP) over the lifetime of the equipment. The equation for calculating NPVMP is as follows:
Figure: 30 TAC §17.17(c)(2)

(d) If the cost analysis procedure of this section produces a negative number or a zero, the property is not eligible for a positive use determination.

§17.25. Appeals Process.

(a) Applicability.

(1) This subchapter applies to all appeals of use determinations issued by the executive director. A proceeding based upon an appeal filed under this subchapter is not a contested case for purposes of Texas Government Code, Chapter 2001.

(2) The following persons may appeal a use determination issued by the executive director:

(A) the applicant seeking a use determination; and

(B) the chief appraiser of the appraisal district for the county in which the property for which a use determination is sought is located.

(b) Form and timing of appeal. An appeal must be in writing and must be filed by United States mail, facsimile, or hand delivery with the chief clerk of the commission within 20 days after the receipt of the executive director's determination letter. A person is presumed to have been notified on the third regular business day after the date the notice of the executive director's action is mailed by first class mail. If an appeal meeting the requirements of this subsection is not filed within the time period specified, the executive director's use determination is final. An appeal filed under this subchapter must:

(1) provide the name, address, and daytime telephone number of the person who files the appeal;

(2) give the name and address of the entity to which the use determination was issued;

(3) provide the use determination application number for the application for which the use determination was issued;

(4) request commission consideration of the use determination; and

(5) explain the basis for the appeal.

(c) Appeal processing. The chief clerk shall:

(1) deliver or mail to the executive director a copy of the appeal;

(2) deliver or mail a copy of the appeal to the applicant if the appeal was filed by the chief appraiser or to the chief appraiser if the appeal was filed by the applicant; and

(3) schedule the appeal for consideration at the next regularly scheduled commission meeting for which adequate notice can be given.

(d) Action by the general counsel. The general counsel may remand a matter from the commission's agenda to the executive director if the executive director or the public interest counsel requests a remand.

(e) Action by the commission.

(1) The person seeking the determination and the chief appraiser may testify at the commission meeting at which the appeal is considered.

(2) The commission may remand the matter to the executive director for a new determination or deny the appeal and affirm the executive director's use determination.

(3) If the commission denies the appeal and affirms the executive director's use determination, the commission's decision shall be final and appealable in district court.

(f) Action by the executive director.

(1) If the commission remands a use determination to the executive director, the executive director shall:

(A) conduct a new technical review of the application that includes an evaluation of any information presented during the commission meeting; and

(B) upon completion of the technical review, issue a new determination. A copy of the new determination shall be mailed to both the applicant and the chief appraiser of the county in which the property is located.

(2) A new determination by the executive director may be appealed to the commission in the manner provided by this subchapter.

(g) Withdrawn appeals. An appeal may be withdrawn by the entity who requested the appeal. The withdrawal must be in writing, and give the name, address, and daytime telephone number of the person who files the withdrawal, and the withdrawal shall indicate the identification number of the use determination. The withdrawal must be filed by United States mail, facsimile, or hand delivery with the chief clerk of the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 23, 2010.

TRD-201006705
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: December 13, 2010
Proposal publication date: July 16, 2010
For further information, please call: (512) 239-6090

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30 TAC §17.15

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code (TWC), §5.120, which authorizes the commission to perform any acts authorized by the TWC or other laws that are necessary and convenient to the exercise of its jurisdiction and powers; and §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC. The rule is also repealed under Texas Tax Code, §11.31, which authorizes the commission to adopt rules to implement the Pollution Control Property Tax Exemption.

The adopted repeal implements the legislative mandate under HB 3206 and HB 3544, 81st Legislature, 2009, which added new subsections (g-1) and (n) to Texas Tax Code, §11.31. Texas Tax Code, §11.31(g-1) requires uniform application to all applications of the standards and methods for processing; and §11.31(n) allows the executive director to use electronic mail for transmitting notices to appraisal districts.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 23, 2010.

TRD-201006706
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: December 13, 2010
Proposal publication date: July 16, 2010
For further information, please call: (512) 239-6090

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CHAPTER 37. FINANCIAL ASSURANCE
SUBCHAPTER V. FINANCIAL ASSURANCE FOR CLASS B SEWAGE SLUDGE FOR LAND APPLICATION UNITS

30 TAC §37.9105

The Texas Commission on Environmental Quality (agency, commission, or TCEQ) adopts the amendment to §37.9105.

The amendment to §37.9105 is adopted *without change* to the proposed text as published in the June 18, 2010, issue of the *Texas Register* (35 TexReg 5172) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The purpose of the adopted amendment is to eliminate a requirement of environmental impairment insurance policies for Class B sewage sludge facilities.

SECTION DISCUSSION

Existing §37.9105, Environmental Impairment Insurance, is amended to remove the requirement in §37.9105(b)(2) that the environmental impairment insurance policy required of Class B sewage sludge operators must provide an automatic renewal option to the insured, who is the facility operator. The adopted paragraph allows the insurer to cancel, terminate, or non-renew the policy as long as it provides 120 days prior notice to the executive director.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rule is not subject to §2001.0225 because it does not meet the criteria for a major environmental rule as defined in that statute.

A major environmental rule means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely af-

fect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the adopted rule is to remove a policy requirement of the environmental impairment insurance required of Class B sewage sludge facilities. Therefore, it is not anticipated that the adopted rule will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that the adopted rule does not meet the definition of a major environmental rule.

Furthermore, even if the adopted rule did meet the definition of a major environmental rule, the adopted rule is not subject to Texas Government Code, §2001.0225, because it does not meet any of the four applicable requirements specified in §2001.0225(a). Texas Government Code, §2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rule does not meet any of these requirements. First, there are no applicable federal standards that this rule would address. Second, the adopted rule does not exceed an express requirement of state law but instead streamlines existing rules adopted pursuant to state law. Third, there is no delegation agreement that would be exceeded by this adopted rule because none relates to this subject matter area. Fourth, the commission is not adopting this rule solely under the commission's general powers, but also under the authority of Texas Health and Safety Code, §361.011, which provides the commission with the authority to manage municipal waste; Texas Health and Safety Code, §361.013, which provides the commission the authority to adopt rules and establish fees for the transportation and disposal of solid waste; Texas Health and Safety Code, §361.022, which provides the state's public policy for preferred methods for generating, treating, storing, and disposing of municipal sludge as reuse; Texas Health and Safety Code, §361.024, which provides the commission with authority to adopt rules consistent with the chapter and establish minimum standards of operation for the management and control of solid waste; Texas Health and Safety Code, §361.061, which provides the commission the authority to issue permits for the construction, operation, and maintenance of solid waste facilities that store, process, or dispose of solid waste; and Texas Health and Safety Code, §361.121, which provides that a permit is required for the land application of Class B sewage sludge, that a fee shall be charged for the issuance of a permit, and that the commission shall adopt rules to require an applicant to submit certain information with a permit application, including information relating to commercial liability insurance and environmental impairment insurance.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period and no comments were received.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the rule and performed an assessment of whether the rule constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the rule is to eliminate a requirement of environmental impairment insurance policies for Class B sewage sludge facilities. The rule substantially advances this stated purpose by removing the requirement that the environmental impairment insurance policy required of Class B sewage sludge operators must provide an automatic renewal option to the insured, who is the facility operator.

Promulgation and enforcement of this rule is neither a statutory nor a constitutional taking of private real property because the rule does not affect real property.

In particular, there are no burdens imposed on private real property, and the rule amends agency rules regarding financial assurance for Class B sewage sludge facilities. Because the regulation does not affect real property, it does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, this rule will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the adopted rule is consistent with CMP goals and policies because the rulemaking is an administrative rule that includes financial assurance, notice, and other procedural requirements for permit holders of Class B sewage sludge; will not have a direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the rule will not violate (exceed) any standards identified in the applicable CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period and no comments were received.

PUBLIC COMMENT

The commission held a public hearing on this proposal in Austin on July 15, 2010 at 10:00 a.m. No comments were received at the hearing. The comment period closed on July 19, 2010. No written comments were received.

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; Texas Water Code, §5.103 and §5.105, which establish the commission's general authority to adopt rules; Texas Health and Safety Code, §361.011, which provides the commission with the authority to manage municipal waste; Texas Health and Safety Code, §361.013, which provides the com-

mission the authority to adopt rules and establish fees for the transportation and disposal of solid waste; Texas Health and Safety Code, §361.022, which provides the state's public policy for preferred methods for generating, treating, storing, and disposing of municipal sludge as reuse; Texas Health and Safety Code, §361.024, which provides the commission with authority to adopt rules consistent with the chapter and establish minimum standards of operation for the management and control of solid waste; Texas Health and Safety Code, §361.061, which provides the commission the authority to issue permits for the construction, operation, and maintenance of solid waste facilities that store, process, or dispose of solid waste; and Texas Health and Safety Code, §361.121, which provides that a permit is required for the land application of Class B sewage sludge, that a fee shall be charged for the issuance of a permit, and that the commission shall adopt rules to require an applicant to submit certain information with a permit application, including information relating to commercial liability insurance and environmental impairment insurance.

The adopted amendment implements Texas Health and Safety Code, §361.121.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 23, 2010.

TRD-201006704
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: June 18, 2010
For further information, please call: (512) 239-6090

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CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendments to §§114.2, 114.51, and 114.64; and the repeal of §114.52.

Section 114.64 is adopted *with change* to the proposed text as published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5718) and will be republished. Sections 114.2 and 114.51 and the repeal of §114.52 are adopted *without change* and the text will not be republished.

The adopted amendments to §114.2 and §114.51 and the repeal of §114.52 will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP). Section 114.64 is not included in the SIP and the amendment to §114.64 will not be submitted to the EPA.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

A rulemaking adopted by the commission on October 6, 2000, revised an air pollution control strategy involving emissions inspection of vehicles to reduce nitrogen oxides (NO_x) and volatile organic compounds (VOC) necessary for the counties included in the Dallas-Fort Worth (DFW), Houston-Galveston-Brazoria (HGB), and El Paso (ELP) ozone nonattainment areas in order to assist in the ability to demonstrate attainment with the one-hour ozone National Ambient Air Quality Standard (NAAQS). The commission adopted vehicle emissions testing analyzer specifications (TAS) and inspection requirements for acceleration simulation mode (ASM) and on-board diagnostics (OBD) inspections. The revised vehicle emissions inspection program, also known as the Inspection and Maintenance (I/M) program, began on May 1, 2002, in Collin, Dallas, Denton, and Tarrant Counties in the DFW area and Harris County in the HGB area. On May 1, 2003, the I/M program expanded to include Ellis, Johnson, Kaufman, Parker, and Rockwall Counties for the DFW area and Brazoria, Fort Bend, Galveston, and Montgomery Counties in the HGB area. Unlike the two-speed idle (TSI) vehicle emissions inspection that had been in place, the ASM inspection has the ability to detect NO_x emissions, while the OBD inspection has the ability to ensure vehicle emissions control systems are functioning as designed by verification through the vehicle's computer system. Because NO_x is a precursor to ground-level ozone formation, reduced NO_x and VOC emissions result in ground-level ozone reductions. In addition, the inclusion of OBD in the I/M program ensured compliance with a federal mandate requiring all 1996 and newer model-year vehicles to receive an OBD inspection.

On October 24, 2001, the commission adopted rules that implemented portions of House Bill (HB) 2134, 77th Texas Legislature, 2001. The adopted rules defined the term "low-volume emissions inspection station" and required all vehicle emissions inspection stations in the DFW and HGB areas to offer both ASM and OBD inspections to the public with the exception of low-volume emissions inspection stations. The adopted rules also revised the TAS and established the Early Participation Incentive Program (EPIP).

The low-volume emissions inspection station designation was established because the cost of ASM vehicle emissions inspection analyzers, which have the capability to inspect all vehicles required to undergo I/M inspections, is much higher than the cost of OBD-only vehicle inspection analyzers, which only have the capability to inspect 1996 and newer model-year vehicles. To ensure that an adequate number of vehicle emissions inspection stations were available to provide both ASM and OBD inspections at the start of the revised I/M program in the DFW and HGB areas, stations that voluntarily opted to be designated as a low-volume emissions inspection station by the Texas Department of Public Safety (DPS), the agency that implements the I/M program along with the TCEQ, were restricted to a maximum of 1,200 OBD inspections per calendar year.

The EPIP was established as an additional method to ensure that an adequate number of vehicle emissions inspection stations were available to provide both ASM and OBD inspections at the start of the revised I/M program in the DFW and HGB areas. The EPIP encouraged early purchases of ASM analyzers by providing vehicle emissions inspection stations with financial assurance offered by the state if the I/M program was terminated early. The EPIP was available to the first 1,000 eligible vehicle emissions inspection stations that were certified by the DPS to offer ASM and OBD inspections to the public. Vehicle emissions inspection station owners that were accepted into the EPIP and maintained their eligibility could have received a payment of up to $675 per month to cover the cost of the ASM analyzers if the I/M program was terminated within five years of the program start date. As the EPIP expired in all I/M program areas on

May 1, 2008, vehicle emissions inspection stations owners are no longer participating in the program.

On October 26, 2005, the commission adopted revisions to §114.51, which required manufacturers of vehicle emissions inspection analyzers used in the I/M program to meet the revised requirements contained in the TCEQ's "Specifications for Vehicle Exhaust Gas Analyzer Systems for Use in the Texas Vehicle Emissions Testing Program," dated May 1, 2005, or in the TCEQ's "Specifications for On-Board Diagnostics II Analyzer for Use in the Texas Vehicle Emissions Testing Program," dated May 1, 2005. Since October 2005, the TAS have been modified four times to improve oversight and enhance effectiveness of the I/M program. The minor modifications did not affect the vehicle emissions inspection procedure or the design and performance criteria for the vehicle emissions inspection analyzer. However, the minor modifications did include updates to accommodate new technology vehicles, enhancements to the method of collecting inspection data that is used to identify the occurrence of possible improper or fraudulent inspections, and updates to internal reference tables used to determine the applicable vehicle emissions inspection criteria. No modification will be considered a minor non-programmatic modification if it results in additional costs to vehicle inspection station owners. Each time the TAS were modified, staff incorporated the necessary software enhancements into a draft version of the TAS, and these enhancements were implemented on all analyzers by the analyzer manufacturers participating in the I/M program. The modified TAS have not been incorporated by rule.

Rules adopted by the commission on March 27, 2002, implemented the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), which was designed to assist low income individuals with repairs, retrofits, or retirement of vehicles that failed emissions inspections as required by HB 2134, 77th Texas Legislature, 2001. Under the LIRAP, monetary assistance is provided for emissions-related repairs directly related to bringing the vehicle into compliance or for replacement assistance for a vehicle that has failed the required emissions inspection. Due to the requirements of Senate Bill (SB) 12, 80th Texas Legislature, 2007, the commission adopted rules on December 5, 2007, that modified the LIRAP, now commonly referred to as the Drive a Clean Machine program, by requiring funds be transferred to a participating dealer not later than five business days after the sale of a replacement vehicle is completed.

The primary reason for this adopted rulemaking is to implement portions of HB 715 and HB 1796 from the 81st Texas Legislature, 2009, relating to requiring the vehicle emissions inspection limit for low-volume emissions inspection stations to be set at no fewer than 150 OBD inspections per month and increasing the maximum time that counties have to reimburse dealerships participating in the LIRAP from five to 10 business days, respectively. This adopted rulemaking also defines the TAS as "the most recent version" resulting in a more streamlined process for minor non-programmatic modifications to the TAS and allow staff to implement minor non-programmatic modifications including updates to accommodate new technology vehicles, enhancements to the method of collecting inspection data, and updates to internal reference tables. However, modifications to the I/M program design, performance criteria for the vehicle emissions inspection analyzer, or the vehicle emissions inspection procedure will not be implemented unless commission approval is received through the rule and SIP revision process. In addition, the adopted rulemaking removes the "Specifications for On-Board Diagnostics II Analyzer for Use in the Texas Vehicle Emissions Testing Program" and its corresponding references to remove redundant requirements and also repeals the EPIP.

The EPIP was established as an incentive program and is not a control strategy measure of the I/M program. In addition, the EPIP expired on May 1, 2008. Therefore, removal of the EPIP will not change the stringency or effectiveness of the I/M program.

SECTION BY SECTION DISCUSSION

In addition to the adopted amendments associated with the rulemaking for Chapter 114, various stylistic, non-substantive changes are included to update rule language to current Texas Register style and format requirements. Such changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally are not specifically discussed in this preamble.

The adopted amendment to §114.2 modifies the definition of a low-volume emissions inspection station. The current definition states that "a low-volume emissions inspection station is a vehicle emissions inspection station that performs only the OBD test and does not exceed 1,200 OBD tests per calendar year." The modified definition states that "a low-volume inspection station is a vehicle emissions inspection station that meets all criteria for obtaining a low-volume waiver from the Texas Department of Public Safety." HB 715 prevents the DPS from restricting a vehicle emissions inspection station to fewer than 150 OBD inspections per month. This adopted amendment ensures that the definition for a low-volume emissions inspection station contained in §114.2 does not conflict with the low-volume waiver criteria for inspection stations listed in the DPS rules (37 TAC §23.95) and meets the requirements of HB 715.

The adopted amendment to §114.51 removes the dates associated with the TAS and adds language requiring analyzer manufacturers to meet the requirements contained in the "most recent version" of the TAS resulting in a more streamlined process for implementing minor non-programmatic modifications to the TAS. The most recent version of the TAS will be the version available at the TCEQ's central office or at *http://www.tceq.state.tx.us/assets/public/implementation/air/ms/IM/txvehanlspecs.pdf.* In addition, the adopted amendment removes the "Specifications for On-Board Diagnostics II Analyzer for Use in the Texas Vehicle Emissions Testing Program" and its corresponding references as the specifications for OBD-only vehicle inspection analyzers are also contained in the "Specifications for Vehicle Exhaust Gas Analyzer Systems for Use in the Texas Vehicle Emissions Testing Program."

The adopted repeal of §114.52 removes all requirements relating to the EPIP, which has expired, and deletes the EPIP requirements that were incorporated into the I/M SIP in the preamble of previous rulemakings adopted on October 24, 2001, October 8, 2003, and September 14, 2004.

The adopted amendment to §114.64 increases the maximum time that counties have to reimburse dealerships participating in the LIRAP from five to 10 business days as mandated by HB 1796. This section is being adopted with a minor non-substantive punctuation change to subsection (d)(1)(B) made since the rulemaking was proposed.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the adopted rule revisions do not meet the definition of a "major environmental rule." Texas Government Code, §2001.0225 states that a "major environmental rule" is, "a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state." Furthermore, while the adopted rulemaking does not constitute a major environmental rule, even if it did, a regulatory impact analysis is not required because the adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule, which: "(1) exceeds a standard set by federal law, unless the rule is specifically required by state law; (2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; (3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopts a rule solely under the general powers of the agency instead of under a specific state law."

The adopted rulemaking implements requirements of the Federal Clean Air Act (FCAA). Under 42 United States Code (USC), §7410, each state is required to adopt and implement a SIP containing adequate provisions to implement, attain, maintain, and enforce the NAAQS within the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, state SIPs must include "enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter," (meaning 42 USC, Chapter 85, Air Pollution Prevention and Control, otherwise known as the FCAA). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410 and must develop programs and control measures to assure that their SIPs provide for implementation, attainment, maintenance, and enforcement of the NAAQS within the state. Furthermore, while states generally are afforded some flexibility in adopting and implementing a SIP, vehicle I/M programs are required elements of the SIP pursuant to 42 USC, §7511(a).

The specific intent of the adopted rulemaking is to clarify, improve upon, and increase consistency within the I/M program and the LIRAP by implementing HB 715 and HB 1796, streamlining the programs, and eliminating certain expired provisions. To further this specific intent, this rulemaking incorporates the following adopted amendments to the I/M program. The current definition of a low-volume emissions inspection station in §114.2 states that "a low-volume emissions inspection station is a vehicle emissions inspection station that performs only the OBD test and does not exceed 1,200 OBD tests per calendar year." The adopted amendment to §114.2 modifies the current definition to state that "a low-volume emissions inspection station is a vehicle emissions inspection station that meets all criteria for obtaining a low-volume waiver from the Texas Department of Public Safety." HB 715 prevents the DPS from restricting a vehicle emissions inspection station to fewer than 150 OBD inspections per month. The adopted amendment ensures that the definition for a low-volume emissions inspection station contained in §114.2 does not conflict with the low-volume waiver criteria for inspection stations listed in the DPS rules (37 TAC §23.95) and meet the requirements of HB 715. The adopted amendment to §114.64 increases the maximum time that counties have to reimburse dealerships participating in the LIRAP from five to 10 business days as mandated by HB 1796. The adopted amendment to §114.51 removes the dates associated with the TAS and add language requiring analyzer manufacturers to meet the requirements contained in the "most recent version" of the TAS and remove the "Specifications for On-Board Diagnostics II Analyzer for Use in the Texas Vehicle Emissions Testing Program" and its corresponding references. The adopted amendment will improve the efficiency of the process used by the commission for implementing minor non-programmatic modifications to the TAS and remove redundant requirements. The adopted repeal of §114.52 repeals all requirements relating to the EPIP, which has expired.

The adopted rulemaking does not constitute a major environmental rule under Texas Government Code, §2001.0225(g)(3) because: 1) the specific intent of the adopted rule revision is not to protect the environment or reduce risks to human health from environmental exposure, but rather to clarify, improve upon, and increase consistency within the I/M program and the LIRAP by implementing HB 715 and HB 1796, streamlining the programs, and eliminating certain expired provisions; and 2) the adopted rulemaking does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs, nor do the adopted rule revisions adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state because the adopted rulemaking actually clarifies, improves upon, and increases consistency within the I/M program and the LIRAP. Because the adopted rulemaking is not a major environmental rule, it is not subject to a regulatory impact analysis under Texas Government Code, §2001.0225.

While the adopted rulemaking does not constitute a major environmental law, even if it did, it is not subject to a regulatory impact analysis under Texas Government Code, §2001.0225. The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by SB 633 during the 75th Texas Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program; or are adopted solely under the general powers of the TCEQ. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded: "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from

the full analysis unless the rule was a major environmental rule that exceeds a federal law.

The FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts revisions to the SIP and rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP and rules was considered to be a major environmental rule that exceeds federal law, then every revision to the SIP and rules would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP and rules have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially unamended. It is presumed that, "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp,* 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue,* 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.,* 798 S.W.2d 353, 357 (Tex. App. Austin 1990, no writ); *Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor,* 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied);* and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance," Texas Government Code, §2001.035. The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

Even if the adopted rulemaking constituted a major environmental rule under Texas Government Code, §2001.0225(g)(3), a regulatory impact analysis is not required because this exemption is part of the commission's SIP for making progress toward the attainment and maintenance of the NAAQS. Therefore, the adopted rule revisions do not exceed a standard set by federal law or exceed an express requirement of state law since they are part of an overall regulatory scheme designed to meet, not exceed the relevant standard set by federal law - the NAAQS. In addition, the adoption and maintenance of the I/M program is directly required by federal law pursuant to 42 USC, §7511(a). The commission is charged with protecting air quality within the state and to design and submit a plan to achieve attainment and maintenance of the federally mandated NAAQS. The Third District Court of Appeals upheld this interpretation in *Brazoria County v. Texas Comm'n on Envtl. Quality,* 128 S.W. 3d 728 (Tex. App. - Austin 2004, *no writ).* In addition, portions of this rulemaking are directly required by HB 715 and HB 1796. Furthermore, no contract or delegation agreement covers the topic that is the subject of this rulemaking. Finally, this rulemaking was not developed solely under the general powers of the TCEQ but is authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code (TWC), which are cited in the STATUTORY AUTHORITY section of this preamble, including THSC, §§382.011, 382.012, and 382.017.

This rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), for the following reasons. The adopted rulemaking is not a major environmental law because: 1) the specific intent of the adopted rulemaking is not to protect the environment or reduce risks to human health from environmental exposure, but rather to clarify, improve upon, and increase consistency within the I/M program and the LIRAP by implementing HB 715 and HB 1796, streamlining the programs, and eliminating certain expired provisions; and 2) the adopted rulemaking does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs, nor does it adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state, because the adopted rulemaking actually clarifies, improves upon, and increases consistency within the I/M program and the LIRAP. Furthermore, even if the adopted rulemaking was a major environmental rule, it does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the adopted rulemaking is part of the SIP, and as such is designed to meet, not exceed the relevant standard set by federal law; 2) parts of the adopted rulemaking are directly required by state law; 3) no contract or delegation agreement covers the topic that is the subject of this rulemaking; or 4) the adopted rulemaking is authorized by specific sections of THSC, Chapter 382 (also known as the Texas Clean Air Act), and the TWC, which are cited in the STATUTORY AUTHORITY section of this preamble.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period, and no comments were received.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rule revisions and performed an analysis of whether the adopted rule revisions constitute a taking under Texas Government Code, Chapter 2007. The commission's assessment indicates Texas Government Code, Chapter 2007 does not apply.

Under Texas Government Code, §2007.002(5), taking means: "(A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Ar-

ticle I, Texas Constitution; or (B) a governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect."

The specific purpose of the adopted rulemaking is to clarify, improve upon, and increase consistency within the I/M program and the LIRAP by implementing HB 715 and HB 1796, streamlining the programs, and eliminating certain expired provisions. Therefore, the adopted rulemaking substantially advances this stated purpose by: modifying the current definition of a low-volume emissions inspection station to state that "a low-volume emissions inspection station is a vehicle emissions inspection station that meets all criteria for obtaining a low-volume waiver from the Texas Department of Public Safety"; ensuring that the definition for a low-volume emissions inspection station contained in §114.2 does not conflict with the low-volume waiver criteria for inspection stations listed in the DPS rules (37 TAC §23.95) and meet the requirements of HB 715; increasing the maximum time that counties have to reimburse dealerships participating in the LIRAP from five to 10 business days as mandated by HB 1796; removing the dates associated with the TAS and adding language requiring analyzer manufacturers to meet the requirements contained in the "most recent version" of the TAS and removing the "Specifications for On-Board Diagnostics II Analyzer for Use in the Texas Vehicle Emissions Testing Program" and its corresponding references; streamlining the process used by the commission for implementing minor non-programmatic modifications to the TAS; removing redundant requirements; and deleting all requirements relating to the EPIP, which has expired.

Promulgation and enforcement of the adopted rule revisions is neither a statutory nor a constitutional taking of private real property. These adopted rule revisions are not burdensome, restrictive, or limiting of rights to private real property because the adopted rule revisions simply clarify, improve upon, and increase consistency within the existing I/M program and the LIRAP. Furthermore, the adopted rule revisions benefit the public by improving upon the I/M program and the LIRAP, making them more accessible to the public and subsequently improving their effectiveness. The adopted rule revisions do not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these adopted rule revisions do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rule revisions in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies. The CMP goals applicable to the adopted rulemaking are to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. No new sources of air contaminants are authorized and ozone levels will be reduced as a result of the adopted rulemaking. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in the Code of Federal Regulations to protect and enhance air quality in the coastal areas (31 TAC §501.32). This adopted rulemaking will not have a detrimental effect on SIP emissions reduction obligations relating to maintenance of the ozone NAAQS by continuing to implement the existing OBD, ASM, and TSI vehicle inspections as a part of the I/M program. This rulemaking action complies with the Code of Federal Regulations. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies. Promulgation and enforcement of these adopted rule revisions will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rule revisions are consistent with these CMP goals and policies and because these adopted rule revisions do not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding the consistency with the CMP during the public comment period and no comments were received.

PUBLIC COMMENT

Public hearings were offered in Fort Worth on July 20, 2010, at 2:00 p.m. at the TCEQ, Region 4 Office, DFW Public Meeting Room, 2309 Gravel Road; in Austin on July 21, 2010, at 10:00 a.m. at the TCEQ, Building E, Room 201S, 12100 Park 35 Circle; and in Houston on July 22, 2010, at 3:00 p.m. at the Houston-Galveston Area Council, Conference Room A, 3555 Timmons Lane. No oral comments were received. The comment period opened on June 18, 2010, and closed on July 26, 2010. One written comment was received from the EPA.

RESPONSE TO COMMENTS

The EPA expressed support for the proposed revisions to the rule and the I/M SIP and expressed continued support for the I/M program and the LIRAP.

The commission appreciates the support for the proposed revisions to the rule and I/M SIP, the I/M program, and the LIRAP. No changes were made to the rule based on this comment.

SUBCHAPTER A. DEFINITIONS

30 TAC §114.2

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.102, General Powers, TWC, §5.103, Rules, and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The amendment is also adopted under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean

Air Act), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. The amendment is also adopted under THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.019, Methods Used to Control and Reduce Emissions From Land Vehicles, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401 *et seq.;* and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorize the commission to adopt an Inspection and Maintenance program for participating Early Action Compact counties. The amendment is adopted pursuant to Texas Transportation Code, §548.3075, which was amended by House Bill 715 from the 81st Texas Legislature, 2009.

The adopted amendment implements Texas Transportation Code, §548.3075.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 23, 2010.

TRD-201006712
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: December 13, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 239-2548

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SUBCHAPTER C. VEHICLE INSPECTION AND MAINTENANCE; LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM; AND EARLY ACTION COMPACT COUNTIES

DIVISION 1. VEHICLE INSPECTION AND MAINTENANCE

30 TAC §114.51

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.102, General Powers, TWC, §5.103, Rules, and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The amendment is also adopted under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. The amendment is also adopted under THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.019, Methods Used to Control and Reduce Emissions From Land Vehicles, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of Federal Clean Air Act, 42 United States Code, §§7401 *et seq.;* and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorize the commission to adopt an Inspection and Maintenance program for participating Early Action Compact counties. The amendment to §114.51 is adopted pursuant to THSC, §382.205.

The adopted amendment implements THSC, Subchapter G, §§382.201 - 382.220, Vehicle Emissions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 23, 2010.

TRD-201006713
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: December 13, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 239-2548

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30 TAC §114.52

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code (TWC), §5.102, General Powers, TWC, §5.103, Rules, and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory

programs. The repeal is also adopted under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. The repeal is also adopted under THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.019, Methods Used to Control and Reduce Emissions From Land Vehicles, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of Federal Clean Air Act, 42 United States Code, §§7401 *et seq.;* and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorize the commission to adopt an Inspection and Maintenance program for participating Early Action Compact counties. The repeal of §114.52 is adopted pursuant to THSC, §382.216.

The adopted repeal implements THSC, Subchapter G, §§382.201 - 382.220, Vehicle Emissions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 23, 2010.

TRD-201006714
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: December 13, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 239-2548

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DIVISION 2. LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM

30 TAC §114.64

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.102, General Powers, TWC, §5.103, Rules, and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The amendment is also adopted under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. The amendment is also adopted under THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC §382.019, Methods Used to Control and Reduce Emissions From Land Vehicles, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of Federal Clean Air Act, 42 United States Code, §§7401 *et seq.;* and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorize the commission to adopt an Inspection and Maintenance program for participating Early Action Compact counties. The amendment is adopted pursuant to THSC, §382.210 which was amended by House Bill 1796 from the 81st Texas Legislature, 2009.

The adopted amendment implements THSC, §382.210.

§114.64. LIRAP Requirements.

(a) Implementation. Upon receiving a written request to implement a Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) by a county commissioners court, the executive director shall authorize the implementation of a LIRAP in the requesting county. The executive director and county shall enter into a grant contract for the implementation of the LIRAP.

(1) The grant contract must provide conditions, requirements, and projected funding allowances for the implementation of the LIRAP.

(2) A participating county may contract with an entity approved by the executive director for services necessary to implement the LIRAP. A participating county or its designated entity shall demonstrate to the executive director that, at a minimum, the county or its designated entity has provided for appropriate measures for determining applicant eligibility and repair effectiveness and ensuring against fraud.

(3) The participating county shall remain the contracted entity even if the county contracts with another county or another entity approved by the executive director to administer the LIRAP.

(b) Repair and retrofit assistance. A LIRAP must provide for monetary or other compensatory assistance to eligible vehicle owners for repairs directly related to bringing certain vehicles that have failed a required emissions test into compliance with emissions requirements or for installing retrofit equipment on vehicles that have failed a required emissions test, if practically and economically feasible, in lieu of or in combination with repairs performed to bring a vehicle into compliance with emissions requirements. Vehicles under the LIRAP must be repaired or retrofitted at a recognized emissions repair facility. To determine eligibility, the participating county or its designated entity shall make applications available for LIRAP participants. The application, at a minimum, must require the vehicle owner to demonstrate that:

(1) the vehicle has failed a vehicle emissions test within 30 days of application submittal;

(2) the vehicle can be driven under its own power to the emissions inspection station or vehicle retirement facility;

(3) the vehicle is currently registered in and has been registered in the program county for the 12 months immediately preceding the application for assistance;

(4) the vehicle has passed the safety portion of the Texas Department of Public Safety (DPS) motor vehicle safety and emissions inspection as recorded in the Vehicle Inspection Report (VIR), or provide assurance that actions will be taken to bring the vehicle into compliance with safety requirements;

(5) the vehicle owner's net family income is at or below 300% of the federal poverty level; and

(6) any other requirements of the participating county or the executive director are met.

(c) Accelerated vehicle retirement. A LIRAP must provide monetary or other compensatory assistance to eligible vehicle owners to be used toward the purchase of a replacement vehicle.

(1) To determine eligibility, the participating county or its designated entity shall make applications available for LIRAP participants. The application, at a minimum, must require the vehicle owner to demonstrate that:

(A) the vehicle meets the requirements under subsection (b)(1) - (3) and (5) of this section;

(B) the vehicle has passed a DPS motor vehicle safety or safety and emissions inspection within 15 months prior to application submittal; and

(C) any other requirements of the participating county or the executive director are met.

(2) Eligible vehicle owners of pre-1996 model year vehicles that pass the required United States Environmental Protection Agency (EPA) Start-Up Acceleration Simulation Mode (ASM) standards emissions test, but would have failed the EPA Final ASM standards emissions test, or some other criteria determined by the commission, may be eligible for accelerated vehicle retirement and replacement compensation under this section.

(3) Notwithstanding the vehicle requirement provided under subsection (b)(1) of this section, an eligible vehicle owner of a vehicle that is gasoline powered and is at least 10 years old as determined from the current calendar year (i.e., 2010 minus 10 years equals 2000) and meets the requirements under subsection (b)(2), (3), and (5) of this section, may be eligible for accelerated vehicle retirement and compensation.

(4) Replacement vehicles must:

(A) be in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, *Federal Register* (65 FR 6698);

(B) have a gross vehicle weight rating of less than 10,000 pounds;

(C) be a vehicle, the total cost of which does not exceed $25,000; and

(D) have passed a DPS motor vehicle safety inspection or safety and emissions inspection within the 15-month period before the application is submitted.

(d) Compensation. The participating county shall determine eligibility and approve or deny the application promptly. If the requirements of subsection (b) or (c) of this section are met and based on available funding, the county shall authorize monetary or other compensations to the eligible vehicle owner.

(1) Compensations must be:

(A) no more than $600 and no less than $30 per vehicle to be used for emission-related repairs or retrofits performed at recognized emissions repair facilities, including diagnostics tests performed on the vehicle; or

(B) based on vehicle type and model year of a replacement vehicle for the accelerated retirement of a vehicle meeting the requirements under this subsection. Only one retirement compensation can be used toward one replacement vehicle annually per applicant. The maximum amount toward a replacement vehicle must not exceed:

(i) $3,000 for a replacement car of the current model year or previous three model years, except as provided by clause (iii) of this subparagraph;

(ii) $3,000 for a replacement truck of the current model year or the previous two model years, except as provided by clause (iii) of this subparagraph;

(iii) $3,500 for a replacement hybrid vehicle of the current model year or the previous model year.

(2) Vehicle owners shall be responsible for paying the first $30 of emission-related repairs or retrofit costs that may include diagnostics tests performed on the vehicle.

(3) For accelerated vehicle retirement, provided that the compensation levels in paragraph (1)(B) of this subsection are met and minimum eligibility requirements under subsection (c) of this section are met, a participating county may set a specific level of compensation or implement a level of compensation schedule that allows flexibility. The following criteria may be used for determining the amount of financial assistance:

(A) model year of the vehicle;

(B) miles registered on the vehicle's odometer;

(C) fair market value of the vehicle;

(D) estimated cost of emission-related repairs necessary to bring the vehicle into compliance with emission standards;

(E) amount of money the vehicle owner has already spent to bring the vehicle into compliance, excluding the cost of the vehicle emissions inspection; and

(F) vehicle owner's income.

(e) Reimbursement for repairs and retrofits. A participating county shall reimburse the appropriate recognized emissions repair facility for approved repairs and retrofits within 30 calendar days of receiving an invoice that meets the requirements of the county or designated entity. Repaired or retrofitted vehicles must pass a DPS safety and emissions inspection before the recognized emissions repair facility is reimbursed. In the event that the vehicle does not pass the emissions retest after diagnosed repairs are performed, the participating county has the discretion, on a case-by-case basis, to make payment for diagnosed emissions repair work performed.

(f) Reimbursements for replacements. A participating county shall ensure that funds are transferred to a participating automobile dealership no later than 10 business days after the county receives proof of the sale, proof of transfer to a dismantler, and any administrative doc-

uments that meet the requirements of the county or designated entity. A list of all administrative documents must be included in the agreements that are entered into by the county or designated entity and the participating automobile dealerships.

(1) A participating county shall provide an electronic means for distributing replacement funds to a participating automobile dealership once all program criteria have been met. The replacement funds may be used as a down payment toward the purchase of a replacement vehicle. Participating automobile dealers shall be located in the State of Texas. Participation in the LIRAP by an automobile dealer is voluntary.

(2) Participating counties shall develop a document for confirming a person's eligibility for purchasing a replacement vehicle and for tracking such purchase.

(A) The document must include at a minimum, the full name of applicant, the vehicle identification number of the retired vehicle, expiration date of the document, the program administrator's contact information, and the amount of money available to the participating vehicle owner.

(B) The document must be presented to a participating dealer by the person seeking to purchase a replacement vehicle before entering into negotiations for a replacement vehicle.

(C) A participating dealer who relies on the document issued by the participating county has no duty to confirm the eligibility of the person purchasing a replacement vehicle in the manner provided by this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 23, 2010.

TRD-201006715
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: December 13, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 239-2548

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 145. PAROLE

SUBCHAPTER A. PAROLE PROCESS

37 TAC §145.14

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §145.14, concerning action upon review; release to mandatory supervision. The amendments are adopted without changes to the proposed text as published in the September 24, 2010, issue of the *Texas Register* (35 TexReg 8716). The text of the rule will not be republished.

The amended rule is adopted to clarify the legal time frame during which the TDCJ-Parole Division shall provide written notice to an eligible offender of future consideration for release to mandatory supervision under §508.149, Government Code, in order to provide an offender the opportunity to submit information to the voting panel.

No public comments were received regarding adoption of these amendments.

The amended rule is adopted under §§508.0441, 508.045 and 508.149, Government Code. Sections 508.0441 and 508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.149 provides authority for the discretionary release of offenders on mandatory supervision.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 22, 2010.

TRD-201006702
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Effective date: December 12, 2010
Proposal publication date: September 24, 2010
For further information, please call: (512) 406-5388

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PART 11. TEXAS JUVENILE PROBATION COMMISSION

CHAPTER 343. SECURE JUVENILE PRE-ADJUDICATION DETENTION AND POST-ADJUDICATION CORRECTIONAL FACILITIES

SUBCHAPTER B. PRE-ADJUDICATION AND POST-ADJUDICATION SECURE FACILITY STANDARDS

37 TAC §343.249

The Texas Juvenile Probation Commission (TJPC) adopts amendments to §343.249, concerning internal security within pre-adjudication and post-adjudication secure facility standards. These amendments are adopted without changes to the proposed text as published in the August 13, 2010, issue of the *Texas Register* (35 TexReg 7005) and will not be republished.

TJPC adopts these amendments in an effort to further ensure juveniles and staff within secure facilities are protected from the accidental or intentional introduction of firearms into the secure portion of the facility. Adult correctional facilities have similar prohibitions against the presence of firearms within secure facilities.

No public comment was received during the official public comment period.

These amendments are adopted under Texas Human Resources Code §141.042, which provides TJPC with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by these adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 22, 2010.

TRD-201006671
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: January 1, 2011
Proposal publication date: August 13, 2010
For further information, please call: (512) 424-6710

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CHAPTER 349. GENERAL ADMINISTRATIVE STANDARDS
SUBCHAPTER C. DISCIPLINARY ACTIONS AND HEARINGS

37 TAC §§349.307, 349.308, 349.311

The Texas Juvenile Probation Commission (TJPC) adopts new §§349.307, 349.308, and 349.311, concerning disciplinary actions and hearings. These rules are adopted without changes to the proposed text as published in the October 8, 2010, issue of the *Texas Register* (35 TexReg 9072) and will not be republished.

TJPC adopts these rules in an effort to clarify and formalize existing internal criteria used in making disciplinary decisions.

No public comment was received during the official public comment period.

These rules are adopted under Texas Human Resources Code §141.042, which provides TJPC with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by these adopted rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 22, 2010.

TRD-201006676
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: January 1, 2011
Proposal publication date: October 8, 2010
For further information, please call: (512) 424-6710

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 150, Commissioner's Rules Concerning Educator Appraisal, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 150 are organized under the following subchapters: Subchapter AA, Teacher Appraisal; and Subchapter BB, Administrator Appraisal.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 150, Subchapters AA and BB, continue to exist.

The public comment period on the review of 19 TAC Chapter 150, Subchapters AA and BB, begins December 10, 2010, and ends January 10, 2011. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028.

TRD-201006727
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: November 23, 2010

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The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 153, School District Personnel, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 153 are organized under the following subchapters: Subchapter AA, Commissioner's Rules Concerning School District Personnel Duties and Benefits; Subchapter BB, Commissioner's Rules Concerning Professional Development; Subchapter CC, Commissioner's Rules on Creditable Years of Service; and Subchapter DD, Criminal History Record Information Review.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 153, Subchapters AA-DD, continue to exist.

The public comment period on the review of 19 TAC Chapter 153, Subchapters AA-DD, begins December 10, 2010, and ends January 10, 2011. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028.

TRD-201006728
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: November 23, 2010

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Adopted Rule Reviews

General Land Office

Title 31, Part 1

The General Land Office (GLO) has completed its review of Chapter 7, relating to Surveying, in accordance with the requirements of Texas Government Code §2001.039. The GLO has determined the reasons for initially adopting Chapter 7 continue to exist, and it readopts this chapter.

Notice of the review was published in the June 25, 2010, issue of the *Texas Register* (35 TexReg 5583). No comments were received as a result of that notice.

As a result of the rule review, the GLO has determined that certain sections of Chapter 7 should be revised, and therefore intends to repeal those sections and immediately replace them by adopting new sections dealing with the same subject matter. Therefore, the GLO has published in this issue of the *Texas Register* the proposed repeal of §7.1 (relating to Forms), §7.2 (relating to Coastal Lands), §7.3 (relating to Deeds of Acquittance), §7.4 (relating to Corrected Patents), §7.6 (relating to Surveyor's Maps or Plats), and §7.7 (relating to Surveyor's Reports, General); and has also published in this issue of the *Texas Register* proposed new §7.1 (relating to Forms), §7.2 (relating to Coastal Lands), §7.3 (relating to Deeds of Acquittance), §7.4 (relating to Corrected Patents), §7.6 (relating to Surveyor's Plats), and §7.7 (relating to Surveyor's Reports, General).

This concludes the GLO's review of Chapter 7.

TRD-201006684
Trace Finley
Deputy Commissioner, Policy and Governmental Affairs
General Land Office
Filed: November 22, 2010

♦ ♦ ♦

Texas State Soil and Water Conservation Board

Title 31, Part 17

Pursuant to the notice of proposed rule review published in the October 1, 2010, issue of the *Texas Register* (35 TexReg 8979), the Texas State Soil and Water Conservation Board (State Board) has reviewed and considered for readoption, revision or repeal 31 TAC Part 17, Chapter 518, Subchapter A, §518.1 and §518.2, concerning Employee Training Rules, in accordance with Texas Government Code, §2001.039.

The State Board considered, among other things, whether the reasons for adoption of these rules continue to exist. As a result of the review, the State Board determined that the rules are still necessary and readopts the sections since they govern the State Board's policies for employee training.

No comments were received on the proposed rule review.

This completes the State Board's review of 31 TAC Chapter 518, Subchapter A.

TRD-201006746
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: November 23, 2010

♦ ♦ ♦

Pursuant to the notice of proposed rule review published in the October 1, 2010, issue of the *Texas Register* (35 TexReg 8979), the Texas State Soil and Water Conservation Board (State Board) has reviewed and considered for readoption, revision or repeal 31 TAC Part 17, Chapter 523, §§523.1 - 523.8, concerning Agricultural and Silvicultural Water Quality Management, in accordance with Texas Government Code, §2001.039.

The State Board considered, among other things, whether the reasons for adoption of these rules continue to exist. As a result of the review, the State Board determined that the rules are still necessary and readopts the sections since they govern the State Board's program for administering the Agricultural and Silvicultural Water Quality Management Program established by the Texas Agriculture Code, Chapter 201.

No comments were received on the proposed rule review.

This completes the State Board's review of 31 TAC Chapter 523.

TRD-201006745
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: November 23, 2010

♦ ♦ ♦

Pursuant to the notice of proposed rule review published in the October 1, 2010, issue of the *Texas Register* (35 TexReg 8979), the Texas State Soil and Water Conservation Board (State Board) has reviewed and considered for readoption, revision or repeal 31 TAC Part 17, Chapter 525, Subchapter A, §§525.1 - 525.9, concerning Audit Requirements for Soil and Water Conservation Districts, in accordance with Texas Government Code, §2001.039.

The State Board considered, among other things, whether the reasons for adoption of these rules continue to exist. As a result of the review, the State Board determined that the rules are still necessary and readopts the sections since they govern the State Board's audit requirements for Soil and Water Conservation Districts established by the Texas Agriculture Code, Chapter 201.

No comments were received on the proposed rule review.

This completes the State Board's review of 31 TAC Chapter 525, Subchapter A.

TRD-201006744
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: November 23, 2010

♦ ♦ ♦

Texas Veterans Commission

Title 40, Part 15

The Texas Veterans Commission (Commission) has completed its review and readopts without amendment Texas Administrative Code, Title 40, Part 15, Chapter 450, relating to Veterans County Service Officers Certificate of Training. This review is conducted pursuant to Texas Government Code, §2001.039. The notice of review was published in the September 24, 2010, issue of the *Texas Register* (35 TexReg 8773).

No comments were received in response to the proposed rule review.

The Commission finds that the reasons for initially adopting this chapter continue to exist. Each section of the chapter was reviewed to determine whether it was obsolete, reflected current legal and policy considerations, reflected current procedures and practices of the Commission, and/or whether it was in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

This concludes the review of Chapter 450.

TRD-201006692
Tina M. Carnes
General Counsel
Texas Veterans Commission
Filed: November 22, 2010

♦ ♦ ♦

The Texas Veterans Commission (Commission) has completed its review and readopts without amendment Texas Administrative Code, Title 40, Part 15, Chapter 451, relating to Veterans County Service Officers Accreditation. This review is conducted pursuant to Texas Government Code, §2001.039. The notice of review was published in the September 24, 2010, issue of the *Texas Register* (35 TexReg 8773).

No comments were received in response to the proposed rule review.

The Commission finds that the reasons for initially adopting this chapter continue to exist. Each section of the chapter was reviewed to determine whether it was obsolete, reflected current legal and policy considerations, reflected current procedures and practices of the Commission, and/or whether it was in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

This concludes the review of Chapter 451.

TRD-201006691
Tina M. Carnes
General Counsel
Texas Veterans Commission
Filed: November 22, 2010

♦ ♦ ♦

The Texas Veterans Commission (Commission) has completed its review and readopts without amendment Texas Administrative Code, Title 40, Part 15, Chapter 452, relating to Administration General Provisions. This review is conducted pursuant to Texas Government Code,

§2001.039. The notice of review was published in the September 24, 2010, issue of the *Texas Register* (35 TexReg 8773).

No comments were received in response to the proposed rule review.

The Commission finds that the reasons for initially adopting this chapter continue to exist. Each section of the chapter was reviewed to determine whether it was obsolete, reflected current legal and policy considerations, reflected current procedures and practices of the Commission, and/or whether it was in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

This concludes the review of Chapter 452.

TRD-201006690
Tina M. Carnes
General Counsel
Texas Veterans Commission
Filed: November 22, 2010

♦ ♦ ♦

The Texas Veterans Commission (Commission) has completed its review and readopts without amendment Texas Administrative Code, Title 40, Part 15, Chapter 453, relating to Historically Underutilized Business Program. This review is conducted pursuant to Texas Government Code, §2001.039. The notice of review was published in the September 24, 2010, issue of the *Texas Register* (35 TexReg 8774).

No comments were received in response to the proposed rule review.

The Commission finds that the reasons for initially adopting this chapter continue to exist. Each section of the chapter was reviewed to determine whether it was obsolete, reflected current legal and policy considerations, reflected current procedures and practices of the Commission, and/or whether it was in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

This concludes the review of Chapter 453.

TRD-201006689
Tina M. Carnes
General Counsel
Texas Veterans Commission
Filed: November 22, 2010

♦ ♦ ♦

The Texas Veterans Commission (Commission) has completed its review and readopts without amendment Texas Administrative Code, Title 40, Part 15, Chapter 454, relating to Grants. This review is conducted pursuant to Texas Government Code, §2001.039. The notice of review was published in the September 24, 2010, issue of the *Texas Register* (35 TexReg 8774).

No comments were received in response to the proposed rule review.

The Commission finds that the reasons for initially adopting this chapter continue to exist. Each section of the chapter was reviewed to determine whether it was obsolete, reflected current legal and policy considerations, reflected current procedures and practices of the Commission, and/or whether it was in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

This concludes the review of Chapter 454.

TRD-201006696
Tina M. Carnes
General Counsel
Texas Veterans Commission
Filed: November 22, 2010

♦ ♦ ♦

The Texas Veterans Commission (Commission) has completed its review and readopts without amendment Texas Administrative Code, Title 40, Part 15, Chapter 455, relating to TAPS Program. This review is conducted pursuant to Texas Government Code, §2001.039. The notice of review was published in the September 24, 2010, issue of the *Texas Register* (35 TexReg 8774).

No comments were received in response to the proposed rule review.

The Commission finds that the reasons for initially adopting this chapter continue to exist. Each section of the chapter was reviewed to determine whether it was obsolete, reflected current legal and policy considerations, reflected current procedures and practices of the Commission, and/or whether it was in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

This concludes the review of Chapter 455.

TRD-201006695
Tina M. Carnes
General Counsel
Texas Veterans Commission
Filed: November 22, 2010

♦ ♦ ♦

The Texas Veterans Commission (Commission) has completed its review and readopts without amendment Texas Administrative Code, Title 40, Part 15, Chapter 456, relating to Contract Negotiation and Mediation. This review is conducted pursuant to Texas Government Code, §2001.039. The notice of review was published in the September 24, 2010, issue of the *Texas Register* (35 TexReg 8774).

No comments were received in response to the proposed rule review.

The Commission finds that the reasons for initially adopting this chapter continue to exist. Each section of the chapter was reviewed to determine whether it was obsolete, reflected current legal and policy considerations, reflected current procedures and practices of the Commission, and/or whether it was in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

This concludes the review of Chapter 456.

TRD-201006694
Tina M. Carnes
General Counsel
Texas Veterans Commission
Filed: November 22, 2010

♦ ♦ ♦

The Texas Veterans Commission (Commission) has completed its review and readopts without amendment Texas Administrative Code, Title 40, Part 15, Chapter 457, relating to Protests of Agency Purchases. This review is conducted pursuant to Texas Government Code, §2001.039. The notice of review was published in the September 24, 2010, issue of the *Texas Register* (35 TexReg 8775).

No comments were received in response to the proposed rule review.

The Commission finds that the reasons for initially adopting this chapter continue to exist. Each section of the chapter was reviewed to determine whether it was obsolete, reflected current legal and policy considerations, reflected current procedures and practices of the Commission, and/or whether it was in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

This concludes the review of Chapter 457.

TRD-201006699
Tina M. Carnes
General Counsel
Texas Veterans Commission
Filed: November 22, 2010

♦ ♦ ♦

The Texas Veterans Commission (Commission) has completed its review and readopts without amendment Texas Administrative Code, Title 40, Part 15, Chapter 458, relating to Statutory Advisory Committees. This review is conducted pursuant to Texas Government Code, §2001.039. The notice of review was published in the September 24, 2010, issue of the *Texas Register* (35 TexReg 8775).

No comments were received in response to the proposed rule review.

The Commission finds that the reasons for initially adopting this chapter continue to exist. Each section of the chapter was reviewed to determine whether it was obsolete, reflected current legal and policy considerations, reflected current procedures and practices of the Commission, and/or whether it was in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

This concludes the review of Chapter 458.

TRD-201006697
Tina M. Carnes
General Counsel
Texas Veterans Commission
Filed: November 22, 2010

♦ ♦ ♦

The Texas Veterans Commission (Commission) has completed its review and readopts without amendment Texas Administrative Code, Title 40, Part 15, Chapter 459, relating to Transportation Support Services. This review is conducted pursuant to Texas Government Code, §2001.039. The notice of review was published in the September 24, 2010, issue of the *Texas Register* (35 TexReg 8775).

No comments were received in response to the proposed rule review.

The Commission finds that the reasons for initially adopting this chapter continue to exist. Each section of the chapter was reviewed to determine whether it was obsolete, reflected current legal and policy considerations, reflected current procedures and practices of the Commission, and/or whether it was in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

This concludes the review of Chapter 459.

TRD-201006698
Tina M. Carnes
General Counsel
Texas Veterans Commission
Filed: November 22, 2010

♦ ♦ ♦

Texas Workforce Commission

Title 40, Part 20

The Texas Workforce Commission (Commission) adopts the review of Chapter 803, Skills Development Fund, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the October 8, 2010, issue of the *Texas Register* (35 TexReg 9119).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 803 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 803, Skills Development Fund.

TRD-201006792
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Filed: November 30, 2010

♦ ♦ ♦

The Texas Workforce Commission (Commission) adopts the review of Chapter 813, Supplemental Nutrition Assistance Program Employment and Training, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the October 8, 2010, issue of the *Texas Register* (35 TexReg 9119).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 813 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 813, Supplemental Nutrition Assistance Program Employment and Training.

TRD-201006793
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Filed: November 30, 2010

♦ ♦ ♦

The Texas Workforce Commission (Commission) adopts the review of Chapter 815, Unemployment Insurance, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the October 8, 2010, issue of the *Texas Register* (35 TexReg 9120).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 815 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 815, Unemployment Insurance.

TRD-201006794
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery Branch
Texas Workforce Commission
Filed: November 30, 2010

♦ ♦ ♦

The Texas Workforce Commission (Commission) adopts the review of Chapter 817, Child Labor, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the October 8, 2010, issue of the *Texas Register* (35 TexReg 9120).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 817 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 817, Child Labor.

TRD-201006795

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery Branch

Texas Workforce Commission

Filed: November 30, 2010

♦ ♦ ♦

The Texas Workforce Commission (Commission) adopts the review of Chapter 833, Community Development Initiatives, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the October 8, 2010, issue of the *Texas Register* (35 TexReg 9120).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 833 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 833, Community Development Initiatives.

TRD-201006796

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery Branch

Texas Workforce Commission

Filed: November 30, 2010

♦ ♦ ♦

The Texas Workforce Commission (Commission) adopts the review of Chapter 843, Job Matching Services, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the October 8, 2010, issue of the *Texas Register* (35 TexReg 9120).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 843 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 843, Job Matching Services.

TRD-201006797

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery Branch

Texas Workforce Commission

Filed: November 30, 2010

♦ ♦ ♦

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 30 TAC §17.14(a)

Tier I Table

The property listed in this table is property that the executive director has determined is used wholly for pollution control purposes when used as shown in the Description section of the table and when no marketable product arises from using the property. The items listed are described in generic terms without the use of brand names or trademarks. The use percentages on all property on the table are established based on standard uses of the pieces of equipment involved. If the executive director determines that the equipment is not being used in a standard manner (*e.g.*, use in production or recovery of a marketable product), the executive director may require that a Tier III application, using the Cost Analysis Procedure, be filed by the applicant to calculate the appropriate use determination percentage. For items where the description limits the use determination to the incremental cost difference, the cost of the property or device with the pollution control feature is compared to a similar device or property without the pollution control feature. The table is a list adopted under Texas Tax Code, §11.31(g).

Air Pollution Control Equipment				
No.	Media	Property	Description	%
Particulate Control Devices				
A-1	Air	Baghouse Dust Collectors	Structures containing filters, blowers, ductwork - used to remove particulate matter from exhaust gas streams.	100
A-2	Air	Demisters or Mist Eliminators Added	Mesh pads or cartridges - used to remove entrained liquid droplets from exhaust gas streams.	100
A-3	Air	Electrostatic Precipitators	Wet or dry particulate collection created by an electric field between positive or negative electrodes and collection surface.	100
A-4	Air	Dry Cyclone Separators	Single or multiple inertial separators with blowers and ductwork used to remove particulate matter from exhaust gas streams.	100
A-5	Air	Scrubbers	Wet collection device using spray chambers, wet cyclones, packed beds, orifices, venturi, or high-pressure sprays to remove particulates and chemicals from exhaust gas streams. System may include pumps, ductwork, and blowers needed for the equipment to function.	100
A-6	Air	Water/Chemical Sprays and Enclosures for Particulate Suppression	Spray nozzles, conveyor and chute covers, windshields, piping, and pumps used to reduce fugitive particulate emissions.	100
A-7	Air	Smokeless Ignitors	Installed on electric generating units to control particulate emissions and opacity on start-up.	100
Combustion Based Control Devices				
A-20	Air	Thermal Oxidizers	Thermal destruction of air pollutants by direct flame combustion.	100
A-21	Air	Catalytic Oxidizer	Thermal destruction of air pollutants that uses a catalyst to promote oxidation.	100

A-22	Air	Flare/Vapor Combustor	Stack, burner, flare tip, and blowers used to destroy air contaminants in a vent gas stream.	100
Non-Volatile Organic Compounds Gaseous Control Devices				
A-40	Air	Molecular Sieve	Microporous filter used to remove hydrogen sulfide (H_2S) or nitrogen oxides (NO_x) from a waste gas stream.	100
A-41	Air	Strippers Used in Conjunction with Final Control Device	Stripper, with associated pumps, piping - used to remove contaminants from a waste gas stream or waste liquid stream.	100
A-42	Air	Chlorofluorocarbon (CFC) Replacement Projects	Projects to replace one CFC with an environmentally cleaner CFC or other refrigerant where there is no increase in the cooling capacity or the efficiency of the unit. Includes all necessary equipment needed to replace the CFC and achieve the same level of cooling capacity.	100
A-43	Air	Halon Replacement Projects	All necessary equipment needed to replace the Halon in a fire suppression system with an environmentally cleaner substance.	100
Monitoring and Sampling Equipment				
A-60	Air	Fugitive Emission Monitors	Organic vapor analyzers - used to discover leaking piping components.	100
A-61	Air	Continuous & Noncontinuous Emission Monitors	Monitors, analyzers, buildings, air conditioning equipment, and optical gas imaging instruments to demonstrate compliance with emission limitations of regulated air contaminants, (including flow and diluent gas monitors and dedicated buildings).	100
A-62	Air	Monitoring Equipment on Final Control Devices	Temperature monitor or controller, flow-meter, pH meter, and other meters for a pollution control device. Monitoring of production equipment or processes is not included.	100
A-63	Air	On or Off-Site Ambient Air Monitoring Facilities	Towers, structures, analytical equipment, sample collectors, monitors, and power supplies used to monitor for levels of contaminants in ambient air.	100
A-64	Air	Noncontinuous Emission Monitors, Portable	Portable monitors, analyzers, structures, trailers, air conditioning equipment, and optical gas imaging instruments used to demonstrate compliance with emission limitations.	100
A-65	Air	Predictive Emission Monitors	Monitoring of process and operational parameters that are used solely to calculate or determine compliance with emission limitations.	100
A-66	Air	Sampling Ports	Construction of stack or tower sampling ports used for emission sampling or for the monitoring of process or operational parameters that are used to calculate or determine compliance with emission limitations.	100
A-67	Air	Automotive Dynamometers	Automotive dynamometers used for emissions testing of fleet vehicles.	100

Nitrogen Oxides Controls				
A-80	Air	Selective Catalytic and Non-catalytic Reduction Systems	Catalyst bed, reducing agent injection and storage, monitors - used to reduce nitrogen oxides (NO_x) emissions from combustion sources. Non-catalytic systems use a reducing agent without a catalyst.	100
A-81	Air	Catalytic Converters for Stationary Sources	Used to reduce NO_x emissions from internal combustion engines.	100
A-82	Air	Air/Fuel Ratio Controllers for Piston-Driven Internal Combustion Engines	Used to control the air/fuel mixtures and reduce NO_x formation for fuel injected, naturally aspirated, or turbocharged engines.	100
A-83	Air	Flue Gas Recirculation	Ductwork and blowers used to redirect part of the flue gas back to the combustion chamber for reduction of NO_x formation. May include fly ash collection in coal fired units.	100
A-84	Air	Water/Steam Injection	Piping, nozzles, and pumps to inject water or steam into the burner flame of utility or industrial burners or the atomizer ports for gas turbines, used to reduce NO_x formation.	100
A-85	Air	Over-fire Air & Combination of asymmetric over-fire air with the injection of anhydrous ammonia or other pollutant-reducing agents	The asymmetric over fire air layout injects preheated air through nozzles through a series of ducts, dampers, expansion joints, and valves also anhydrous ammonia or other pollutant-reducing agent injection is done at the same level.	100
A-86	Air	Low-NO_x Burners	Installation of low-NO_X burners. The eligible portion is the incremental cost difference. For a replacement burner, the incremental cost difference is calculated by comparing the cost of the new burner with the cost of the existing burner. For new installations, the incremental cost difference is calculated by comparing the cost of the new burner to the cost of a similarly sized burner without NO_X controls from the most recent generation of burners.	100
A-87	Air	Water Lances	Installed in the fire box of boilers and industrial furnaces to eliminate hot spots, thereby reducing NO_X formation.	100
A-88	Air	Electric Power Generation Burner Retrofit	Retrofit of existing burners on electric power generating units with components for reducing NO_x including directly related equipment.	100
A-89	Air	Wet or Dry Sorbent Injection Systems	Use of a sorbent for flue gas desulfurization or NOx control.	100
Volatile Organic Compounds (VOC) Control				
A-110	Air	Carbon Absorption Systems	Carbon beds or liquid-jacketed systems, blowers, piping, condensers - used to remove VOCs or odors from exhaust gas streams.	100

A-111	Air	Storage Tank Secondary Seals and Internal Floating Roofs	Used to reduce VOC emissions caused by evaporation losses from aboveground storage tanks.	100
A-112	Air	Replacement of Existing Pumps, Valves, or Seals in Piping Service	The incremental cost difference between the cost of the original equipment and the replacement equipment is eligible only when the replacement of these parts is done for the sole purpose of eliminating fugitive emissions of VOCs. New systems do not qualify for this item.	100
A-113	Air	Welding of Pipe Joints in VOC Service (Existing Pipelines)	Welding of existing threaded or flanged pipe joints to eliminate fugitive emission leaks.	100
A-114	Air	Welding of Pipe Joints in VOC Service (New Construction)	The incremental cost difference between the cost of using threaded or flanged joints and welding of pipe joints in VOC service.	100
A-115	Air	External Floating Roofs	Used to reduce VOC emissions caused by evaporation losses from aboveground storage tanks. Must be installed to meet or exceed §115.112 of this title (relating to Control Requirements).	100
			Mercury Control	
A-130	Air	Sorbent Injection Systems	Sorbents sprayed into the flue gas that chemically reacts to absorb mercury. The sorbents are then removed by a particulate removal device. Equipment may include pumps, tanks, blowers, nozzles ductwork, hoppers, and particulate collection devices needed for the equipment to function.	100
A-131	Air	Fixed Sorbent Systems	Equipment, such as stainless steel plate with a gold coating that is installed in the flue gas to absorb mercury.	100
A-132	Air	Mercury Absorbing Filters	Filters that absorb mercury such as those using the affinity between mercury and metallic selenium.	100
A-133	Air	Oxidation Systems	Equipment used to change elemental mercury to oxidized mercury. This can be catalysts (similar to Selective Catalytic Reduction (SCR) catalyst) or chemical additives that can be added to the flue gas or directly to the fuel.	100
A-134	Air	Photochemical Oxidation	Use of an ultraviolet light from a mercury lamp to provide an excited state mercury species in flue gas, leading to oxidation of elemental mercury. These units are only eligible if mercury is removed from flue gas.	100
A-135	Air	Chemical Injection Systems	Equipment used to inject chemicals into the combustion zone or flue gas that chemically bonds mercury to the additive, which is then removed in a particulate removal device.	100

Sulfur Oxides Controls				
A-160	Air	Wet and Dry Scrubbers	Circulating fluid bed and moving bed technologies using a dry sorbent or various wet scrubber designs that inject a wet sorbent into the scrubber.	100
A-161	Air	Selective Catalytic and Non-catalytic Reduction Systems	Catalyst bed, reducing agent injection and storage, monitors - used to reduce sulfur oxide emissions from combustion sources. Non-catalytic systems use a reducing agent without a catalyst.	100
Miscellaneous Control Equipment				
A-180	Air	Hoods, Duct and Collection Systems connected to Final Control Devices	Piping, headers, pumps, hoods, and ducts used to collect air contaminants and route them to a control device.	100
A-181	Air	Stack Modifications	Construction of stacks extensions to meet a permit requirement.	100
A-182	Air	New Stack Construction	The incremental cost difference between the stack height required for production purposes and the stack height required for pollution control purposes.	100
A-183	Air	Stack Repairs	Repairs made to an existing stack for that stack to provide the same level of pollution control as was previously provided.	100
A-184	Air	Vapor/Liquid Recovery Equipment (for venting to a control device)	Piping, blowers, vacuum pumps, and compressors used to capture a waste gas or liquid stream and vent to a control device, including used to eliminate emissions associated with loading tank trucks, rail cars, and barges.	100
A-185	Air	Paint Booth Control Devices	Pollution control equipment associated with the paint booth - including the items such as the control device, water curtain, filters, or other devices to capture paint fumes.	100
A-186	Air	Blast Cleaning System - Connected to a Control Device	Particulate control device and blast material recycling system.	100
A-187	Air	Amine or Chilled Ammonia Scrubber	Installed to provide post combustion capture of pollutants (including carbon dioxide upon the effective date of a final rule adopted by the United States Environmental Protection Agency (EPA) regulating carbon dioxide as a pollutant).	100
A-188	Air	Catalyst-based Systems	Installed to allow the use of catalysts to reduce pollutants in emission streams.	100
A-189	Air	Enhanced Scrubbing Technology	Installed to enhance scrubber performance, including equipment that promotes the oxidation of elemental mercury in the flue gas prior to entering the scrubber.	100

Water and Wastewater Pollution Control Equipment				
No.	Media	Property	Description	%
Solid Separation and De-watering				
W-1	Water	API Separator	Separates oil, water, and solids by settling and skimming.	100
W-2	Waste water	CPI Separator	Mechanical oil, water, and solids separator.	100
W-3	Waste water	Dissolved Air Flotation	Mechanical oil, water, and solids separator.	100
W-4	Waste water	Skimmer	Used to remove hydrocarbon from process wastewater.	100
W-5	Waste water	Decanter	Used to decant hydrocarbon from process wastewater.	100
W-6	Waste water	Belt Press, Filter Press, or Plate and Frame	Mechanical de-watering devices.	100
W-7	Water	Centrifuge	Separation of liquid and solid waste by centrifugal force, typically a rotating drum.	100
W-8	Water	Settling Basin	Simple tank or basin for gravity separation of suspended solids.	100
W-9	Water	Equalization	Tank, sump, or headbox used to settle solids and equilibrate process wastewater streams.	100
W-10	Water	Clarifier	Circular settling basins usually containing surface skimmers and sludge removal rakes.	100
Disinfection				
W-20	Water	Chlorination	Wastewater disinfection treatment using chlorine.	100
W-21	Water	De-chlorination	Equipment for removal of chlorine from water or wastewater.	100
W-22	Water	Electrolytic Disinfection	Disinfect water by the use of electrolytic cells.	100
W-23	Water	Ozonization	Equipment that generates ozone for the disinfection of wastewater.	100
W-24	Water	Ultraviolet	Disinfection of wastewater by the use of ultraviolet light.	100
W-25	Water	Mixed Oxidant Solution	Solution of chlorine, chlorine dioxide, and ozone to replace chlorine for disinfection.	100
Biological Systems				
W-30	Water	Activated Sludge	Biologically activating carbon matter in wastewater by aeration, clarification, and return of the settled sludge to aeration.	100
W-31	Water	Adsorption	Use of activated carbon to remove organic water contaminants.	100
W-32	Water	Aeration	Passing air through wastewater to increase oxygen available for bacterial activities that remove contaminants.	100

W-33	Water	Rotary Biological Contactor	Use of large rotating discs that contain a bio-film of microorganisms that promote biological purification of the wastewater.	100
W-35	Water	Trickling Filter	Fixed bed of highly permeable media in which wastewater passes through and forms a slime layer to remove contaminants.	100
W-36	Water	Wetlands and Lagoons (artificial)	Artificial marsh, swamp, or pond that uses vegetation and natural microorganisms as bio-filters to remove sediment and other pollutants.	100
W-37	Water	Digester	Enclosed, heated tanks for treatment of sludge that is broken down by bacterial action.	100
Other Equipment				
W-50	Water	Irrigation	Equipment that is used to disburse treated wastewater through irrigation on the site.	100
W-51	Water	Outfall Diffuser	Device used to diffuse effluent discharge from an outfall.	100
W-52	Water	Activated Carbon Treatment	Use of carbon media such as coke or coal to remove organics and particulate from wastewater. May be used in either fixed or fluidized beds.	100
W-53	Water	Oxidation Ditches and Ponds	Process of pumping air bubbles into a pond to assist in oxidizing organic and mineral pollution.	100
W-54	Water	Filters: Sand, Gravel, or Microbial	Passing wastewater through a sand or gravel bed to remove solids and reduce bacteria.	100
W-55	Water	Chemical Precipitation	Process used to remove heavy metals from wastewater.	100
W-56	Water	Ultra-filtration	Use of semi-permeable membrane and hydrostatic pressure to filter solids and high molecular weight solutes.	100
W-57	Water	Conveyances, Pumps, Sumps, Tanks, Basins	Used to segregate storm water from process water, control storm water runoff, or convey contaminated process water.	100
W-58	Water	Water Recycling Systems	Installed systems, excluding cooling towers, that clean, recycle, or reuse wastewater or use grey water or storm water to reduce the amount of a facility's discharge or the amount of new water used as process or make-up water including Zero Discharge Systems.	100
W-59	Water	Wastewater Treatment Facility/Plant	New wastewater treatment facilities (including on-site septic systems) constructed to process wastewater generated on site.	100
W-60	Water	High-Pressure Reverse Osmosis	The passing of a contaminated water stream over a permeable membrane at high pressure to collect contaminants.	100
W-61	Water	Hydro-cyclone Vapor Extraction	An air-sparged hydro-cyclone for the removal of VOCs from a wastewater stream.	100

W-62	Water	Recycled Water Cleaning System	Equipment used to collect and recycle the water used in a high-pressure water system for cleaning contaminants from equipment and pavement.	100
W-63	Water	Chemical Oxidation	Use of hydrogen peroxide or other oxidants for wastewater treatment.	100
W-64	Water	Storm Water Containment Systems	Structures or liners used for containment of runoff from rainfall. The land that is actually occupied by the containment structure is eligible for a positive use determination.	100
W-65	Water	Wastewater Impoundments	Ponds used for the collection of water after use and before circulation.	100
W-66	Water	Oil/Water Separator	Mechanical device used to separate oils from storm water.	100
Control/Monitoring Equipment				
W-70	Water	pH Meter, Dissolved Oxygen. Meter, or Chart Recorder	Used for wastewater operations control and monthly reporting requirements.	100
W-71	Water	On-line Analyzer	Device that conducts chemical analysis on sample streams for wastewater operations control.	100
W-72	Water	Neutralization	Control equipment used to adjust pH of wastewater treatment components.	100
W-73	Water	Respirometer	Device used to measure oxygen uptake or carbon dioxide (CO_2) release in wastewater treatment systems.	100
W-74	Water	Diversion	Structures used for the capture and control of storm water and process wastewater or emergency diversion of process material. Land means only land that is actually occupied by the diversion or storage structure.	100
W-76	Water	Building	Used for housing wastewater control and monitoring equipment.	100
W-77	Water	De-foaming Systems	Systems consisting of nozzles, pilings, spray heads, and piping used to reduce surface foam.	100

Solid Waste Management Pollution Control Equipment				
No.	Media	Property	Description	%
Solid Waste Management				
S-1	Land/ Water	Stationary Mixing and Sizing Equipment	Immobile equipment used for solidification, stabilization, or grinding of self-generated waste material for the purpose of disposal.	100
S-2	Land/ Water	Decontamination Equipment	Equipment used to remove waste contamination or residues from vehicles that leave the facility.	100

S-3	Land/ Water	Solid Waste Incinerator (not used for energy recovery and export or material recovery)	Solid waste incinerators, feed systems, ash handling systems, and controls.	100
S-4	Land/ Water/Air	Monitoring and Control Equipment	Alarms, indicators, and controllers, for high liquid level, pH, temperature, or flow in waste treatment system. Does not include fire alarms.	100
S-5	Land/ Water	Solid Waste Treatment Vessels	Any vessel used for waste treatment.	100
S-6	Land/ Water	Secondary Containment	External structure or liner used to contain and collect liquids released from a primary containment device and/or ancillary equipment. Main purpose is to prevent groundwater or soil contamination.	100
S-7	Land/ Water	Liners (Noncommercial Landfills and Impoundments)	A continuous layer or layers of natural and/or man-made materials that restrict downward or lateral escape of wastes or leachate in an impoundment or landfill.	100
S-8	Land/ Water	Leachate Collection and Removal Systems	A system capable of collecting leachate or liquids, including suspended solids, generated from percolation through or drainage from a waste. Systems for removal of leachate may include sumps, pumps, and piping.	100
S-9	Land/ Water	Leak Detection Systems	A system capable of detecting the failure of a primary or secondary containment structure or the presence of a liquid or waste in a containment structure.	100
S-10	Land/ Water	Final Cover Systems for Landfills (Noncommercial)	A system of liners and materials to provide drainage, erosion prevention, infiltration minimization, gas venting, and a biotic barrier.	100
S-11	Land/ Water	Lysimeters	An unsaturated zone monitoring device used to monitor soil-pore liquid quality at a waste management unit (e.g., below the treatment zone of a land treatment unit).	100
S-12	Water	Groundwater Monitoring Well and Systems	A groundwater well or system of wells designed to monitor the quality of groundwater at a waste management unit (e.g., detection monitoring systems or compliance monitoring systems).	100
S-13	Air	Fugitive Emission Monitors	A monitoring device used to monitor or detect fugitive emissions from a waste management unit or ancillary equipment.	100
S-14	Land/ Water	Slurry Walls/Barrier Walls	A pollution control method using a barrier to minimize lateral migration of pollutants in soils and groundwater.	100

S-15	Water	Groundwater Recovery or Remediation System	A groundwater remediation system used to remove or treat pollutants in contaminated groundwater or to contain pollutants (e.g., pump-and-treat systems).	100
S-16	Water	Noncommercial Injection Wells (Including Saltwater Disposal Wells) and Ancillary Equipment	Injection well, pumps, collection tanks and piping, pretreatment equipment, and monitoring equipment.	100
S-17	Land/ Water	Noncommercial Landfills (used for disposal of self generated waste materials) and Ancillary Equipment	Excavation, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, waste hauling equipment, decontamination facilities, security systems, and equipment used to manage the disposal of waste in the landfill.	100
S-18	Land/ Water	Resource Conservation Recovery Act Containment Buildings (used for storage or treatment of hazardous waste)	Pads, structures, solid waste treatment equipment used to meet the requirements of 30 TAC Chapter 335, Subchapter O - Land Disposal Restrictions, §335.431.	100
S-19	Land/ Water	Surface Impoundments and Ancillary Equipment (Including Brine Disposal Ponds)	Excavation, ponds, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, and pumps.	100
S-20	Land/ Water	Waste Storage Used to Collect and/or Store Waste Prior to Treatment or Disposal	Tanks, containers and ancillary equipment such as pumps, piping, secondary containment, and vent controls (e.g., Resource Conservation Recovery Act Storage Tanks, 90-Day Storage Facilities, Feed Tanks to Treatment Facilities).	100
S-21	Air	Fugitive Emission Containment Structures	Structures or equipment used to contain or reduce fugitive emissions or releases from waste management activities (e.g., coverings for conveyors, chutes, enclosed areas for loading and unloading activities).	100
S-22	Water	Double-Hulled Barge	If double-hulled to reduce chance of leakage into public waters, calculate the incremental cost difference between a single-hulled barge and a double-hulled barge.	100
S-23	Land	Composting Equipment	Used to compost material where the compost will be used on site. (Does not include commercial composting facilities.)	100
S-24	Land	Compost Application Equipment	Equipment used to apply compost that has been generated on-site.	100
S-25	Land	Vegetated Compost Sock	Put in place as part of a facility's permanent Best Management Plan (BMP).	100

S-26	Air	Foundry Sand Reclamation Systems for Foundries	Components of a sand reclamation system that provide specific pollution control. Includes hooding over shaker screens vented to a dust collector, conveyor covers, and emission control devices at other points.	100
S-27	Air/Water/ Land	Concrete Reclaiming Equipment	Processes mixed, un-poured concrete batches to reclaim the sand and gravel for reuse and recycles the water in a closed loop system.	100
S-28	Land	Fencing installed for the control of windblown trash or access control.	Fencing installed at landfills, solid waste transfer stations, or storage/treatment areas located at hazardous waste management facilities to meet environmental regulations.	100

Miscellaneous Pollution Control Equipment				
No.	Media	Property	Description	%
M-1	Air/ Land/ Water	Spill Response/Cleanup Equipment Pre-positioned and Stored for Addressing Future Emergencies	Boats, barges, booms, skimmers, trawls, pumps, power units, packaging materials and containers, vacuum trailers, storage sheds, diversion basins, tanks, and dispersants.	100
M-2	Air/ Land	Hazardous Air Pollutant Abatement Equipment - required removal material contaminated with asbestos, lead, or some other hazardous air pollutant	High-Efficiency Particulate Arresting (HEPA) Vacuum Equipment, Negative Air Pressure Enclosures, Glove Bags, and Disposal.	100
M-3	Air/ Land/ Water	Vacuum Trucks, Street Sweepers and Watering Trucks	Mobile Surface Cleaning Equipment - used exclusively to control particulate matter on plant roads. (Does not include sweepers or scrubbers used to control particulate matter within buildings.)	100
M-4	Land	Compactors, Barrel Crushers, Balers, Shredders	Compactors and similar equipment used to change the physical format of waste material for recycling/reuse purposes or on-site disposal of facility-generated waste.	100
M-5	Air/ Land/ Water	Solvent Recovery Systems	Used to remove hazardous content from waste solvents by heat, vaporization, and condensation, by filtration, or by other means. The recycled solvents must be reused at the facility generating the waste.	100
M-6	Land/ Water	Boxes, Bins, Carts, Barrels, Storage Bunkers	Collection/storage containers for source-separation of materials to be recycled or reused. Does not include product storage containers or facilities.	100

M-7	Air/ Land/ Water	Environmental Paving Located at Industrial Facilities	Paving of outdoor vehicular traffic areas in order to meet or exceed an adopted air quality rule, regulation, or law. Does not include paving of parking areas or driveways for convenience purposes or storm water control. Does not include dirt or gravel. Value of the paving must be stated on a square foot basis with a plot plan provided that shows the paving in question.	100
M-8	Air/ Land/ Water	Sampling Equipment	Equipment used to collect samples of exhaust gas, wastewater, soil, or other solid waste to be analyzed for specific contaminants or pollutants.	100
M-9	Water	Dry Stack Building for Poultry Litter	A pole-barn type structure used to temporarily store poultry litter in an environmentally safe manner.	100
M-10	Land/ Water	Poultry Incinerator	Incinerators used to dispose of poultry carcasses.	100
M-11	Land/ Water	Structures, Enclosures, Containment Areas, Pads for Composting Operations	Required to meet 'no contact' storm water regulations.	100
M-12	Air	Methane Capture Equipment	Equipment used to capture methane generated by the decomposition of waste material on site. Methane must be sent to a control device rather than used.	100
M-13	Land	Drilling Mud Recycling System	Consisting of only the Shaker Tank System, Shale Shakers, Desilter, Desander, and Degasser.	100
M-14	Land	Drilling Rig Spill Response Equipment	Includes only the Ram Type Blowout Preventers, Closing Units, and Choke Manifold Systems.	100
M-15	Air	Odor Neutralization and Chemical Treatment Systems	Carbon absorption, zeolite absorption, and other odor neutralizing and chemical treatment systems to meet local ordinance or to prevent/correct nuisance odors at off-site receptors.	100
M-16	Air	Odor Dispersing and Removal Systems	Electrostatic precipitators, vertical dispersing fans, stack extensions, and other physical control equipment used to dilute, disperse, or capture nuisance odor vent streams.	100
M-17	Air	Low NO_x Combustion System for Drilling Rigs	Equipment on power generating units designed solely to reduce NO_x generation	100
M-18	Air	Odor Detectors	Olfactometers, gas chromatographs, and other analytical instrumentation used specifically for detecting and measuring ambient odor, either empirically or chemical specific.	100
M-19	Land	Cathodic Protection	Cathodic protection installed to prevent corrosion of metal tanks and piping.	100

M-20	Water	Fish and Other Aquatic Organism Protection Equipment	Equipment installed to protect fish and other aquatic organisms from entrainment or impingement in an intake cooling water structure. Equipment includes: Aquatic Filter Barrier Systems, Fine-Mesh Traveling Intake Screens, Fish Return Buckets, Sprays, Flow-Altering Louvers, Fish Trough, Fish Behavioral Deterrents, and Wetland Creation.	100
M-21	Water/ Land	Double-walled Piping	The difference between cost of single walled piping and the cost of double-walled piping, when the double-walled piping is installed to prevent unauthorized discharges.	100
M-22	Water/ Land	Double-walled Tanks	The difference between cost of single walled tanks and the cost of double-walled tanks, when the double-walled tanks are installed to prevent unauthorized discharges.	100

Equipment Located at Service Stations				
No.	Media	Property	Description	%
Spill and Overfill Prevention Equipment				
T-1	Water	Tight Fill Fittings	Liquid tight connections between the delivery hose and fill pipe.	100
T-2	Water	Spill Containers	Spill containment manholes equipped with either a bottom drain valve to return liquids to the tank or a hand pump for liquid removal.	100
T-3	Water	Automatic Shut-off Valves	Flapper valves installed in the fill pipe to automatically stop the flow of product.	100
T-4	Water	Overfill Alarms	External signaling device attached to an automatic tank gauging system.	100
T-5	Water	Vent Restriction Devices	Float vent valves or ball float valves to prevent backflow through vents.	100
Secondary Containment				
T-10	Water	Double-walled Tanks	The difference between cost of single-walled tanks and the cost of double-walled tanks, when the double-walled tanks are installed to prevent unauthorized discharges or leaks.	100
T-11	Water	Double-walled Piping	The difference between cost of single-walled piping and the cost of double-walled piping, when the double-walled piping is installed to prevent unauthorized discharges or leaks.	100
T-12	Water	Tank Top Sumps	Liquid tight containers to contain leaks or spills that involve tank top fittings and equipment.	100
T-13	Water	Under Dispenser Sumps	Contains leaks and spills from dispensers and pumps.	100
T-14	Water	Sensing Devices	Installed to monitor for product accumulation in secondary containment sumps.	100

T-15	Land/ Water	Concrete Paving Above Underground Tanks and Pipes	Required concrete paving located above underground pipes and tanks. The use determination value is limited to the difference between the cost per square foot of the concrete paving and the cost per square foot of the other paving installed at the service station. This item only applies to service stations.	100
Release Detection for Tanks and Piping				
T-20	Water	Automatic Tank Gauging	Includes tank gauging probe and control console.	100
T-21	Water	Groundwater or Soil Vapor Monitoring	Observation wells located inside the tank excavation or monitoring wells located outside the tank excavation.	100
T-22	Water	Monitoring of Secondary Containment	Liquid sensors or hydrostatic monitoring systems installed in the interstitial space for tanks or piping.	100
T-23	Water	Automatic Line Leak Detectors	Devices installed at the pump that are designed to detect leaks in underground piping. Mechanical and electronic devices are acceptable.	100
T-24	Water	Under Pump Check Valve	Valve installed to prevent back flow in the fuel dispensing line. This device is only used on suction pump piping systems.	100
T-25	Water	Tightness Testing Equipment	Equipment purchased to comply with tank and/or piping tightness testing requirements.	100
Cathodic Protection				
T-30	Water	Isolation Fittings	Dielectric bushings and fittings to separate underground piping from aboveground tanks and piping.	100
T-31	Water	Sacrificial Anodes	Magnesium or zinc anodes packaged in low resistivity backfill to provide galvanic protection.	100
T-32	Water	Dielectric Coatings	Factory installed coal-tar epoxies, enamels, fiberglass reinforced plastic, or urethanes on tanks and/or piping. Field installed coatings limited to exposed threads, fittings, and damaged surface areas.	100
Emissions Control Equipment				
T-40	Air	Stage I or Stage II Vapor Recovery	Includes pressure/vacuum vent relief valves, vapor return piping, stage 2 nozzles, coaxial hoses, vapor processing units, and vacuum-assist units. Used for motor vehicle fuel dispensing facilities. Does not include fuel delivery components of fuel dispensing unit.	100

Figure: 30 TAC §17.17(b)

Expedited Review List

No.	Property	Description
B-1	Coal Cleaning or Refining Facilities	Used to remove impurities from coal in order to boost the heat content and to reduce potential air pollutants.
B-2	Atmospheric or Pressurized and Bubbling or Circulating Fluidized Bed Combustion Systems and Gasification Fluidized Bed Combustion Combined Cycle Systems	Combustion systems that reduce pollution through the use of a fluidized bed that can be atmospheric and bubbling or circulating; gasification combined cycle systems; or pressurized and bubbling or circulating systems.
B-3	Ultra-Supercritical Pulverized Coal Boilers	Boiler system designed to provide 4500 pounds per square inch gauge (psig)/1100°/1100°/1100° double reheat configuration.
B-4	Flue Gas Recirculation Components	Ductwork, blowers, and ancillary equipment used to redirect part of the flue gas back to the combustion chamber for reduction of nitrogen oxides (NO_x) formation. May include fly ash collection in coal fired units.
B-5	Syngas Purification Systems and Gas-Cleanup Units	A system, including all necessary appurtenances, that: (1) produces synthesis gas from coal, biomass, petroleum coke, or solid waste and is then converted to electricity via combined cycle power generation equipment; and (2) equipment that removes sulfur, carbon, and other polluting compounds from synthesis gas streams.
B-6	Enhanced Heat Recovery Systems	A heating system used to reduce the temperature and humidity of the exhaust gas stream and recover the heat so that it can be returned to the steam generator so as to increase the quantity of steam generated per quantity of fuel consumed.
B-7	Exhaust Heat Recovery Boilers	Used to recover the heat from boiler to generate additional steam.
B-8	Heat Recovery Steam Generators	A counter-flow heat exchanger consisting of a series of super-heater, boiler (or evaporator) and economizer tube sections, arranged from the gas inlet to the gas outlet to maximize heat recovery from the gas turbine exhaust gas.
B-9	Heat Transfer Sections for Heat Recovery Steam Generators	Super-heaters, Evaporators, Re-heaters and Economizers.
B-10	Enhanced Steam Turbine Systems	Enhanced efficiency steam turbines.
B-11	Methanation	Coal Gasification process that removes carbon and produces methane, including the necessary support systems and appurtenances.

B-12	Coal Combustion or Gasification By-product and Co-product Handling, Storage, and Treatment Facilities	Used for handling, storage, or treatment of by-products or co-products produced (resulting) from the combustion or gasification of coal such as boiler and Gasifier slag, bottom ash, flue gas desulfurization (FGD) material, fly ash, and sulfur.
B-13	Biomass Cofiring Storage, Distribution, and Firing Systems	Installed to reduce pollution by using biomass as a supplementary fuel.
B-14	Coal Cleaning or Drying Processes, such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology	Used to produce a cleaner burning coal (such as coal drying, moisture reduction, air jigging, precombustion decarbonization, or coal flow balancing technology).
B-15a	Oxy-Fuel Combustion Technology	Installed to allow the feeding of oxygen, rather than air, and a proportion of recycled flue gases to the boiler.
B-15b	Amine or Chilled Ammonia Scrubbing	Installed to provide post combustion capture of pollutants (including carbon dioxide upon the effective date of a final rule adopted by the United States Environmental Protection Agency (EPA) regulating carbon dioxide as a pollutant).
B-15c	Catalyst based Systems	Installed to allow the use of catalysts to reduce emissions.
B-15d	Enhanced Scrubbing Technology	Installed to enhance scrubber performance, including equipment that promotes the oxidation of elemental mercury in the flue gas prior to entering the scrubber.
B-15e	Modified Combustion Technologies	Systems such as chemical looping and biomass co-firing that are designed to enhance pollutant removal.
B-15f	Cryogenic Technology	Cryogenic cooling systems used to reduce pollution (including carbon dioxide upon the effective date of a final rule adopted by the EPA regulating carbon dioxide as a pollutant).
B-16	Carbon Dioxide Capture and Geological Sequestration Equipment	Used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is then geologically sequestered in this state. (This item is only in effect upon the effective date of an EPA final rule regulating carbon dioxide as a pollutant.)
B-17	Fuel Cells	Used to generate electricity using hydrogen derived from coal, biomass, petroleum coke, or solid waste.
B-18	Regulated Air Pollutant Control Equipment	Any other facility, device, or method designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.

Figure: 30 TAC §17.17(c)(1)

$$\frac{(\text{Production Capacity Factor} \times \text{Capital Cost New}) - \text{Capital Cost Old} - \text{NPVMP}}{\text{Capital Cost New}} \times 100$$

Where:

[1] **The Production Capacity Factor (PCF)** is calculated by dividing the capacity of the existing equipment or process by the capacity of the new equipment or process. When there is an increase in production capacity, PCF is used to adjust the capacity of the new equipment or process to the capacity of the existing equipment or process. When there is a decrease in production capacity, PCF is used to adjust the capacity of the existing equipment or process to the production capacity of the new equipment or process. In this case, this calculation is modified so that PCF is applied to Capital Cost Old (CCO) rather than Capital Cost New.

[2] **Capital Cost New** is the estimated total capital cost of the new equipment or process.

[3] **Capital Cost Old** is the cost of comparable equipment or process without the pollution control. The standards used for calculating CCO are as follows:

[3.1] If comparable equipment without the pollution control feature is on the market in the United States, then an average market price of the most recent generation of technology must be used.

[3.2] If the conditions in variable 3.1 do not apply and the company is replacing an existing unit that already has received a positive use determination, the company shall use the CCO from the application for the previous use determination.

[3.3] If the conditions in variable 3.1 and 3.2 do not apply and the company is replacing an existing unit, then the company shall convert the original cost of the unit to today's dollars by using a published industry specific standard. If the production capacity of the new equipment or process is lower than the production capacity of the old equipment or process CCO is divided by the PCF to adjust CCO to reflect the same capacity as CCN.

[3.4] If the conditions in variables 3.1, 3.2 and 3.3 do not apply, and the company can obtain an estimate of the cost to manufacture the alternative equipment without the pollution control feature, then an average estimated cost to manufacture the unit must be used. The comparable unit must be the most recent generation of technology. A copy of the estimate must be provided with the worksheet including the specific source of the information.

[4] **NPVMP**--The net present value of the marketable product recovered for the expected lifetime of the property, calculated using the equation in paragraph (2) of this subsection. Typically, the most recent three-year average price of the material as sold on the open market should be used in the calculation. If the price varies from state-to-state, the applicant shall calculate an average, and explain how the figures were determined.

Figure: 30 TAC §17.17(c)(2)

$$NPVMP = \sum_{t=1}^{n} \frac{(\text{Marketable Product Value} - \text{Production Cost})_t}{(1 + \text{Interest Rate})^t}$$

[i] **Marketable Product Value**--The marketable product value may be calculated one of two ways.

1. The retail value of the product produced by the equipment for one year periods. Typically, the most recent three-year average price of the material as sold on the open market should be used in the calculation. If the price varies from state-to-state, the applicant shall calculate an average, and explain how the figures were determined.

2. If the material is used as an intermediate material in a production process, then the value assigned by to the material for internal accounting purposes may be used. It is the responsibility of the applicant to show that the internally assigned value is comparable to the value assigned by other similar producers of the product.

[ii] **Production Cost**--The costs directly attributed to the production of the product, including raw materials, storage, transportation, and personnel, but excluding non-cash costs, such as overhead and depreciation.

[iii] **n**--This is the estimated useful life in years of the equipment that is being evaluated for a use determination

[iv] Interest Rate--10%

Figure: 30 TAC §290.47(a)

APPENDIX A

Requirements. Public water supply systems which achieve and maintain recognition must exceed the minimum acceptable standards of the commission in these sections.

(1) To attain recognition as a "Superior Public Water System", the following additional requirements must be met:

(A) Physical facilities shall comply with the requirements in these sections.

(B) There shall be a minimum of two licensed operators with additional operators required for larger systems.

(C) The system's microbiological record for the previous 24 months period shall indicate no violations (frequency, number or maximum contaminant level of the drinking water standards.

(D) The quality of the water shall comply with all primary water quality parameters listed in the drinking water standards.

(E) The chemical quality of the water shall comply with all secondary constituent levels listed in the drinking water standards.

(F) The system's operation shall comply with applicable state statutes and minimum acceptable operating practices set forth in §290.46 of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems).

(G) The system's capacities shall meet or exceed minimum water system capacity requirements set forth in §290.45 of this title (relating to Minimum Water System Capacity Requirements).

(H) The system shall have at least two wells, two raw water pumps or a combination of these with enough capacity to provide average daily consumption with the largest well or pump out of service. This requirement shall also apply to treatment plant pumps necessary for operation in accordance with §290.42 of this title (relating to Water Treatment).

(I) The water system shall be well maintained and the facilities shall present a pleasing appearance to the public.

(2) To attain recognition as an "Approved Public Water System," all additional requirements listed under subsection (a)(1) of this section with exception of secondary constituents, subsection (a)(1)(E) of this section must be met. Public water systems which provide water quality that exceeds the secondary chemical standards may be excluded from this recognition program at the discretion of the executive director.

Signs. Systems which have met the requirements for recognition as a superior or approved system may erect signs denoting this honor.

Inspections. To receive or maintain recognition as a superior or approved water system, the system must be inspected and evaluated by commission personnel as to physical facilities, appearance and operation. Systems which fail to meet the above requirements in this section will be denied recognition or will have their recognition revoked. The signs shall be immediately removed on notice from the executive director.

Figure: 30 TAC §290.47(b)

RETAIL SERVICE AGREEMENT

I. PURPOSE. The NAME OF WATER SYSTEM is responsible for protecting the drinking water supply from contamination or pollution which could result from improper system construction or configuration on the retail connection owner's side of the meter. The purpose of this service agreement is to notify each customer of the restrictions which are in place to provide this protection. The public water system enforces these restrictions to ensure the public health and welfare. Each retail customer must sign this agreement before the NAME OF WATER SYSTEM will begin service. In addition, when service to an existing retail connection has been suspended or terminated, the water system will not re-establish service unless it has a signed copy of this agreement.

II. RESTRICTIONS. The following unacceptable practices are prohibited by State regulations.

A. No direct connection between the public drinking water supply and a potential source of contamination is permitted. Potential sources of contamination shall be isolated from the public water system by an air-gap or an appropriate backflow prevention device.

B. No cross-connection between the public drinking water supply and a private water system is permitted. These potential threats to the public drinking water supply shall be eliminated at the service connection by the installation of an air-gap or a reduced pressure-zone backflow prevention device.

C. No connection which allows water to be returned to the public drinking water supply is permitted.

D. No pipe or pipe fitting which contains more than 8.0% lead may be used for the installation or repair of plumbing at any connection which provides water for human use.

E. No solder or flux which contains more than 0.2 percent lead can be used for the installation or repair of plumbing at any connection which provides water for human use.

III. SERVICE AGREEMENT. The following are the terms of the service agreement between the NAME OF WATER SYSTEM (the Water System) and NAME OF CUSTOMER (the Customer).

A. The Water System will maintain a copy of this agreement as long as the Customer and/or the premises is connected to the Water System.

B. The Customer shall allow his property to be inspected for possible cross-connections and other potential contamination hazards. These inspections

shall be conducted by the Water System or its designated agent prior to initiating new water service; when there is reason to believe that cross-connections or other potential contamination hazards exist; or after any major changes to the private water distribution facilities. The inspections shall be conducted during the Water System's normal business hours.

C. The Water System shall notify the Customer in writing of any cross-connection or other potential contamination hazard which has been identified during the initial inspection or the periodic reinspection.

D. The Customer shall immediately remove or adequately isolate any potential cross-connections or other potential contamination hazards on his premises.

E. The Customer shall, at his expense, properly install, test, and maintain any backflow prevention device required by the Water System. Copies of all testing and maintenance records shall be provided to the Water System.

IV. ENFORCEMENT. If the Customer fails to comply with the terms of the Service Agreement, the Water System shall, at its option, either terminate service or properly install, test, and maintain an appropriate backflow prevention device at the service connection. Any expenses associated with the enforcement of this agreement shall be billed to the Customer.

CUSTOMER'S
SIGNATURE:_____

DATE:_____

Figure: 30 TAC §290.47(c)

SANITARY CONTROL EASEMENT

DATE: _____, 2____

GRANTOR(S):
GRANTOR'S ADDRESS:
GRANTEE:
GRANTEE'S ADDRESS:

SANITARY CONTROL EASEMENT:

Purpose, Restrictions, and Uses of Easement:
1. The purpose of this easement is to protect the water supply of the well described and located below by means of sanitary control.
2. The construction, existence, and/or operation of the following within a 150-foot radius of the well described and located below are prohibited: septic tank or sewage treatment perforated drainfields; areas irrigated by low dosage, low angle spray on-site sewage facilities; absorption beds; evapotranspiration beds; abandoned, inoperative or improperly constructed water wells of any depth; underground petroleum and chemical storage tanks or liquid transmission pipelines; sewage treatment plants; sewage wet wells; sewage pumping stations; drainage ditches which contains industrial waste discharges or wastes from sewage treatment systems; animal feed lots; solid waste disposal sites, landfill and dump sites; lands on which sewage plant or septic tank sludge is applied; lands irrigated by sewage plant effluent; military facilities; industrial facilities; wood-treatment facilities; liquid petroleum and petrochemical production, storage, and transmission facilities; Class 1, 2, 3, and 4 injection wells; pesticide storage and mixing facilities; and all other constructions or operations that could pollute the groundwater sources of the well that is the subject of this easement. For the purpose of this easement, improperly constructed water wells are those wells which do not meet the surface and subsurface construction standards for a public water supply well.
3. The construction, existence and/or operation of tile or concrete sanitary sewers, sewer appurtenances, septic tanks, storm sewers, cemeteries, and/or the existence of livestock in pastures is specifically prohibited within a 50-foot radius of the water well described and located below.
4. This easement permits the construction of homes or buildings upon the Grantor's property, and farming and ranching operations, as long as all items in Restrictions Nos. 2 and 3 are recognized and followed.

The Grantor's property subject to this Easement is described in the documents recorded at:
Volume ___, Pages ___ of the Real Property Records of _____ County, Texas.

PROPERTY SUBJECT TO EASEMENT:

All of that area within a 150 foot radius of the water well located ___ feet at a radial of ___ degrees from the ___ corner of Lot ___, of a Subdivision of Record in Book ___, Page ___ of the County Plat Records, _____ County, Texas.

TERM:

This easement shall run with the land and shall be binding on all parties and persons claiming under the Grantor(s) for a period of two years from the date that this easement is recorded; after which time, this easement shall be automatically extended until the use of the subject water well as a source of water for public water systems ceases.

ENFORCEMENT:

Enforcement of this easement shall be proceedings at law or in equity against any person or persons violating or attempting to violate the restrictions in this easement, either to restrain the violation or to recover damages.

INVALIDATION:

Invalidation of any one of these restrictions or uses (covenants) by a judgment or court order shall not affect any of the other provisions of this easement, which shall remain in full force and effect.

FOR AND IN CONSIDERATION, of the sum of One Dollar ($1.00) and for other good and valuable consideration paid by the Grantee to the Grantor(s), the receipt of which is hereby acknowledged, the Grantor does hereby grant and convey to Grantee and to its successors and assigns the sanitary control easement described in this easement.

GRANTOR(S)

By:

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF §

BEFORE ME, the undersigned authority, on the day of _____, 2____, personally appeared _____ known to me to be the person(s) whose name(s) is (are) subscribed to the foregoing instrument and acknowledged to me that executed the same for the purposes and consideration therein expressed.

Notary Public in and for
THE STATE OF TEXAS
My Commission Expires:
Typed or Printed Name of Notary

Recorded in _____ Courthouse, _____ Texas on _____, 2____

Figure: 30 TAC §290.47(d)

Customer Service Inspection Certificate

Name of PWS _____
PWS I.D.# _____
Location of Service _____

Reason for Inspection: New construction ..... ☐
Existing service where contaminant hazards are suspected ..... ☐
Major renovation or expansion of distribution facilities ..... ☐

I _____, upon inspection of the private water distribution facilities connected to the aforementioned public water supply do hereby certify that, to the best of my knowledge:

Compliance	Non-Compliance		
☐	☐	(1)	No direct connection between the public drinking water supply and a potential source of contamination exists. Potential sources of contamination are isolated from the public water system by an air gap or an appropriate backflow prevention assembly in accordance with Commission regulations.
☐	☐	(2)	No cross-connection between the public drinking water supply and a private water system exists. Where an actual air gap is not maintained between the public water supply and a private water supply, an approved reduced pressure-zone backflow prevention assembly is properly installed and a service agreement exists for annual inspection and testing by a certified backflow prevention assembly tester.
☐	☐	(3)	No connection exists which would allow the return of water used for condensing, cooling or industrial processes back to the public water supply.
☐	☐	(4)	No pipe or pipe fitting which contains more than 8.0% lead exists in private water distribution facilities installed on or after July 1, 1988.
☐	☐	(5)	No solder or flux which contains more than 0.2% lead exists in private water distribution facilities installed on or after July 1, 1988.

I further certify that the following materials were used in the installation of the private water distribution facilities:

Service lines Lead ☐ Copper ☐ PVC ☐ Other ☐
Solder Lead ☐ Lead Free ☐ Solvent Weld ☐ Other ☐

I recognize that this document shall become a permanent record of the aforementioned Public Water System and that I am legally responsible for the validity of the information I have provided.

Remarks

Signature of Inspector

Registration Number

Title

Type of Registration

Date

Figure: 30 TAC §290.47(f)

The following form must be completed for each assembly tested. A signed and dated original must be submitted to the public water supplier for recordkeeping purposes:

BACKFLOW PREVENTION ASSEMBLY TEST AND MAINTENANCE REPORT

NAME OF PWS: _____
PWS I.D.: #_____
MAILING ADDRESS: _____
CONTACT PERSON: _____
LOCATION OF SERVICE: _____

The backflow prevention assembly detailed below has been tested and maintained as required by commission regulations and is certified to be operating within acceptable parameters.

TYPE OF ASSEMBLY

☐ Reduced Pressure Principle
☐ Double Check Valve
☐ Pressure Vacuum Breaker
☐ Reduced Pressure Principle-Detector
☐ Double Check-Detector
☐ Spill-Resistant Pressure Vacuum Breaker

Manufacturer_____
Size_____
Model Number_____
Located At _____
Serial Number_____

Is the assembly installed in accordance with manufacturer recommendations and/or local codes? _____

	Reduced Pressure Principle Assembly			Pressure Vacuum Breaker	
	Double Check Valve Assembly		Relief Valve	Air Inlet	Check Valve
	1st Check	2nd Check			
Initial Test	Held at ___ psid Closed Tight ☐ Leaked ☐	Held at ___ psid Closed Tight ☐ Leaked ☐	Opened at ___ psid Did not open ☐	Opened at ___ psid Did not open ☐	Held at ___ psid Leaked ☐
Repairs and Materials Used					
Test After Repair	Held at ___ psid Closed Tight ☐	Held at ___ psid Closed Tight ☐	Opened at ___ psid	Opened at ___ psid	Held at ___ psid

Test gauge used: Make/Model_____ SN:_____
Date Tested for Accuracy: _____
Remarks:_____
The above is certified to be true at the time of testing.
Firm Name _____Certified Tester (print)_____
Firm Address _____Certified Tester (signature)_____
Firm Phone #_____Cert. Tester No._____Date_____

* TEST RECORDS MUST BE KEPT FOR AT LEAST THREE YEARS
** USE ONLY MANUFACTURER'S REPLACEMENT PARTS

Figure: 30 TAC §290.111(c)(3)(B)

Treatment Technique Requirements for *Cryptosporidium* [1]

Average *Cryptosporidium* Level in the Raw Water	**Bin Classification**	**Minimum Removal/Inactivation Requirement**
Cryptosporidium < 0.075 oocysts/L	Bin 1	2.0-log
0.075 oocysts/L ≤*Cryptosporidium* < 1.0 oocysts/L	Bin 2	4.0-log
1.0 oocysts/L ≤*Cryptosporidium* < 3.0 oocysts/L	Bin 3	5.0-log
Cryptosporidium ≥3.0 oocysts/L	Bin 4	5.5-log

[1]The executive director will assign *Cryptosporidium* removal credit based on the treatment processes used at the plant:

a) Treatment plants utilizing coagulation, flocculation, and granular media filtration will receive a 2.5-log *Cryptosporidium* removal credit.

b) Treatment plants utilizing coagulation, flocculation, clarification, and granular media filtration will receive a 3.0-log *Cryptosporidium* removal credit.

c) The executive director will assign *Cryptosporidium* removal credit to treatment plants utilizing bag, cartridge, or membrane filters on an individual basis.

Figure: 30 TAC §290.111(d)(1)

Microbial Inactivation Requirements

Pretreatment Provided	Filter Technology Used			
	Conventional Filters [1]		Membrane Filters and Cartridge Filters [2]	
	Giardia	Virus	*Giardia*[3]	Virus
No coagulation	NA[4]	NA[4]	0.0-log	4.0-log
Coagulation and flocculation	1.0-log	3.0-log	0.0-log	3.0-log
Coagulation, flocculation, and clarification	0.5-log	2.0-log	0.0-log	2.0-log

[1] Filters in which water passes through a porous granular media and which utilize depth filtration processes.
[2] Filters in which particulate matter larger than 1 micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism.
[3] The executive director will determine the required Giardia inactivation on a case-by-case basis.
[4] NA = Not Allowed. Conventional filtration with no coagulation is not allowed to receive Giardia or viral treatment credit.

Figure: 30 TAC §290.115(c)(2)

Routine Stage 2 Monitoring Frequency and Number of Sites

Water Type	Retail Population	Routine Frequency[1]	Routine Number of Sites[5]
Surface Water (or Groundwater Under the Direct Influence of Surface Water)[2]	fewer than 500	annual	1 or 2[3]
	500 to 3,300	quarterly	1 or 2[3]
	3,301 to 9,999	quarterly[4]	2
	10,000 to 49,999	quarterly[4]	4
	50,000 to 249,999	quarterly[4]	8
	250,000 to 999,999	quarterly[4]	12
	1,000,000 to 4,999,999	quarterly[4]	16
	5,000,000 or more	quarterly[4]	20
Groundwater	fewer than 500	annual	1 or 2[3]
	500 to 9,999	annual	2[3]
	10,000 to 99,999	quarterly[4]	4
	100,000 to 499,999	quarterly[4]	6
	500,000 or more	quarterly[4]	8

[1] All systems must monitor during month of highest disinfection byproduct concentrations.
[2] A system that uses any treated surface water or groundwater under the direct influence of surface water shall be considered a surface water system for purposes of this section.
[3] Systems serving fewer than 500 people and surface water systems serving 500 to 3,300 people must identify two sample sites in accordance with 40 Code of Federal Regulations §141.605(b) and may sample at a single site if the highest total trihalomethanes (TTHM) and haloacetic acids (group of five) (HAA5) concentrations occur at the same time and place. If highest TTHM and HAA5 concentrations occur at the same time and location, one dual sample set must be collected at that location. If highest TTHM and HAA5 concentrations occur at different locations, then a single TTHM sample must be collected at the location with higher historical TTHM, and a single HAA5 sample must be collected at the location with higher historical HAA5.
[4] Systems on quarterly monitoring must take dual sample sets every 90 days.
[5] Monitoring locations must be approved by the executive director.

Figure: 30 TAC §290.115(c)(5)(B)

Timing of Stage 1 Samples Evaluated for 40/30 Initial Distribution System Evaluation (IDSE) Waiver

This type of system:	40/30 certification is based on eight consecutive calendar quarters of Stage 1 compliance monitoring results beginning no earlier than[1]
Systems that are not in a combined distribution system:	
System serving 100,000 or more people	January 2004
System serving 50,000 to 99,999 people	
System serving 10,000 to 49,999 people	January 2005
System serving fewer than 10,000 people	
Systems in a combined distribution system	
Consecutive or wholesale system of any population	at the same time as the largest system in the combined distribution system

[1]A system that did not monitor during the specified period must base eligibility on compliance samples taken during the 12 months preceding the specified period.

Figure: 30 TAC §290.115(c)(5)(C)

Initial Distribution System Evaluation (IDSE) Schedule

Retail population:	**Submit IDSE plan or waiver documentation by:**[1, 2]	**Complete IDSE by:**	**Submit IDSE report by:**[3]
Systems that are not part of a combined distribution system and systems that serve the largest population in the combined distribution system:			
100,000 or more	October 1, 2006	September 30, 2008	January 1, 2009
50,000 through 99,999	April 1, 2007	March 31, 2009	July 1, 2009
10,000 through 49,999	October 1, 2007	September 30, 2009	January 1, 2010
less than 10,000 (Community Only)	April 1, 2008	March 31, 2010	July 1, 2010
Other systems that are part of a combined distribution system:			
Any population	At the same time as the system with the earliest compliance date in the combined distribution system		

[1]If, within 12 months after the date identified in this column, the executive director does not approve a system's IDSE plan or notify the system that review is incomplete, the IDSE plan will be considered approved. The system must implement that plan and must complete standard IDSE monitoring or a system specific study no later than the date identified in the third column.

[2]Waiver documentation must be submitted by the date indicated.

[3]If the executive director does not approve an IDSE report or notify a system that review is incomplete within three months after the IDSE report is due to be submitted, or within nine months of the date that waiver documentation must be submitted for systems receiving waivers, the submitted report or waiver documentation will be considered approved and must be implemented.

Figure: 30 TAC §290.115(c)(5)(C)(ii)(V)

Frequency of Initial Distribution System Evaluation (IDSE) Monitoring

Population and Type of Water	Sampling Frequency and Timing
Systems distributing surface water or groundwater under the direct influence of surface water (GUI):	
less than 500 that purchase treated surface water or GUI	one (during peak historical month[2])
less than 500 with no purchased water source	
500 to 3,300 that purchase treated surface water or GUI	four (every 90 days)
500 to 3,300 with no purchased water source	
3,301 to 9,999	
10,000 to 49,999	six (every 60 days)
50,000 to 249,999	
250,000 to 999,999	
1,000,000 to 4,999,999	
5,000,000 or more	
Systems that only use groundwater not under the direct influence of surface water:	
less than 500 that purchase treated groundwater	one (during peak historical month[2])
less than 500 with no purchased water source nonconsecutive systems	
500 to 9,999	four (every 90 days)
10,000 to 99,999	
100,000 to 499,999	
500,000 or more	

[1]A dual sample set with both a total trihalomethanes (TTHM) and an haloacetic acids (group of five (HAA5) sample must be taken at each monitoring location during each monitoring period.

[2]Monitoring must be conducted during the peak historical month for TTHM levels or HAA5 levels. Available compliance, study, or operational data must be reviewed to determine the peak historical month for TTHM or HAA5 levels.

Figure: 30 TAC §290.117(c)(1)(A)

Required Number of Lead and Copper Tap Sample Sites

System Size (Number of People Served)	Number of Sites for Initial/Routine Monitoring	Number of Sites for Reduced Monitoring: annual, three-year, and nine-year
more than 100,000	100	50
10,001 to 100,000	60	30
3,301 to 10,000	40	20
501 to 3,300	20	10
101 to 500	10	5
100 or fewer	5	5

Figure: 30 TAC §290.117(e)(1)

Number of Water Quality Parameter (WQP) Distribution Sample Sites

System Size (Number of People Served)	Initial and Routine Number of WQP Distribution Sites	Reduced Number of WQP Distribution Sites
more than 100,000	25	10
10,001 - 100,000	10	7
3,301 - 10,000	3	3
501 - 3,300	2	2
101 - 500	1	1
less than 101	1	1

Figure: 30 TAC §290.117(e)(2)

Initial or Routine Water Quality Parameter (WQP) Entry Point and Distribution Monitoring

Monitoring Period	Initial/Routine WQP List	Location	Frequency
Initial or routine monitoring	pH, alkalinity, calcium, conductivity, temperature, and orthophosphate or silica[1]	Routine number of distribution sites and all entry point(s)	Every six months

[1]Orthophosphate (measured as phosphate-phosphorous (PO_4-P)) must be measured only when an inhibitor containing a phosphate compound is used; inhibitors that contain phosphate include orthophosphate and polyphosphate. Silica must be measured only when an inhibitor containing silicate compound is used.

Figure: 30 TAC §290.117(e)(3)

Water Quality Parameter (WQP) Entry Point and Distribution Monitoring After Installing Corrosion Control

Monitoring Period	Corrosion Control Installation WQP List	Location	Frequency
After installation of corrosion control	pH, alkalinity, orthophosphate or silica[1], and calcium[2]	Routine number of distribution sites	Quarterly
	pH, alkalinity dosage rate and concentration[3], and inhibitor dosage rate and inhibitor residual[4]	All entry points	At least every two weeks.

[1]Orthophosphate must be measured if an inhibitor containing a phosphate compound is used. Silica must be measured if an inhibitor containing silicate compound is used.
[2]Calcium must be measured if calcium carbonate stabilization is used as part of corrosion control.
[3]Alkalinity must be measured if alkalinity is adjusted as part of corrosion control.
[4]Inhibitor dosage rates and inhibitor residual concentrations (orthophosphate or silica) must be measured if an inhibitor is used.

Figure: 30 TAC §290.117(e)(4)

Water Quality Parameter (WQP) Entry Point and Distribution Monitoring After Optimal Water Quality Parameter (OWQP) Determination

Monitoring Period	Post-OWQP Designation WQP List	Location	Frequency
After determination of approved OWQP ranges by the executive director	pH, alkalinity, orthophosphate or silica[1], and calcium[2]	Routine number of distribution sites	Quarterly
	pH, alkalinity dosage rate and concentration[3], and inhibitor dosage rate and inhibitor residual[4]	All entry points	At least every two weeks

[1]Orthophosphate must be measured if an inhibitor containing a phosphate compound is used. Silica must be measured if an inhibitor containing silicate compound is used.
[2]Calcium must be measured if calcium carbonate stabilization is used as part of corrosion control.
[3]Alkalinity must be measured if alkalinity is adjusted as part of corrosion control.
[4]Inhibitor dosage rates and inhibitor residual concentrations (orthophosphate or silica) must be measured if an inhibitor is used.

Figure: 30 TAC §290.117(e)(5)

Reduced Water Quality Parameter (WQP) Entry Point and Distribution Monitoring

Monitoring Period	Reduced WQP List	Location	Frequency
Reduced monitoring	pH, alkalinity, orthophosphate or silica[1], calcium[2]	Reduced number of distribution sites	Quarterly, annually[5], or every 3 years[6]
	pH, alkalinity dosage rate and concentration[3], inhibitor dosage rate and inhibitor residual[4]	All entry point(s)	Every two weeks

[1]Orthophosphate must be measured if an inhibitor containing a phosphate compound is used. Silica must be measured if an inhibitor containing silicate compound is used.

[2]Calcium must be measured if calcium carbonate stabilization is used as part of corrosion control.

[3]Alkalinity must be measured if alkalinity is adjusted as part of corrosion control.

[4]Inhibitor dosage rates and inhibitor residual concentrations (orthophosphate or silica) must be measured if an inhibitor is used.

[5]In accordance with subparagraph (B) of this paragraph, the executive director may allow a system to sample WQPs in distribution annually if it has operated within approved Optimal Water Quality Parameters (OWQPs)three consecutive years of monitoring.

[6]In accordance with subparagraph (C) of this paragraph, the executive director may allow systems to sample WQP in distribution once every three years if the system has operated within approve OWQP ranges during three consecutive years of annual monitoring. The executive director may allow a system to sample WQPs in the distribution once every three years if it has maintained 90th percentile lead levels less than or equal to 0.005 milligrams per liter (mg/L), 90th percentile copper levels less than or equal to 0.65 mg/L, and has operated within approved OWQP ranges during two consecutive six-month monitoring periods.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice of Settlement of a Texas Water Code Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health and Safety Code. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: Settlement Agreement in *Brazoria Estates, L.L.C. v. Brazoria County, Texas and the Texas Commission on Environmental Quality;* Cause No. 48854, in the 23rd Judicial District, Brazoria County District Court.

Background: Brazoria County brought this enforcement action in a suit filed by Brazoria Estates, L.L.C. Brazoria County alleges violations of the rules promulgated by the Texas Commission on Environmental Quality under the Texas Health and Safety Code related to the operation of on-site sewage facilities.

Nature of the Settlement: The settlement awards $30,000 in civil penalties to be divided between Brazoria County and the State of Texas. The penalty awarded to Brazoria County is directed to a supplemental environmental project in Brazoria County. The Judgment awards $5,000 in attorney's fees to Brazoria County and $4,000 in attorney's fees to the State. The Judgment also requires Brazoria Estates, L.L.C., to comply with rules of the Texas Commission on Environmental Quality regarding on-site sewage facilities.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment and written comments on the proposed settlement should be directed to Mark Steinbach, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201006803
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: November 30, 2010

♦ ♦ ♦

Notice Regarding Private Real Property Rights Preservation Act Guidelines

In 1995, the Legislature enacted the Private Real Property Rights Preservation Act (Act), Texas Government Code Chapter 2007. As required by the Act, the Office of the Attorney General prepared guidelines to assist governmental entities in identifying and evaluating those governmental actions that might result in a taking of private real property. The guidelines were first published in the January 12, 1996, issue of the *Texas Register* (21 TexReg 387). The Act requires that the Office of the Attorney General review the guidelines at least annually and revise them as necessary. The guidelines are available at *www.oag.state.tx.us/AG_Publications/txts/propertyguide2005.shtml.* The most recent revision was published in the November 25, 2005, issue of the *Texas Register* (30 TexReg 7911).

The Office of the Attorney General has begun its annual review and invites comments, suggestions, or information on whether the guidelines are consistent with the decisions of the United States and Texas supreme courts from June 1, 2009 through June 30, 2010. In addition, based on the review of cases issued in the prior year, proposed changes to the guidelines are set out in the graphic attached to this notice. Any comments must be submitted no later than 30 days from publication of this notice. Please address comments to Jeb Boyt, Assistant Attorney General, Environmental Protection and Administrative Law Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78701-2548, or at *jeb.boyt@oag.state.tx.us* or via facsimile at (512) 320-0167. The Office of the Attorney General will review any comments submitted and will later publish notice of any revisions to the guidelines.

PRIVATE REAL PROPERTY RIGHTS PRESERVATION ACT GUIDELINES

TABLE OF CONTENTS

§ 1.0 GENERAL DESCRIPTION OF THE LEGISLATION; DEFINITION OF "TAKING."

§ 1.1. PURPOSE OF GUIDELINES.

§ 1.11. The Private Real Property Rights Preservation Act (Act or PRPRPA) represents a basic charter for the protection of private real property rights in Texas.[1] The Act represents the Texas legislature's acknowledgment of the importance of protecting private real property interests.[2] PRPRPA's purpose is to ensure that certain governmental entities take a "hard look" at their actions on private real property rights, and that those entities act according to the letter and spirit of the Act.[3] PRPRPA is, in short, another instrument to ensure open and responsible government.

§ 1.12. Section 2007.041 requires the attorney general to:

(a) prepare guidelines to assist governmental entities in identifying and evaluating those governmental actions described in § 2007.003(a)(1)-(3) of the Act that may result in a taking;

(b) file the guidelines with the secretary of state for publication in the Texas Register in the manner prescribed by Chapter 2002 of the Government Code; and

(c) review the guidelines at least annually and revise the guidelines as necessary to ensure consistency with the actions of the legislature and the decisions of the United States Supreme Court and the supreme court of this state.

§ 1.13. Governmental actions undertaken pursuant to these Guidelines that compel the need to promulgate "Takings Impact Assessments" (TIAs) must ensure that information regarding the private real property implications of governmental actions are considered before decisions are made and actions taken.[4] This information and analysis must be accurate, concise, and of high quality. TIAs must concentrate on the truly significant real property issues. No need exists to amass needless detail and meaningless data. The public is entitled to governmental conformance with legislative will, not a mass of unnecessary paperwork. Nevertheless, the public is entitled to more than mere pro forma analyses by the governmental entities covered by the Act. TIAs shall serve as the means of assessing the impact on private real property, rather than justifying decisions already made.

§ 1.14. The failure of a governmental entity to promulgate a TIA when one is required will subject the governmental entity to a lawsuit to invalidate the governmental action.[5]

§ 1.15. CAVEAT. These Guidelines do not represent a formal Attorney General's opinion and should not be construed as an opinion of the Attorney General as to whether a specific governmental action constitutes a "taking." The Act raises complex and difficult issues in emerging areas of law, public policy, and government. These Guidelines are intended to provide guidance as governmental entities seek to conform their activities to the Act's requirements.

§ 1.2 DEFINITION OF "TAKING."

§ 1.21. The Act is directed at ensuring that governmental entities undertaking governmental actions covered by the Act do not do so without expressly considering or assessing whether "takings" of private real property may result. The duty to promulgate a TIA represents a critical mechanism in ensuring that requisite attention is paid to the impact of a covered governmental action on real property interests. Governmental entities need to be fully aware of three sets of criteria set forth in the Act defining the scope of what actions may constitute a "taking."

§ 1.22. The Act, § 2007.002(5), defines "taking" as follows:

(A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or

(B) a governmental action that:

(i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and

(ii) is the producing cause[6] of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

§ 1.23. The Act, § 2007.002, sets forth a definition of "taking" that (i) incorporates current jurisprudence on "takings" under the United States and Texas Constitutions, and (ii) sets forth a

new statutory definition of "taking."

(a) The Fifth Amendment to the United States Constitution (the "Takings Clause") provides: "[N]or shall private property be taken for public use, without just compensation." The Takings Clause applies to the states by virtue of the Fourteenth Amendment.[7]

(b) Article I, § 17 of the Texas State Constitution provides as follows: "No person's property shall be taken, damaged, or destroyed for or applied for public use without adequate compensation being made, unless by the consent of such person."

(c) The Act, § 2007.002(5)(B), sets forth a new statutory definition of "taking." Essentially, if a governmental entity takes some "action" covered by the Act and that action results in a devaluation of a person's private real property of 25% or more, then the affected party may seek appropriate relief under the Act. Such an action for relief would be predicated on the assumption that the affected real property was the subject of the governmental action.

§ 1.3. "REGULATORY TAKINGS" OR "INVERSE CONDEMNATION": GENERAL PRINCIPLES.

§ 1.31. While there is usually little question that there is a "taking" when the government physically seizes or occupies private real property, there may be uncertainty as to whether a "taking" occurs when the government regulates private real property or activities occurring on private real property, or when the government undertakes some physically non-intrusive action which may have an impact on real property rights. These Guidelines pertain, for the most part, to the non-physical invasion and non-occupancy situations.[8] Under Texas law, a regulatory taking is also referred to as inverse condemnation.[9]

§ 1.32. The Takings Clause "does not bar government from interfering with property rights, but rather requires compensation 'in the event of *otherwise proper interference* amounting to a taking'."[10] A physically non-intrusive governmental regulation or action that affects the value, use, or transfer of real property may constitute a "taking" if it "goes too far."[11] Regulatory or governmental actions are sometimes difficult to evaluate for "takings" because government may properly regulate or limit the use of private real property, relying on its "police power" authority and responsibility to protect the public health, safety, and welfare of its citizens. Accordingly, government may abate public nuisances, terminate illegal activities, and establish building codes, safety standards, or sanitary requirements generally without creating a compensatory "taking." Government may also limit the use of real property through land use planning, zoning ordinances, setback requirements, and environmental regulations.

§ 1.33. Governmental actions taken specifically for the purposes of protecting public health and safety may be given broader latitude by courts before they are found to be "takings." However, the mere assertion of a public health and safety purpose should be viewed as insufficient to avoid a taking determination. Actions which are asserted to be for the protection of public health and safety should be undertaken only in response to real and substantial threats to public health and safety, be designed to advance significantly the health and safety purpose, and should impose no greater burden than is necessary to achieve the health and safety purpose. Otherwise, the exemptions or exceptions for these actions may swallow the rule set forth by the Act to protect private real property.[12]

§ 1.34. If a governmental action diminishes or destroys a fundamental real property right–such as the right to possess, exclude others from, or dispose of real property–it could constitute a "taking."[13] Similarly, if a governmental action imposes substantial and significant limitations on real property use, there could be a "taking."[14]

§ 1.4. CONSTITUTIONAL REGULATORY "TAKINGS" ANALYSES.

§ 1.41. Introduction

(a) A governmental action may result in the "taking" of private real property requiring the payment of compensation if it denies an owner economically viable use of his land. Deprivation of economic viability may occur through the denial of development permits, as well as through the application of ordinances or state laws.[15] "[A] plaintiff seeking to challenge a government regulation as an uncompensated taking of private property may proceed . . . by alleging a 'physical' taking, a *Lucas*-type 'total regulatory taking,' a *Penn Central* taking, or a land-use exaction violating the standards set forth in *Nollan* and *Dolan*."[16]

(b) Prior to 2005, the perception existed that a regulation that did not "substantially advance legitimate state interests" could result in a taking. In *Lingle*, however, the Supreme Court rejected that argument and concluded that the "substantially advances" test no longer has a place in takings jurisprudence, and observed that "[a]n inquiry of this nature has some logic in the context of a due process challenge, for a regulation that fails to serve any legitimate governmental objective may be so arbitrary or irrational that it runs afoul of the Due Process Clause."[17]

(c) Governmental actions requiring exactions of property must meet the "rough proportionality test." This test requires a governmental entity to make "some sort of individualized determination that the required dedication is related both in nature and extent to the project's anticipated impact, though a precise mathematical calculation is not required."[18]

§ 1.42. Federal Law

(a) A proper regulatory taking analysis considers the economic impact of the regulation, in particular whether the proposed governmental action interferes with a real property owner's reasonable investment-backed development expectations.[19] For instance, in determining whether a "taking" has occurred, a court, among other things, might weigh the governmental action's impact on vested development rights against the government's interest in taking the action. Defining reasonable investment-backed expectations is a complex, fact-intensive undertaking. In *Reahard v. Lee County*,[20] the Eleventh Circuit of the United States Court of Appeals set forth the following set of eight essentially factual issues to be considered in determining whether a private real property owner's "investment-backed development expectations" have been negatively impacted and thus a regulatory taking effected:

1. History of the property (when purchased? how much land purchased? where was the land located? nature of title? composition of the land? how was the land initially used?);

2. History of the development (what was built on the land? by whom? how subdivided? to whom sold? what plats filed? what roads dedicated?);

3. History of zoning and regulation. (how and when was the land classified? how was use proscribed? changes in zoning classification?);

4. How did development change when title passed;

5. Present nature and extent of the property;

6. Owner's reasonable expectations under state common law;

7. Neighboring landowners' reasonable expectations under state common law; and

8. Diminution of owner's investment-backed expectations, if any, after passage of the regulation or the undertaking of a governmental action.

(b) If a governmental action prohibits *all* economically viable or beneficial uses of real property, a "taking" occurs, unless the governmental entity can demonstrate that laws of nuisance or other pre-existing limitations on the use of the real property prohibit the proposed uses, or unless the governmental entity can show that there is no interest at stake protected or defined by common law. The United States Supreme Court has acknowledged that it has never clarified the "property interest against which the loss of value is to be measured, but has suggested that a real property owner's "investment-backed development expectations" as shaped by state property law may provide the answer.[21]

(c) In 2002, the United States Supreme Court held that temporary development moratoria are not *per se* takings of property under the Takings Clause. The Court reasoned that "the answer to the abstract question whether a temporary moratorium effects a taking is neither 'yes, always' nor 'no, never'; the answer depends upon the particular circumstances of the case."[22]

§ 1.43. State Law

(a) The governmental entity must consider whether there is a taking under state constitutional law (commonly referred to as inverse condemnation). In the non-physical intrusion cases, Texas courts, on a case-by-case basis, have employed several general tests to determine whether a compensable governmental taking has occurred under the provisions of the Texas Constitution, such as:

(1) whether the governmental entity has imposed a burden on private real property which creates a disproportionate diminution in economic value or renders the property wholly useless;

(2) whether the governmental action against the owner's real property interest is for its own advantage;[23]

(3) whether the governmental action constitutes an unreasonable and direct physical or legal restriction or interference with the owner's right to use and enjoy the property; [;]

(4) whether the governmental action is a constitutionally cognizable injury that results in diminished value of a property; or[24]

(5) whether the governmental action accords with substantive due process principles through a rational relationship to a legitimate governmental interest.[25]

(b) The Texas Supreme Court has held that in order for there to be an inverse condemnation there

must be a "direct restriction" on the landowner's use of his property. As used, "direct restriction" is the "actual physical or legal restriction on the property's use such as blocking of access or denial of a permit for development."[26] Since the court found that the condemnor's unreasonable delay of condemnation proceedings did not rise to the level of a "direct restriction" on the landowner's use of his property, therefore, the landowner could not recover damages in a suit for inverse condemnation.[27]

(c) In *City of College Station v. Turtle Rock Corporation*, the Texas Supreme Court held that there must be a reasonable connection between an exaction and the need for the property by the government.[28] The court recognized that in order to be a compensable taking, the ordinance must render the entire property "wholly useless" or otherwise cause "total destruction" of the entire tract's economic value. Furthermore, the landowner must show that the ordinance is unreasonable or arbitrary in that particular application.[29]

(d) In *Town of Flower Mound v. Stafford Estates*, the Texas Supreme Court "restate[d] the rule of *Nollan* and *Dolan* generally as follows: conditioning government approval of a development of property on some exaction is a compensible taking unless the condition (1) bears an essential nexus to the substantial advancement of some legitimate government interest and (2) is roughly proportional to the projected impact of the proposed development."[30] The U.S. Supreme Court, however, has since done away with the first prong of that test.[31] The Texas Supreme Court went on to find that "[t]he requirement that a developer improve an abutting street at its own expense is in no sense a use restriction; it is much closer to a required dedication of property–that being the money to pay for a required improvement."[32] The court held that "[f]or purposes of determining whether an exaction as a condition of government approval of development is a compensable taking, we see no important distinction between a dedication of property to the public and a requirement that property already owned by the public be improved."[33] The court also followed the U.S. Supreme Court in agreeing "that the burden should be on the government to 'make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development'."[34] The court also found that, because the developer prevailed in its claim under the Texas Constitution and received compensation, the developer's federal takings claim was precluded.[35]

(e) In *City of San Antonio v. TPLP Office Park Properties*, the Texas Supreme Court applied the rational basis standard of review from *Nollan* to determine whether the exercise of police power by a local government was in accord with substantive due process principles.[36] In prior decisions, the Supreme Court had applied the rational basis standard of review to a substantive due process challenge to the denial of a development application by a city.[37] In *TPLP Office Park*, the Supreme Court held that "[u]nder the rational relationship standard, the City's decisions must be upheld if evidence in the record shows it to be at least fairly debatable that the decisions were rationally related to a legitimate governmental interest."[38]

(f) To distinguish a taking from a cause of action sounding in tort (e.g., negligence or nuisance), contract, or some other law, the Texas Supreme Court has emphasized intent as a factor among the elements comprising a state constitutional taking claim.[39] Thus, private economic loss from a contract dispute with the government does not give rise to a constitutional taking, since the

government is acting in its capacity as a contracting party and not in its capacity as a sovereign intending to act upon private property for a public purpose.[40] In other contexts, Texas courts examine whether the government knows that its specific act caused identifiable harm or that private property damage was substantially certain to result from the act.[41]

§ 1.5. REGULATORY TAKINGS ANALYSIS: NEW STATUTORY FORMULATION.

§ 1.51. PRPRPA creates a new definition of taking, in addition to judicially-determined takings The Act, § 2007.002(5), provides that a "taking" occurs when a governmental action covered by the Act is a producing cause of a 25 percent or more reduction in the value of private real property affected by the governmental action. Section 2007.003 [~~2(5)(B)~~], however, limits the application of the new definition.[42]

§ 2.0. APPLICABILITY OF THE ACT.

§ 2.1. GOVERNMENTAL ACTIONS COVERED.

§ 2.11(a) Section 2007.003(a) provides that the Act applies only to the following governmental actions:

(1) the adoption or issuance of an ordinance, rule, regulatory requirement, resolution, policy, guideline, or similar measure;

(2) an action that imposes a physical invasion or requires a dedication or exaction of private real property;

(3) an action by a municipality that has an effect in the extraterritorial jurisdiction of the municipality,[43] excluding annexation, and that enacts or enforces an ordinance, rule, regulation, or plan that does not impose identical requirements or restrictions in the entire extraterritorial jurisdiction of the municipality; and

(4) enforcement of a governmental action listed in Subdivisions (1) through (3), whether the enforcement of the governmental action is accomplished through the use of permitting, citations, orders, judicial or quasi-judicial proceedings, or other similar means.

(b) The requirement to do a TIA only applies to § 2007.003(a)(1)-(3).[44]

§ 2.12. The following actions, furthermore, are exempted from coverage of the Act under § 2007.003(b):

(1) an action by a municipality except as provided by subsection (a)(3);

(2) a lawful forfeiture or seizure of contraband as defined by Article 59.01, Code of Criminal Procedure;

(3) a lawful seizure of property as evidence of a crime or violation of law;

(4) an action, including an action of a political subdivision, that is reasonably taken to fulfill an obligation mandated by federal law or an action of a political subdivision that is reasonably taken to fulfill an obligation mandated by state law;

(5) the discontinuance or modification of a program or regulation that provides a unilateral expectation that does not rise to the level of a recognized interest in private real property;

(6) an action taken to prohibit or restrict a condition or use of private real property if the governmental entity proves that the condition or use constitutes a public or private nuisance as defined by background principles of nuisance and property law of this state;

(7) an action taken out of a reasonable good faith belief that the action is necessary to prevent a grave and immediate threat to life or property;

(8) a formal exercise of the power of eminent domain;

(9) an action taken under a state mandate to prevent waste of oil and gas, protect correlative rights of owners of interests in oil or gas, or prevent pollution related to oil and gas activities;

(10) a rule or proclamation adopted for the purpose of regulating water safety, hunting, fishing, or control of nonindigenous or exotic aquatic resources;

(11) an action taken by a political subdivision:

(A) to regulate construction in an area designated under law as a floodplain;

(B) to regulate on-site sewage facilities;

(C) under the political subdivision's statutory authority to prevent waste or protect rights of owners of interest in groundwater; or

(D) to prevent subsidence;

(12) the appraisal of property for purposes of ad valorem taxation;

(13) an action that:

(A) is taken in response to a real and substantial threat to public health and safety;

(B) is designed to significantly advance the health and safety purpose; and

(C) does not impose a greater burden than is necessary to achieve the health and safety purpose; or

(14) an action or rulemaking undertaken by the Public Utility Commission of Texas to order or require the location or placement of telecommunications equipment owned by another party on the premises of a certificated local exchange company.

§ 2.13. According to § 2007.003(c) of the Act, § 2007.021 ("Suit Against Political Subdivision") and § 2007.022 ("Administrative Proceeding Against State Agency") (collectively, "Action To Determine Taking") do not apply to the enforcement or implementation of a statute, ordinance, order, rule, regulation, requirement, resolution, policy, guideline, or similar measure that was in effect September 1, 1995, and that prevents the pollution of a reservoir or an aquifer designated as a sole source aquifer under the federal Safe Drinking Water Act (42 U.S.C. Section 300h-3(e)).

§ 2.14. Nor does the Act apply to the enforcement or implementation of the Open Beaches Act, Subchapter B, Chapter 61, Natural Resources Code, as it existed on September 1, 1995, or to the enforcement or implementation of any rule or similar measure that was adopted under that subchapter and was in existence on September 1, 1995.[45]

§ 2.15. In order to effectuate the will of the legislature and to ensure that the Act is not read either too broadly or too narrowly, each governmental entity covered by the Act should promulgate a set of procedures ("Governmental Entity-Specific TIA Procedures") specific to the governmental entity that defines which of its activities, programs, or policy, rule, or regulation promulgation activities trigger the need for a TIA.[46] Such promulgation of the Governmental Entity-Specific TIA Procedures should be completed as soon as possible after the publication of these Guidelines. However, the promulgation of these TIA procedures must not delay conformance with the Act or these Guidelines.

§ 2.16. In promulgating the Governmental Entity-Specific TIA Procedures, the governmental entity should establish (1) "Categorical Determination" categories that indicate that there are no private real property rights affected by certain types of proposed governmental actions, as well as (2) a quick, efficient, and effective mechanism or approach to making "No Private Real Property Impacts Determinations" ("No PRPI Determinations") associated with the proposed governmental action.

§ 2.17. Categorical Determinations that no private real property interests are affected by the proposed governmental action would obviate the need for any further compliance with the Act. Without limitations the following are examples of the types of activities that might fall into such a Categorical Determination category: (i) student policies established by state institutions of higher education, and (ii) professional qualification requirements for licensed or permitted professionals.

§ 2.18. No PRPI Determinations would also obviate the need for any further compliance with the Act once it is determined that there are no private real property interests impacted by a specific governmental action. In such a case, there would be no established Categorical Determination category in which the proposed governmental action fits, but after consideration and preliminary analysis of a specific proposed governmental action, the governmental entity is satisfied that there would be no impacts on private real property interests.

§ 2.19. Until and unless a covered governmental entity develops Governmental Entity-Specific TIA Procedures, it will have to determine on an ad hoc basis whether any private real property interests are impacted (including to what extent) by its proposed actions. Furthermore, because the TIA necessarily depends on the type of governmental action being proposed and the specific nature of the impacts on specific private real property, the governmental entity promulgating a TIA has discretion (within the parameters of the Act, § 2007.043(b)) to determine the precise extent and form of the assessment, on a case-by-case basis.

§ 3.0. GUIDE TO PROMULGATING TIAS.

§ 3.1. Requirements for Promulgating TIAs.

The Act, § 2007.043(b), requires that the TIA:

(1) describe the specific purpose of the proposed action and identify:

(A) whether and how the proposed action substantially advances its stated purpose; and

(B) the burdens imposed on private real property and the benefits to society resulting from the

proposed use of private real property;

(2) determine whether engaging in the proposed governmental action will constitute a taking; and

(3) describe reasonable alternative actions that could accomplish the specified purpose and compare, evaluate, and explain:

(A) how an alternative action would further the specified purpose; and

(B) whether an alternative action would constitute a taking.

Section 2007.043(b) provides that a TIA [~~(d) A takings impact assessment prepared under this section~~] is public information.

§ 3.2. Guide for Evaluating Proposed Governmental Actions.

Governmental entities covered by the Act should use the following guide in reviewing the potential impact of a proposed governmental action covered by the Act. While this guide may provide a framework for evaluating the impact on private real property a proposed governmental action may have generally, "takings" questions normally arise in the context of specific affected real property. This guide for evaluating governmental actions covered by the Act is another tool that a governmental entity should aggressively use to safeguard private real property owners.

(a) Question 1: Is the Governmental Entity undertaking the proposed action a governmental entity covered by the Act, i.e., is it a "Covered Governmental Entity"? *See* § 2007.002(1).

(1) If the answer to Question 1 is "No": No further compliance with the Act is necessary.

(2) If the answer to Question 1 is "Yes": Go to Question 2.

(b) Question 2. Is the proposed action to be undertaken by the covered governmental entity an action covered by the Act, i.e., a "Covered Governmental Action"? *See, supra*, § 2 of these Guidelines. [; and] In addition, governmental entities may develop categorical determinations and specific procedures for developing TIAs [~~Governmental Entity-Specific TIA Procedures for "Categorical Determinations" as developed by the respective Covered Governmental Entities~~].[47] *See, supra*, §§ 2.15-2.17.

(1) If the answer to Question 2 is "No": No further compliance with the Act is necessary.

(2) If the answer to Question 2 is "Yes": Go to Question 3.

(c) Question 3. Does the covered governmental action result in a burden on "private real property" as that term is defined under § 2007.002(4) [~~in the Act~~]?

(1) If the answer to Question 3 is "No": A "No Private Real Property Impact" or No PRPI Determination should be made. No further compliance with the Act is necessary if a No PRPI Determinations is made. Logically, the initial critical issue regarding any proposed governmental action is whether there is any burden on private real property. If a governmental entity has not resolved this issue by reference to its preexisting list of Categorical Determinations, it can do so by quickly and concisely making a No PRPI Determinations.

(2) If the answer to Question 3 is "Yes": A TIA is required and the governmental entity must

undertake evaluation of the proposed governmental action on private real property rights.

§3.3. Elements of the TIA. As set forth in § 3.11, *supra*, the Act sets forth explicit elements that must be evaluated by the governmental entity proposing to undertake a governmental action covered by the Act.

(a) Question 4. What is the specific purpose of the proposed covered governmental action? The TIA must clearly show how the proposed governmental action furthers its stated purpose. Thus, it is important that a governmental entity clearly state the purpose of its proposed action in the first place, and whether and how the proposed action substantially advances its stated purpose.

(b) Question 5. How does the proposed covered governmental action burden private real property?[48]

(c) Question 6. How does the proposed covered governmental action benefit society?

(d) Question 7. Does the proposed covered governmental action result in a "taking"?

Whether a Proposed Covered Governmental Action "burdens," in the first analysis, and ultimately results in a "taking" must be measured against all three prongs of the "takings" analysis outlined in §§ [~~secs.~~] 1.2-1.5 of these Guidelines. In addition, the proposed governmental action must be a final and authoritative determination.[49] The Covered Governmental Entity proposing to engage in a Covered Governmental Action should consider the following subquestions:

(1) Does the proposed covered governmental action result indirectly or directly in a permanent or temporary physical occupation of private real property?

Regulation or action resulting in a permanent or temporary physical occupation of all or a portion of private real property will generally constitute a "taking." For example, a regulation that required landlords to allow the installation of cable television boxes in their apartments was found to constitute a "taking."[50]

(2) Does the proposed covered governmental action require a property owner to dedicate a portion of private real property or to grant an easement?

Carefully review all governmental actions requiring the dedication of property or grant of an easement. The dedication of real property must be reasonably and specifically designed to prevent or compensate for adverse impacts of the proposed development. Likewise, the magnitude of the burden placed on the proposed development should be reasonably related to the adverse impacts created by the development. A court will also consider whether the action in question substantially advances a legitimate state interest.

For example, the United States Supreme Court determined in *Nollan* that compelling an owner of waterfront property to grant a public easement across his property that does not substantially

advance the public's interest in beach access, constitutes a "taking."[51] Likewise, the Court held that compelling a property owner to leave a public green way, as opposed to a private one, did not substantially advance protection of a floodplain, and was a "taking."[52]

(3) Does the proposed covered governmental action deprive the owner of all economically viable uses of the property?

If a governmental action prohibits or somehow denies all economically viable or beneficial uses of the land, it will likely constitute a "taking." In this situation, however, the governmental entity should consider whether it can demonstrate that the proposed uses are prohibited by the laws of nuisance or other preexisting limitations on the use of the property.[53]

It may be important to analyze the action's impact on the property as a whole, and not just the impact on a portion of the property. It is also important to assess whether there is any profitable use of the remaining property available.[54] The remaining use does not necessarily have to be the owner's planned use, a prior use, or the highest and best use of the property. One factor in this assessment is the degree to which the governmental action interferes with a property owner's reasonable investment-backed development expectations.

Carefully review governmental actions requiring that all of a particular parcel of land be left substantially in its natural state. A prohibition of all economically viable uses of the property is vulnerable to a "takings" challenge. In some situations, however, there may be pre-existing limitations on the use of property that could insulate the government from takings liability.

(4) Does the proposed covered governmental action have a significant impact on the landowner's economic interest?

Carefully review governmental actions that have a significant impact on the owner's economic interest. Courts will often compare the value of property before and after the impact of the challenged action. Although a reduction in property value alone may not be a "taking," a severe reduction in property value often indicates a reduction or elimination of reasonably profitable uses. Another economic factor courts will consider is the degree to which the challenged action impacts any development rights of the owner.

Two factors are considered to determine whether a governmental action has unreasonably interfered with a property owner's right to use and enjoy property. The first factor compares the value that has been taken with the remaining value in the property, without considering any anticipated gains or future profits.[55] The second factor examines investment-backed expectations, including knowledge of existing regulations.[56] "Historical uses of the property are critically important when determining the reasonable investment-backed expectations of the landowner."[57]

When access to a property may be impaired as the result of a governmental action, compensation is owed only when access is materially and substantially impaired.[58] Roadways are for the benefit of the traveling public, and those doing business along public roadways must assume the risk that future improvements of the roadway system may divert traffic away from their businesses.[59] However, impairment that results only in increased circuity of travel is not

compensable.[60] In addition, "partial, temporary disruption of access is not sufficiently 'material and substantial' to constitute a compensable taking."[61] "The obstruction of streets and highways . . . must be reasonable and necessary for the public improvement which is being made."[62] Similarly, a property owner has no vested right that his premises must be visible from a public roadway.[63]

(5) Does the covered governmental action decrease the market value of the affected private real property by 25 percent or more? Is the affected private real property the subject of the covered governmental action? *See* § 2007.002(5)(B).

Compensation is not required for every decrease in market value attributable to governmental action.[64] Historically, courts have only allowed recovery if the injury is not one suffered by the community in general.[65] "Community damages are not connected with the landowner's use and enjoyment of property and give rise to no compensation."[66] Whether governmental action results in community damages is determined by the nature of the alleged injury rather than the location of the property.[67]

(6) Does the proposed covered governmental action deny a fundamental attribute of ownership? Governmental actions that deny the landowner a fundamental attribute of ownership–including the right to possess, exclude others and dispose of all or a portion of the property–are potential takings.

In *Dolan*, the United States Supreme Court [~~has~~] held that a taking resulted when a city required a public easement for recreational purposes where the public interest asserted was conservation of the flood plain.[68] [~~In finding this to be a "taking," the Court stated: The city never demonstrated~~] The Court found that the city had not established "why a public green way, as opposed to a private one, was required in the interest of flood control."[69] The Court emphasized that the [~~difference to the petitioner, of course, is the loss of her ability to exclude others. . . [T]~~ ~~his~~] right to exclude others is "one of the most essential sticks in the bundle of rights that are commonly characterized as property."[70]

The United States Supreme Court has also held that barring the inheritance (an essential attribute of ownership) of certain interests in land held by individual members of an Indian tribe constituted a "taking."[71]

(e) Question 8. What are the alternatives to the proposed covered governmental action?

Lastly, the governmental entity must describe reasonable alternative actions to the proposed governmental action that could accomplish the specified purpose and compare and evaluate the alternatives. The governmental agency must also evaluate the "takings" implication of each reasonable alternative to the proposed action pursuant to the applicable provisions of these Guidelines.

ENDNOTES:

1. Private real property is defined in the Act, § 2007.002(4), to mean an interest in property recognized by common law:

"Private real property" means an interest in real property recognized by common law, including a groundwater or surface water right of any kind, that is not owned by the federal government, this state, or a political subdivision of this state.

2. Furthermore, the Act may reflect a developing, broader appreciation of the importance of private property rights. *See Dolan v. City of Tigard*, 512 U.S. 374 (1994): "We see no reason why the Takings Clause of the Fifth Amendment, as much a part of the Bill of Rights as the First Amendment or Fourth Amendment, should be relegated to the status of a poor relation in these comparable circumstances."

3. Section 2007.002(1) defines "governmental entity" as: "(A) a board, commission, council, department, or other agency in the executive branch of state government that is created by constitution or statute, including an institution of higher education as defined by Section 61.003, Education Code; or (B) a political subdivision of this state."

4. Section 2007.043(a) provides:
A governmental entity shall prepare a written takings impact assessment of a proposed governmental action described in Section 2007.003(a)(1) through (3) that complies with the evaluation guidelines developed by the attorney general under Section 2007.041 before the governmental entity provides the public notice required under Section 2007.042.

Section 2007.042 provides:
(a) A political subdivision that proposes to engage in a governmental action described in Section 2007.003(a)(1) through (3) that may result in a taking shall provide at least 30 days' notice of its intent to engage in the proposed action by providing a reasonably specific description of the proposed action in a notice published in a newspaper of general circulation published in the county in which affected private real property is located. If a newspaper of general circulation is not published in that county, the political subdivision shall publish a notice in a newspaper of general circulation located in a county adjacent to the county in which affected private real property is located. The political subdivision shall, at a minimum, include in the notice a reasonably specific summary of the takings impact assessment that was prepared as required by this subchapter and the name of the official of the political subdivision from whom a copy of the full assessment may be obtained.
(b) A state agency that proposes to engage in a governmental action described in Section 2007.003(a)(1) or (2) that may result in a taking shall:
(1) provide notice in the manner prescribed by Section 2001.023; and
(2) file with the secretary of state for publication in the Texas Register in the manner prescribed by Chapter 2002 a reasonably specific summary of the takings impact assessment that was prepared by the agency as required by this subchapter.

5. Section 2007.044 provides:
(a) A governmental action requiring a takings impact assessment is void if an assessment is not prepared. A private real property owner affected by a governmental action taken without the

preparation of a takings impact assessment as required by this subchapter may bring suit for a declaration of the invalidity of the governmental action.
(b) A suit under this section must be filed in a district court in the county in which the private real property owner's affected property is located. If the affected property is located in more than one county, the private real property owner may file suit in any county in which the affected property is located.
(c) The court shall award a private real property owner who prevails in a suit under this section reasonable and necessary attorney's fees and court costs.

6. In 2007, the Texas Supreme Court clarified that "the essential components of a producing cause [are] that (1) the cause must be a substantial cause of the event in issue and (2) it must be a but-for cause, namely one without which the event would not have occurred." *Ford Motor Co. v. Ledesma*, 242 S.W.3d 32, 46 (Tex. 2007). [~~A "producing cause" is an "efficient, exciting, or contributing cause, which in the natural sequence, produced injuries of damages complained of, if any." *Union Pump Company v. Allbriton*, 898 S.W.2d 773, 775 (Texas 1995) (*citing Haynes and Boone v. Bowser Bouldin, Ltd.*, 896 S.W.2d 179, 182 (Texas 1995)).~~] An element of "producing cause" is causation in fact which requires that the defendant's conduct be a substantial factor in bringing about the plaintiff's injuries, and that the injuries would not have occurred without defendant's conduct. *C. J. Doe v. Boys Club of Greater Dallas, Inc.*, 907 S.W.2d 472, 481 (Tex. 1995). A "producing cause" need not be foreseeable.

7. *See Chicago, B & Q. R. Co. v City of Chicago*, 166 U.S. 226 (1897).

8. The most easily recognized type of "taking" occurs when the government physically occupies private property. Clearly, when the government seeks to use private property for a public building, a highway, a utility easement, or some other public purpose, it must compensate the property owner.
Physical invasions of property, as distinguished from physical occupancies, may also give rise to a "taking" where the invasions are of a recurring or substantial nature. Examples of physical invasions include, among others, flooding and water related intrusions and overflight or aviation easement intrusions.

9. *Town of Flower Mound v. Stafford Estates, Ltd. P'shp*, 135 S.W.3d 620, 646 (Tex. 2004).

10. *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 543, 125 S.Ct. 2074, 2084 (2005), quoting *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 315 (1987) (*emphasis in original*). The Court went on to note that "if a government action is found to be impermissible–for instance because it fails to meet the 'public use' requirement or is so arbitrary as to violate due process–that is the end of the inquiry." *Id.*

11. "The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922).

12. *See* exemptions (6), (7), and (13) of § 2007.003(b) of the Act (set forth *infra* in § 2.12 of these Guidelines).

13. *Dolan*, 512 U.S. at 391.

14. *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1025 n.12 (1992).

15. *Lucas*, 505 U. S. at 1019; *Dolan*, 512 U.S. at 385, n.6.

16. *Lingle*, 544 U.S. at 548.

17. *Id.* at 542. Although the Texas Supreme Court adopted the "substantial advancement" test, *see Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 933-35 (Tex. 1998), the Court has had no opportunity to address whether the test still applies in Texas takings law post-*Lingle*. *See, e.g., Park v. City of San Antonio*, 230 S.W.3d 860, 868 n. 6 (Tex. App.—El Paso 2007, pet. denied). At least one state court of appeals has predicted the Texas Supreme Court will likewise abandon the substantial advancement test. *See 2800 La Frontera No. 1A, Ltd. v. City of Round Rock*, No. 03-08-00790-CV, 2010 WL 143418, at *7 (Tex. App.—Austin Jan. 12, 2010, no pet.) (mem. op.).

18. *Dolan*, 512 U. S. at 391. The rough-proportionality test, however, has not been extended beyond the special context of exactions. *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 702 (1999).

19. *Penn Central Trans. Co. v. City of New York*, 438 U.S. 104, 124 (1978).

20. 968 F.2d 1131 (11th Cir. 1992), supplemented, 978 F.2d 1212, rev'd, 30 F.3d 1412 (1994).

21. *Lucas*, 505 U.S. at 1016, n.7.

22. *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 321 (2002). The Court went on to analyze the circumstances in *Tahoe-Sierra* within the *Penn Central* framework. *Id.*; *see Penn Central*, 438 U.S. at 124 (regulatory takings jurisprudence characterized by "essentially ad hoc, factual inquiries").

23. *City of Austin v. Teague*, 570 S.W.2d 389, 393 (Tex. 1978).

24. *State v. Dawmar Partners, Ltd.*, 267 S.W.3d 875, 878 (Tex. 2008).

25. *City of San Antonio v. TPLP Office Park Prop.*, 218 S.W.3d 60, 64-65 (Tex. 2007).

26. *Westgate Ltd. v. State*, 843 S.W.2d 448, 452 (Tex. 1992).

27. *Id.* The court supported its findings with the decisions of two Texas appellate courts. A landowner may not recover in a suit for inverse condemnation even if there is the construction of improvements which would have the ultimate effect of increasing the property's chances of flooding and thus reducing the property's value. 843 S.W.2d at 452, citing *Allen v. City of Texas City*, 775 S.W.2d 863, 865 (Tex. App.–Houston [1st. Dist.] 1989, writ denied); *Hubler v. City of Corpus Christi*, 564 S.W.2d 816 (Tex. Civ. App–Corpus Christi 1978, writ ref'd n.r.e.). Moreover, the *Westgate* court reserved the question of whether a cause of action might exist

where there is bad faith on the part of the condemnor. 843 S.W.2d at 454.

28. 680 S.W.2d 802, 806 (Tex. 1984).

29. *Id.* The *Turtle Rock* holding was cited by the United States Supreme Court in *Nollan*, 107 S.Ct. 3141, 3150, and is consistent with the holding of that opinion.

30. 135 S.W.3d at 634 (Tex. 2004).

31. *See Lingle*, 544 U.S. at 545; *see, supra,* § 1.41.

32. 135 S.W.3d at 635.

33. *Id.* at 639-640

34. *Id.* at 643.

35. *Id.* at 646.

36. 218 S.W.3d at 64-65.

37. *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 938-939 (Tex. 1998), *cert. denied* 119 S.Ct. 2018 (1999).

38. 218 S.W.3d at 65.

39. The elements of a taking claim under Tex. Const. art. I, § 17 are that (1) the government intentionally performed certain acts, (2) that resulted in a "taking" of property, (3) for public use. *Gen. Servs. Comm'n v. Little-Tex Insulation Co.*, 39 S.W.3d 591, 598 (Tex. 2001).

40. *See, e.g., State v. Holland*, 221 S.W.3d 639 (Tex. 2007) (holding no taking liability for government's refusal to pay patent holder as part of its contract for oil spill cleanup technology).

41. *See, e.g., City of San Antonio v. Pollock*, 284 S.W.3d 809, 820-21 (Tex. 2009) (finding no taking intent in city's negligent failure to prevent landfill gas migration to private houses); *City of Dallas v. Jennings*, 142 S.W.3d 310 (Tex. 2004) (distinguishing nuisance from taking to find no taking liability for city's unintended sewage backup into private homes); *but see Tarrant Reg'l Water Dist. v. Gragg*, 151 S.W.3d 546 (Tex. 2004) (affirming taking verdict against water district for downstream flooding that was substantially certain to occur by the district's actions).

42. There are limitations to the Act's coverage included in the definition of "taking" in § 2007.002(5)(B): "a. private real property must be affected; b. the private real property must be the subject of the governmental action; and c. the governmental action must restrict or limit the owner's right to the property that would otherwise exist in the absence of the governmental action."

43. "Extraterritorial jurisdiction" means the unincorporated area, not part of any other city, that is contiguous to the corporate limits of a city. 52 Tex. Jur. 3d *Municipalities* § 85 (1989). The

extent of an extraterritorial jurisdiction depends on the population of the city. *See id.*; *see also* Tex. Local Gov't Code § 42.021.

44. Tex. Gov't Code § 2007.041(a).

45. *See* 31 TAC §§ 15.1-15.10.

46. Governmental entities are reminded that § 2007.003(a) provides that the Act applies to the following governmental actions: "(1) the adoption or issuance of an ordinance, rule, regulatory requirement, resolution, policy, guideline, or similar measure."

47. In 2002, the Texas Supreme Court decided its first case under the Private Real Property Rights Preservation Act. In *Bragg v. Edwards Aquifer Authority*, the Court concluded that the adoption of well permitting rules by an aquifer authority is excepted from the Act as an action "taken under a political subdivision's statutory authority to prevent waste or protect rights of owners of interest in groundwater." 71 S.W.3d 729, 730 (Tex. 2002). The Court also concluded that "the Authority's proposed actions on the Braggs' permit applications constitute 'enforcement of a governmental action,' to which the TIA requirement does not apply." *Id.* at 731.

48. *See* discussion of relevant issues under § 3.3(d), *infra*.

49. *Mayhew*, 964 S.W.2d at 929. "A court cannot determine whether a regulation has gone 'too far' unless it knows how far the regulation goes." *Id.*

50. *See Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982).

51. *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987).

52. *Dolan*, 512 U.S. at 394-396.

53. *Lucas*, 505 U.S. at 1029-1032.

54. *Fla. Rock Indus., Inc. v. United States*, 18 F.3d 1560 (Fed. Cir. 1994).

55. *Mayhew*, 964 S.W.2d at 935-936.

56. *Id.* at 936.

57. *Id.* at 937.

58. *Dawmar Partners*, 267 S.W.3d at 878.

59. *State v. Schmidt*, 867 S.W.2d 769, 773 (Tex. 1994).

60. *Dawmar Partners*, 267 S.W.3d at 880; *State v. Bristol Hotel Asset Co.*, 293 S.W.3d 170, 174 (Tex. 2009).

61. *Bristol Hotel*, 293 S.W.3d at 173, citing *City of Austin v. Avenue Corp.*, 704 S.W.2d 11, 13 (Tex. 1986).

62. *Avenue Corp.*, 704 S.W.2d at 13.

63. *Schmidt*, 867 S.W.2d at 774.

64. *Felts v. Harris County*, 915 S.W.2d 482, 484 (Tex. 1996).

65. *Id.*

66. *Id.* at 485. In *Felts*, the Supreme Court found that highway noise was a community damage and thus non-compensable. *See also* Tex. Prop. Code § 21.042, relating to assessment of damages.

67. *Schmidt*, 867 S.W.2d at 781.

68. 512 U.S. at 392-396.

69. *Id.* at 393.

70. *Id.*

71. *Hodel v. Irving*, 481 U.S. 704 (1987).

For information regrading this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201006806
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: November 30, 2010

♦ ♦ ♦

Texas Health and Safety and Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code, and Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *Harris County, Texas and the State of Texas acting by and through the Texas Commission on Environmental Quality, a Necessary and Indispensable Party v. MMI Products, Inc. d/b/a Merchants Metals, Inc. and Merchants Metals Holding Company;* Cause No. 2009-02879; in the 333rd Judicial District Court, Harris County, Texas.

Nature of Defendants' Operations: Defendants operate a facility in Harris County, Texas where they galvanize metal fencing products. For several years, Defendants have had difficulties meeting the requirements of the general storm water permit for storm water effluent, primarily zinc excursions. Defendants have never met the permit benchmark parameter for zinc.

Proposed Agreed Final Judgment and Permanent Injunction: The Agreed Final Judgment orders the Defendants to collectively pay $120,000 in civil penalties. The State will receive $15,000 in attorney's fees from the Defendants.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Anthony W. Benedict, Assistant Attorney General, Environmental Protection and Administrative Law Division, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201006805
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: November 30, 2010

♦ ♦ ♦

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project during the period of November 12, 2010, through November 18, 2010. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Coastal Coordination Council's web site. The notice was published on the web site on November 24, 2010. The public comment period for this project will close at 5:00 p.m. on December 27, 2010.

FEDERAL AGENCY ACTIONS:

Applicant: Padre Island National Seashore; Location: The project is located near Bird Island Basin in the Padre Island National Seashore, Kleberg County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: South Bird Island, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 14; Easting: 666597; Northing: 3039202. Project Description: The applicant proposes to replace caliche in a 0.25-acre area located between the Worldwinds wind surfing concession and the Laguna Madre at Bird Island Basin (Phase I) and to stabilize 450 feet of road/parking area between Worldwinds and the Bird Island Basin Boat Ramp and parking area (Phase 2). According to the applicant, the project purpose is to provide safe access for visitors and staff walking from the Worldwinds surfing concession to the Laguna Madre and will stabilize the road and parking along the Laguna Madre at Bird Island Basin. CMP Project No.: 11-0197-F1. Type of Application: U.S.A.C.E. permit application #SWG-2003-00244 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the application listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Kate Zultner, Consistency Review Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or via email at kate.zultner@glo.state.tx.us. Comments should be sent to Ms. Zultner at the above address or email.

TRD-201006693
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: November 22, 2010

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Comptroller of Public Accounts

Notice of Contract Award

The Comptroller of Public Accounts (Comptroller) State Energy Conservation Office (SECO) announces the award of an energy efficient appliance mail-in rebate program contract to Morley Companies, Inc., One Morley Plaza, Saginaw, Michigan 48603, under Request for Proposals #199b.

The notice of request for proposals was published in the September 17, 2010, issue of the *Texas Register* (35 TexReg 8525). The term of the contract is November 19, 2010, through February 1, 2012. The amount of the contract is not to exceed $335,240 a time.

TRD-201006668
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: November 22, 2010

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/29/10 - 12/05/10 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/29/10 - 12/05/10 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-201006719
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 23, 2010

♦ ♦ ♦

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.101, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/06/10 - 12/12/10 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/06/10 - 12/12/10 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009[3] for the period of 12/01/10 - 12/31/10 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 12/01/10 - 12/31/10 is 18% for Commercial over $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/11 - 03/31/11 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/11 - 03/31/11 is 18% for Commercial over $250,000.

The retail credit card quarterly rate as prescribed by §303.009[1] for the period of 01/01/11 - 03/31/11 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The lender credit card quarterly rate as prescribed by §346.101 Texas Finance Code[1] for the period of 01/01/11 - 03/31/11 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009[4] for the period of 01/01/11 - 03/31/11 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 01/01/11 - 03/31/11 is 18% for Commercial over $250,000.

The retail credit card annual rate as prescribed by §303.009[1] for the period of 01/01/11 - 03/31/11 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/10 - 12/31/10 is 5.00% for Consumer/Agricultural/Commercial/credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/10 - 12/31/10 is 5.00% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

[4]Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-201006774
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 30, 2010

♦ ♦ ♦

Commission on State Emergency Communications

Notice of Proposed Rates for the State Wireline 9-1-1 Fee and Equalization Surcharge and Allocation of Appropriated Equalization Surcharge Revenue

Notice is given to the public of the Commission on State Emergency Communications' (CSEC) proposed rates for the wireline 9-1-1 emergency service fee (wireline fee) and equalization surcharge (surcharge), and the allocation of surcharge revenue under Texas Health and Safety Code Chapter 771. The current and proposed wireline fee rate is $.50 per "local exchange access line or equivalent local exchange access line" as defined by CSEC in 1 TAC §255.4. The current and proposed surcharge percentage is set by CSEC rule at 1.0% of the charges for "intrastate long-distance service" as defined by CSEC in 1 TAC §255.2. CSEC allocates appropriated surcharge consistent with the strategies in its approved appropriations and as authorized by Health and Safety Code §§771.072, 771.075, and 771.0751.

Interested parties have 45 days from the date this notice is published in the *Texas Register* to file comments. Comments should be submitted to the Public Utility Commission of Texas c/o Central Records, P.O. Box 13326, Austin, TX 78711-3326. Hearing and speech-impaired individuals with text telephone (TTY) may contact the Public Utility Commission at (512) 936-7136. **All comments should reference Project Number 38917.**

Wireline Fee and Surcharge Rate

The wireline fee is applicable in the geographic areas within each of Texas' 24 Regional Planning Commissions (RPCs) in which 9-1-1 service is provided through the state 9-1-1 program. This does not include areas for the following counties and cities that are not participating in the state 9-1-1 program. The counties not participating include: Smith, Taylor, Austin, Bexar, Comal, Guadalupe, Brazos, Calhoun, Cameron, Denton, El Paso, Ector, Galveston, Harris, Henderson, Howard, Kerr, Lubbock, McLennan, Medina, Midland, Montgomery, Wichita, Wilbarger, Potter, Randall, Tarrant, Rusk and Harrison. The cities not participating include: Addison, Aransas Pass, Dallas, Plano, Coppell, DeSoto, Ennis, Cedar Hill, Longview, Wylie, Denison, Duncanville, Farmers Branch, Garland, Highland Park, Mesquite, Richardson, Sherman, University Park, Glenn Heights, Hutchins, Lancaster, Portland, Rowlett, Corpus Christi, Kilgore and Sunnyvale.

The surcharge is a statewide fee that is applicable irrespective of whether 9-1-1 service is provided by the RPCs through the state 9-1-1 program or by an Emergency Communication District (ECD) as that term is defined in Texas Health and Safety Code §771.001(3).

CSEC is not proposing any changes to either the wireline fee rate or the equalization surcharge percentage.

Allocation of Surcharge

RPCs

CSEC allocates appropriated surcharge for 9-1-1 to the RPCs in order to subsidize those RPCs whose statutory allocation of appropriated service fees (wireline and wireless fees) is insufficient to fund their CSEC-approved strategic plans. Allocation of appropriated surcharge is based on need as initially determined by CSEC staff during the strategic plan process. The requirements of the RPCs' strategic plans are prescribed CSEC rule in 1 TAC §255.1).

The RPCs submit their strategic plans in three stages: Stage 1 is submitted in even number of years, reviewed by CSEC, and incorporated as appropriate into CSEC's Legislative Appropriations Request. Stage 2 is submitted in odd numbered years to correspond with the legislative session and requires detailed planning and financial information to allocate appropriated funding. Stage 3 is required when contingent funding has been certified by the Comptroller. At each stage, CSEC staff reviews and analyzes each plan to ensure that it is in accord with CSEC's hierarchical budget components. For the 2010-2011 biennia 14 RPCs will be allocated surcharge in order to fund the components. For the ensuing biennium, sufficient surcharge has been appropriated to fund the components of these RPCs except for ancillary equipment maintenance.

Surcharge allocation to the RPCs is limited by Texas Health and Safety Code §771.072(d) to "not more than .5 percent" of the revenue received from the surcharge. The Comptroller's estimate of available revenue (AR) for surcharge for FY 2011 is $38.470 million. For FY 2011, appropriated surcharge to be allocated to fund the RPCs strategic plans is within statutory limits at $6,920,105.

Poison Control Program Funding of the Poison Control Program is appropriated and allocated in accordance with CSEC's legislative bill pattern. As of May 1, 2010, CSEC became the sole administrator of the Poison Control Program. The Texas Legislature has approved the following strategies regarding the poison control program:

B.1.1 Strategy: Poison Call Center Operations;

B.1.2. Strategy: Statewide Poison Network Operations; and

B.1.3 Strategy: Poison Program Management.

CSEC allocates appropriated surcharge to the six regional poison control centers through grants approved in accordance with CSEC rule 254.1. CSEC issues vouchers to reimburse poison center host institutions (e.g., University of Texas Medical Branch at Galveston; Scott and White Memorial Hospital, Temple, Texas) up to the amount of the approved grants for Poison Call Center Operations, and pays vendors for Network Operations and Program Management-including the Department of Information Resources.

The allocation of surcharge is limited by statute to "not more than .8 percent" of the revenue received from the surcharge. The Comptroller's estimate of available revenue (AR) for surcharge for FY 2011 is $38.470 million. For FY 2011, appropriated surcharge to be allocated is within statutory limits at $7.575 million.

Referenced documents can be reviewed through the Public Utility Commission's InterChange at http://interchange.puc.state.tx.us/ by logging-in with the project number provided above. Additional details and related information can be obtained by request to the Commission on State Emergency Communications, Project 38917, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

TRD-201006759
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Filed: November 29, 2010

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 10, 2011.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 10, 2011.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: Bao Vu Nguyen dba Carousel Mobile Home Park; DOCKET NUMBER: 2010-1236-MLM-E; IDENTIFIER: RN101187847; LOCATION: Brazos County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 Texas Administrative Code (TAC) §290.46(f)(2), (3)(B)(v), (D)(i) and (ii), by failing to keep on file and make available for review an up-to-date record of water works operations and maintenance activities for operator review and reference; 30 TAC §290.42(l), by failing to compile and maintain a thorough plant operations manual for operator review and reference; 30 TAC §290.45(b)(1)(A)(i), by failing to provide a well capacity of 1.5 gallons per minute per connection; and 30 TAC §288.20(a) and §288.30(5)(B), by failing to adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; PENALTY: $322; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: City of Cedar Hill; DOCKET NUMBER: 2010-1561-WQ-E; IDENTIFIER: RN101390953; LOCATION: Cedar Hill, Dallas County; TYPE OF FACILITY: PWS; RULE VIOLATED: the Code, §26.039(b), by failing to provide timely notification of an accidental discharge which causes pollution; and the Code, §26.121(a), by failing to prevent the unauthorized discharge of a pollutant into or adjacent to water in the state; PENALTY: $5,110; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: City of Center; DOCKET NUMBER: 2010-1594-MWD-E; IDENTIFIER: RN101614014; LOCATION: Shelby County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010063003, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits for mercury, zinc, and flow; 30 TAC §305.125(17) and §319.1 and TPDES Permit Number WQ0010063003, Sludge Provisions, by failing to timely submit the annual sludge report; and 30 TAC §305.125(17) and §319.1 and TPDES Permit Number WQ0010063003, Biomonitoring Requirements Number 3.b(3), by failing to timely submit the quarterly biomonitoring reports; PENALTY: $8,692; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: Paul Leggett dba Country Lake Water Supply; DOCKET NUMBER: 2010-1252-PWS-E; IDENTIFIER: RN103196879; LOCATION: Carthage, Panola County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notification of the failure to sample; PENALTY: $6,674; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: EASTGREEN, INC. dba AIG Technologies Data Center; DOCKET NUMBER: 2010-1390-PST-E; IDENTIFIER: RN104341193; LOCATION: Tarrant County; TYPE OF FACILITY: technology data center with underground storage tanks (USTs); RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; and 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current delivery

certificate; PENALTY: $6,513; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3100; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: City of Edgewood; DOCKET NUMBER: 2010-0242-MWD-E; IDENTIFIER: RN101916302; LOCATION: Van Zandt County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0014648001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits for ammonia nitrogen (NH_3N), five-day carbonaceous biochemical oxygen demand, and total suspended solids (TSS); PENALTY: $5,380; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: Mario Espinoza dba El Potosino Body Shop; DOCKET NUMBER: 2010-1282-AIR-E; IDENTIFIER: RN105763361; LOCATION: Tyler, Smith County; TYPE OF FACILITY: auto body refinishing and paint shop; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to conducting surface coating operations; PENALTY: $5,250; ENFORCEMENT COORDINATOR: Allison Fischer, (512) 239-2574; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: E Z Stop, L.L.C. dba E Z Stop; DOCKET NUMBER: 2010-1249-PST-E; IDENTIFIER: RN101796654; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the commission of any change or additional information regarding USTs; 30 TAC §334.8(c)(1)(C) and (5)(B)(ii), by failing to submit a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record the inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; and 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube; PENALTY: $7,785; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(9) COMPANY: FIRST MINIT MARKIT, INC. dba First Minit Markit; DOCKET NUMBER: 2010-1407-PST-E; IDENTIFIER: RN102446648; LOCATION: Garland, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: $2,525; ENFORCEMENT COORDINATOR: Cara Windle, (512) 239-2581; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: First National Bank of Hughes Springs; DOCKET NUMBER: 2010-1369-IWD-E; IDENTIFIER: RN101724953; LOCATION: Avinger, Marion County; TYPE OF FACILITY: groundwater treatment unit; RULE VIOLATED: 30 TAC §305.125(1), TPDES General Permit Number TXG830334, Part III. Permit Requirements, Section A. Effluent Limitations Number 1, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limits for benzene, toluene, ethylbenzene, and total xylenes, methyl tert-butyl ether, pH, and lead; 30 TAC §305.125(1) and (17) and §319.1 and TPDES General Permit Number TXG830334, Part III. Permit Requirements, Section A. Effluent Limitations Number 1, by failing to submit monitoring results at the intervals specified in the permit; and 30 TAC §305.125(1) and §319.5(b) and TPDES General Permit Number TXG830334, Part III. Permit Requirements, Section A. Effluent Limitations Number 1, by failing to collect and analyze samples for daily average and daily maximum concentration for polynuclear aromatic hydrocarbons; PENALTY: $9,212; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: HOLCIM (TEXAS) LIMITED PARTNERSHIP; DOCKET NUMBER: 2010-1200-IWD-E; IDENTIFIER: RN100219286; LOCATION: Midlothian, Ellis County; TYPE OF FACILITY: limestone quarry and portland cement manufacturing plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0002580000, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with permit effluent limits for TSS; PENALTY: $2,600; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Huebner Hills Owners Association; DOCKET NUMBER: 2010-1338-EAQ-E; IDENTIFIER: RN104990858; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: business park development; RULE VIOLATED: 30 TAC §213.4(g)(1) and Edwards Aquifer Water Pollution Abatement Plan (EAQ WPAP) Number 13-06062802 Standard Condition Number 1, by failing to record in the deed records of the county the September 21, 2006, EAQ WPAP approval letter within 30 days of receiving the approval; 30 TAC §213.5(f)(1) and EAQ WPAP Number 13-06062802 Standard Condition Number 5, by failing to submit written notification of intent to commence construction to the regional office; and 30 TAC §213.4(a)(1) and (j) and EAQ WPAP Number 13-06062802 Standard Condition Number 4, by failing to obtain approval of a modification of an EAQ WPAP prior to beginning a regulated activity over the EAQ Recharge Zone; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 14250 Judson Road, San Antonio, 78233-4480, (210) 490-3096.

(13) COMPANY: Keith Roy dba Keith's Stump Grinding; DOCKET NUMBER: 2010-1321-MLM-E; IDENTIFIER: RN105944466; LOCATION: Jasper, Jasper County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the general prohibitions for the outdoor burning of waste; and 30 TAC §330.15(a)(1) - (3) and (c) and the Code, §26.121, by failing to comply with the general prohibitions regarding MSW; PENALTY: $1,865; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(14) COMPANY: Moss Bluff Hub, LLC; DOCKET NUMBER: 2010-1322-AIR-E; IDENTIFIER: RN100217256; LOCATION: Liberty County; TYPE OF FACILITY: natural gas storage; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit (FOP) Number O-02587, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to submit a semi-annual deviation report; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Gena Hawkins, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: NZSA, INC. dba Zeta Food Mart; DOCKET NUMBER: 2010-0971-PST-E; IDENTIFIER: RN102352457; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)

and the Code, §26.3475(a), by failing to provide proper release detection; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.49(a)(2) and the Code, §26.3475(d), by failing to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that corrosion protection is continuously provided to all underground metal components of the UST system; 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system; 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection; 30 TAC §334.10(b), by failing to maintain the required UST records and make them immediately available for inspection; 30 TAC §334.8(c)(5)(A)(ii), by failing to make a valid delivery certificate immediately available for inspection; and 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form; PENALTY: $8,735; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(16) COMPANY: Ocean Mobile Home Park, LLC; DOCKET NUMBER: 2010-1582-PWS-E; IDENTIFIER: RN100928282; LOCATION: Chambers County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.39(j)(1)(A), TCEQ AO Docket Number 2006-1592-PWS-E, Ordering Provision Number 2.a.i, and THSC, §341.0351, by failing to notify the commission prior to making any significant change or addition where the change in the existing distribution system results in an increase or decrease in production, treatment, storage, or pressure maintenance capacity; and 30 TAC §290.39(h)(3) and TCEQ AO Docket Number 2006-1592-PWS-E, Ordering Provision Number 2.a.ii, by failing to notify the executive director in writing as to its completion and attest that the completed work was substantially in accordance with the plans on file with the commission; PENALTY: $240; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Paradise Independent School District; DOCKET NUMBER: 2010-1593-MWD-E; IDENTIFIER: RN101519387; LOCATION: Wise County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013439001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits for TSS, biochemical oxygen demand, and flow; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: PVR Natural Gas Gathering, LLC; DOCKET NUMBER: 2010-1221-AIR-E; IDENTIFIER: RN100225796; LOCATION: Canadian, Hemphill County; TYPE OF FACILITY: natural gas transmission plant; RULE VIOLATED: 30 TAC §106.512(2)(C)(ii) and THSC, §382.085(b), by failing to conduct performance testing; 30 TAC §116.110(a) and §122.143(4), FOP Number O-00725, General Operating Permit (GOP) Number 514, Site-wide requirements (b)(7)(A), and THSC, §382.0518(a) and §382.085(b), by failing to obtain proper authorization; 30 TAC §111.111(a)(4)(A)(ii) and THSC, §382.085(b), by failing to maintain and document daily notations in a flare operation log; 30 TAC §116.115(c) and §122.143(4), New Source Review (NSR) Permit Number 104, Special Condition (SC) Number 3, FOP Number O-00725, GOP Number 514, Site-wide requirements Number (b)(7), and THSC, §382.085(b), by failing to maintain monthly records of all flow rates and total sulfur content of gas processing streams and combustion fuel unit streams; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 104, SC Number 5, FOP Number O-00725, GOP Number 514, Site-wide requirements Number (b)(7), and THSC, §382.085(b), by failing to measure the firebox operating temperature; and 30 TAC §122.143(4), FOP Number O-00725, GOP Number 514, Site-wide requirements Number (b)(8)(A)(iv)(c), and THSC, §382.085(b), by failing to maintain a complete observation log for stationary vents from emission units in operation; PENALTY: $14,961; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 791099-4933, (806) 353-9251.

(19) COMPANY: Ranger Gas Gathering, L.L.C.; DOCKET NUMBER: 2010-1539-AIR-E; IDENTIFIER: RN100219534; LOCATION: Eastland County; TYPE OF FACILITY: oil and gas processing plant; RULE VIOLATED: 30 TAC §116.110(a) and §122.143(4), Site Operating Permit Number O-02945, GTC, and THSC, §382.085(b), by failing to obtain permit authorization; PENALTY: $58,900; ENFORCEMENT COORDINATOR: Allison Fischer, (512) 239-2574; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(20) COMPANY: Paul D. Reed dba Reed's Lawn Service, LLC; DOCKET NUMBER: 2010-1433-LII-E; IDENTIFIER: RN104509971; LOCATION: Huntsville, Walker County; TYPE OF FACILITY: landscaping business; RULE VIOLATED: 30 TAC §344.24(a), by failing to obtain a city permit prior to performing maintenance on and installing a new section on an existing irrigation system; PENALTY: $200; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: RESTAURANT SERVICE, LLC; DOCKET NUMBER: 2010-1383-MWD-E; IDENTIFIER: RN102184033; LOCATION: Jersey Village, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0014860001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with the permitted effluent limitations for NH_3N; PENALTY: $1,260; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 425-6010; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: South Freestone County Water Supply Corporation; DOCKET NUMBER: 2010-1363-PWS-E; IDENTIFIER: RN101402683; LOCATION: Teague, Freestone County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(j)(1)(A) and (B), by failing to conduct customer service inspections by an individual that is a plumber inspector or water supply protection specialist licensed by the State Board of Plumbing Examiners or by a customer service inspector who has completed a commission approved course, passed an examination administered by the executive director, and holds a current professional certification or endorsement as a customer service inspector; 30 TAC §290.41(c)(1)(D), by failing to ensure that livestock in pastures are not allowed within 50 feet of a water supply well; 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling cock on the discharge pipe of each well pump; 30 TAC §290.46(t), by failing to post a legible sign at each production, treatment, and storage facility that contains the name of the water supply and emergency telephone numbers where a responsible official can be contacted; and 30 TAC §290.41(c)(1)(F), by failing to provide a sanitary control easement that covers the land within 150 feet of the well; PENALTY: $1,290; ENFORCEMENT COORDINATOR:

Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(23) COMPANY: S.S.G. FUEL SERVICE, INC. dba Exxon Food Mart; DOCKET NUMBER: 2010-1480-PST-E; IDENTIFIER: RN102950565; LOCATION: Baytown, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition; and 30 TAC §115.246(1) and (6) and THSC, §382.085(b), by failing to maintain the Stage II records at the station; PENALTY: $9,915; ENFORCEMENT COORDINATOR: Bridget Lee, (512) 239-2545; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(24) COMPANY: Ahmad Yousef dba Stop-N-Go; DOCKET NUMBER: 2010-1403-PST-E; IDENTIFIER: RN101876720; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the commission of any change or additional information regarding the USTs; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for the regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.50(d)(1)(B)(iii)(IV) and the Code, §26.3475(c)(1), by failing to record the measurement of any water level in the bottom of the tank to the nearest 1/8 inch at least once a month and make the appropriate adjustments to the inventory control records; 30 TAC §334.50(d)(9)(A) and the Code, §26.3475(a) and (c)(1), by failing to use a combination of statistical inventory reconciliation and inventory control as a release detection method for the UST system tanks and product piping; 30 TAC §334.49(b)(2) and the Code, §26.3475(d), by failing to maintain all components electrically isolated from the corrosive elements of the surrounding soil, backfill, groundwater, or any other water, and from other metallic compounds; 30 TAC §334.46(a)(1)(D), by failing to maintain all UST system equipment; and 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube; PENALTY: $8,454; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(25) COMPANY: The George Foundation; DOCKET NUMBER: 2010-1475-PST-E; IDENTIFIER: RN101235570; LOCATION: Richmond, Fort Bend County; TYPE OF FACILITY: ranch with USTs; RULE VIOLATED: 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to inspect and test the cathodic protection system; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; and 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(a), by failing to monitor the UST for releases; PENALTY: $4,750; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 5425 Polk Avenue. Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201006711

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 23, 2010

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Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 10, 2011.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 10, 2011.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: Bayer Material Science, LLC; DOCKET NUMBER: 2010-1148-AIR-E; IDENTIFIER: RN100209931; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: polycarbonate manufacturing plant; RULE VIOLATED: 30 Texas Administrative Code (TAC) §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization for the operation of the carbon adsorption system; and 30 TAC §122.143(4) and §122.145(2)(A), Federal Operating Permit (FOP) Number O-02100, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to report all deviations on the semi-annual deviation reports; PENALTY: $19,836; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Timothy Bradberry dba Cooley Point; DOCKET NUMBER: 2010-1068-PWS-E; IDENTIFIER: RN101251718; LOCATION: Briar, Tarrant County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.43(e), by failing to provide an intruder-resistant fence or lockable building; 30 TAC §290.45(b)(1)(C)(i) and THSC, §341.0315(a)(1), by failing to provide a minimum well capacity of 0.6 gallons per minute per connection; and 30 TAC §290.41(c)(1)(F), by failing to provide a sanitary control easement; PENALTY: $2,557; ENFORCEMENT COORDINATOR:

Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2010-1511-AIR-E; IDENTIFIER: RN100222330; LOCATION: Goldsmith, Ector County; TYPE OF FACILITY: gas plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and §122.143(4), Permit Number 676A, Special Condition Number 1, FOP Number O-02585, Special Terms and Conditions Number 7, and THSC, §382.085(b), by failing to maintain compliance with the 481.70 pounds per hour sulfur dioxide permitted emission limit for the tail gas incinerator stack; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O-02585, GTC, and THSC, §382.085(b), by failing to include all instances of deviations in the semi-annual deviation report; PENALTY: $23,875; Supplemental Environmental Project (SEP) offset amount of $9,550 applied to Texas Parent Teacher Association - *Clean School Bus Program*; ENFORCEMENT COORDINATOR: John Muennink, (713) 767-3500; REGIONAL OFFICE: 3300 North A Street, Building 4-107, Midland, Texas 79705-5406, (432) 570-1359.

(4) COMPANY: City of Deport; DOCKET NUMBER: 2010-0915-MWD-E; IDENTIFIER: RN101919256; LOCATION: Lamar County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010741001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, and the Code, §26.121(a), by failing to comply with permitted effluent limitations for five-day carbonaceous biochemical oxygen demand and pH; PENALTY: $11,600; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: City of Hitchcock; DOCKET NUMBER: 2010-0075-MWD-E; IDENTIFIER: RN101920031; LOCATION: Galveston County; TYPE OF FACILITY: wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010690001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits for ammonia nitrogen and total mercury; PENALTY: $59,075; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Kinder Morgan Treating, LP; DOCKET NUMBER: 2010-1269-AIR-E; IDENTIFIER: RN103363826; LOCATION: Lasara, Willacy County; TYPE OF FACILITY: amine treating plant; RULE VIOLATED: 30 TAC §116.110(a)(1) and THSC, §382.0518(a) and §382.085(b), by failing to obtain permit authorization; PENALTY: $6,750; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: MARS CONVENIENCE, INC. dba La Porte Shell; DOCKET NUMBER: 2010-1296-PST-E; IDENTIFIER: RN101802619; LOCATION: La Porte, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment, vapor space manifolding, and dynamic back pressure; PENALTY: $2,580; ENFORCEMENT COORDINATOR: Tate Barrett, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: ALBERT KHOA CORPORATION dba Mikes Pit Stop 6; DOCKET NUMBER: 2010-1623-PST-E; IDENTIFIER: RN101810513; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment, vapor space manifolding, and dynamic back pressure; PENALTY: $2,425; ENFORCEMENT COORDINATOR: Cara Windle, (512) 239-2581; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: City of Refugio; DOCKET NUMBER: 2010-1391-MWD-E; IDENTIFIER: RN103913935; LOCATION: Refugio County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125, TPDES Permit Number WQ0010255001, Permit Conditions 2.g., and the Code, §26.121(a), by failing to prevent an unauthorized discharge of wastewater; PENALTY: $2,425; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(10) COMPANY: San Angelo Packing Company, Inc.; DOCKET NUMBER: 2010-1347-IWD-E; IDENTIFIER: RN101511772; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0003901000, Part IV, Conditions of the Permit, by failing to comply with the permitted limits for five-day biochemical oxygen demand (BOD_5) and flow; 30 TAC §305.125(1) and TPDES Permit Number WQ0003901000, Part VI, Standard Permit Conditions, Monitoring Requirements Number 7.c., by failing to submit noncompliance notification for any effluent violation which deviates from the permitted effluent limitations by greater than 40% and for unauthorized discharges in writing to the regional office and the Enforcement Division; 30 TAC §305.125(1) and TPDES Permit Number WQ0003901000, Part IV, Conditions of the Permit, by failing to comply with the permitted application rate for total nitrogen loading of 400 pounds per acre per year for effluent used for irrigation; 30 TAC §305.125(1) and TPDES Permit Number WQ0003901000, Part VI, Monitoring Requirements Number 3.b., by failing to make soil monitoring records available for review; 30 TAC §305.125(1) and TPDES Permit Number WQ0003901000, Part V, Special Provision M, by failing to timely submit copies of the soil monitoring reports to the regional office; and 30 TAC §305.125(1) and TPDES Permit Number WQ0003901000, Part V, Special Provision K, by failing to timely complete and submit copies of the tabulated effluent quality and volume data for the wastewater used for irrigation; PENALTY: $20,573; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(11) COMPANY: SARD ENTERPRISES, INC. dba LaPorte Chevron; DOCKET NUMBER: 2010-1240-PST-E; IDENTIFIER: RN101788677; LOCATION: La Porte, Houston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment, vapor space manifolding, and dynamic back pressure; PENALTY: $2,528; ENFORCEMENT COORDINATOR: Tate Barrett, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Structural Metals, Inc.; DOCKET NUMBER: 2010-1606-IWD-E; IDENTIFIER: RN102413689; LOCATION: Seguin, Guadalupe County; TYPE OF FACILITY: steel works with blast furnace and rolling mills; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0001712000, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for total organic carbon and oil and grease; PENALTY: $6,200; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321;

REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2010-1041-IWD-E; IDENTIFIER: RN105694467; LOCATION: Stafford, Fort Bend County; TYPE OF FACILITY: highway/street construction site; RULE VIOLATED: 30 TAC §305.125(1), TPDES General Permit Number TXG830335, Part III Permit Requirements Section A, Effluent Limitations Number 1, and the Code, §26.121(a)(1), by failing to comply with the permitted effluent limitations for benzene, methyl tert-butyl ether, and pH; PENALTY: $3,120; SEP offset amount of $3,120 applied to Texas Association of Resource Conservation and Development Areas, Inc. - Abandoned Tire Clean-Up; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 425-6010; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Trucker's Corner, LP; DOCKET NUMBER: 2010-1344-MWD-E; IDENTIFIER: RN105137020; LOCATION: Carl's Corner, Hill County; TYPE OF FACILITY: wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0014769001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, and the Code, §26.121(a), by failing to comply with permitted effluent limits for BOD_5), pH, and total suspended solids; and 30 TAC §305.125(17) and §319.1 and TPDES Permit Number WQ0014769001, Sludge Provisions, by failing to timely submit monitoring results at the intervals specified in the permit; PENALTY: $6,232; ENFORCEMENT COORDINATOR: Jordan Jones, (512) 239-2569; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: WTG Gas Processing, L.P.; DOCKET NUMBER: 2010-1312-AIR-E; IDENTIFIER: RN102665296; LOCATION: Martin County; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §122.146(1) and THSC, §382.085(b), by failing to submit the Title V permit compliance certification; and 30 TAC §122.145(2)(A) - (C) and THSC, §382.085(b), by failing to submit a Title V deviation report; PENALTY: $8,067; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3300 North A Street, Building 4-107, Midland, Texas 79705-5406, (432) 570-1359.

TRD-201006777
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 30, 2010

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Notice of a Public Hearing on Proposed Revisions to 30 TAC Chapter 290

The Texas Commission on Environmental Quality (TCEQ or commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 290, Public Drinking Water, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would incorporate the new federal lead and copper rules; would reorganize the Texas lead and copper rules to make them consistent with the organizational structure used in other Texas rules regulating chemicals in drinking water; and would make minor changes for consistency with other federal rules recently adopted by the commission, specifically the Long Term 2 Enhanced Surface Water Treatment Rule, the Stage 2 Disinfectants and Disinfection Byproducts Rule, and the Ground Water Rule.

The commission will hold a public hearing on this proposal in Austin on January 6, 2011, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

Written comments may be submitted to Patricia Duron, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2009-020-290-PR. The comment period closes January 14, 2011. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* For further information, please contact Michael Lentz, Water Supply Division, Public Drinking Water Section, (512) 239-1650.

TRD-201006724
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 23, 2010

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Notice of a Public Hearing on Proposed Revisions to 30 TAC Chapters 213 and 311

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed new §213.31 of 30 TAC Chapter 213, Edwards Aquifer and proposed new §311.91 of 30 TAC Chapter 311, Watershed Protection, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement requirements needed to allow the application of pesticides in areas with an existing discharge prohibition once pesticide applications become a point source discharge subject to National Pollutant Discharge Elimination System regulation.

The commission will hold a public hearing on this proposal in Austin on January 6, 2011, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

Written comments may be submitted to Natalia Henricksen, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/.* File size restric-

tions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2010-055-311-OW. The comment period closes January 14, 2011. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* For further information, please contact Lynda Clayton, Water Quality Assessment Unit, (512) 239-4591.

TRD-201006710
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 23, 2010

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Notice of Correction to Agreed Order Number 2

In the October 22, 2010, issue of the *Texas Register* (35 TexReg 9540), the Texas Commission on Environmental Quality (commission) published a Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions, specifically Item Number 2. The reference to Albemarle Corporation was submitted in error by the commission as Supplemental Environmental Project (SEP) offset amount of $6,345 applied to Harris County - Ambient and Meteorological Air Monitoring and instead should have been submitted as Texas Association of Resource Conservation and Development - Abandoned Tire Clean Up.

For questions concerning this error, please contact Anna Treadwell at (512) 239-0974.

TRD-201006718
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 23, 2010

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 10, 2011.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 10, 2011.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: City of Dallas Water Utilities; DOCKET NUMBER: 2009-2053-WQ-E; TCEQ ID NUMBER: RN101227189; LOCATION: 405 Long Creek Road, Sunnyvale, Dallas County; TYPE OF FACILITY: public water system; RULES VIOLATED: TWC, §26.121(a), by failing to prevent the unauthorized discharge of a pollutant into or adjacent to water in the state; and TWC, §26.039(b), by failing to provide timely notification to the TCEQ of an accidental discharge which causes pollution; PENALTY: $9,500; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Dolphin Petroleum, LP; DOCKET NUMBER: 2010-0193-AIR-E; TCEQ ID NUMBER: RN100216902; LOCATION: approximately three miles south of Farm-to-Market (FM) Road 774 on FM Road 2678, near Refugio, Refugio County; TYPE OF FACILITY: oil and gas production plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit Number O-00257, Oil and Gas General Operating Permit Number 514, Site-wide requirements (b)(2), by failing to submit the annual permit compliance certification within 30 days after the end of the certification period; PENALTY: $3,175; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: MCCRAW OIL COMPANY, INC. dba Kwik Check 42; DOCKET NUMBER: 2009-1752-PST-E; TCEQ ID NUMBER: RN101545051; LOCATION: 2025 East Copeland Road, Arlington, Tarrant County; TYPE OF FACILITY: four underground storage tanks (USTs) and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b), by failing to maintain the required UST records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.7(d)(3) and §334.8(c)(4)(A)(vii), (B), and (5)(B)(ii), by failing to provide an amended UST registration to the agency for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form; 30 TAC §334.50(b)(1)(A), (2)(A), and (i)(III) and TWC, §26.3475(a) and (c)(1), by failing to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring), failing to provide release detection for the piping associated with the USTs, and failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.72(3)(B), by failing to report a suspected release to the TCEQ within 24 hours of discovery; 30 TAC §334.74, by failing to investigate a suspected release within 30 days of discovery; 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system;

30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one Station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee receives in-house Stage II vapor recovery training regarding the purpose and operation of the vapor recovery system; 30 TAC §115.246(1), (3), and (5) and THSC, §382.085(b), by failing to maintain Stage II equipment at least once every 12 months; 30 TAC §115.242(9) and THSC, §382.085(b), by failing to maintain Stage II records at the Station and make them immediately available for inspection upon request by agency personnel; and 30 TAC §115.242(9), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system; PENALTY: $19,222; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Oscar Palacios dba Tres Palacios Elsa Pit; DOCKET NUMBER: 2010-0013-MSW-E; TCEQ ID NUMBER: RN105819882; LOCATION: northwest corner of Mile 4 Road and Mile 19 Road, Edcouch, Hidalgo County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; PENALTY: $7,500; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(5) COMPANY: Star Fuels, Inc. dba Texas City Conoco; DOCKET NUMBER: 2010-0614-PST-E; TCEQ ID NUMBER: RN101755536; LOCATION: 2903 Palmer Highway, Texas City, Galveston County; TYPE OF FACILITY: four USTs and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months; and 30 TAC §115.246(3) and (6) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; PENALTY: $8,151; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: The Kippur Corporation; DOCKET NUMBER: 2010-0241-AIR-E; TCEQ ID NUMBER: RN101694933; LOCATION: 8770 Castner Drive, El Paso, El Paso County; TYPE OF FACILITY: dual-chamber waste incinerator; RULES VIOLATED: 30 TAC §101.8(a) and THSC, §382.085(b), by failing to conduct Method Testing 9; PENALTY: $16,000; STAFF ATTORNEY: Jeffrey J. Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(7) COMPANY: Trudy J. Gillem dba Country Villa Mobile Home Park; DOCKET NUMBER: 2010-0447-PWS-E; TCEQ ID NUMBER: RN101441764; LOCATION: North side of Highway 202 approximately three miles east of Beeville, Bee County; TYPE OF FACILITY: mobile home park with a public water system; RULES VIOLATED: 30 TAC §290.42(j), by failing to use an approved chemical or media for the disinfection of potable water that conforms to the American National Standards Institute/National Sanitation Foundation standards; 30 TAC §290.46(s)(1), by failing to calibrate the well meter once every three years; 30 TAC §290.44(d)(6), by failing to provide all dead-end mains with acceptable flush valves; 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment, and storage facilities that contains the name of the facility and emergency telephone numbers where a responsible official can be contacted; 30 TAC §290.41(c)(3)(O), by failing to enclose the well with an intruder-resistant fence or lockable ventilated well house; TWC, §5.702, 30 TAC §290.51(a)(3), and TCEQ AO Docket Number 2005-0201-PWS-E, Ordering Provision Number 2.a.iii., by failing to pay public health service fees, including late fees, for TCEQ Financial Administration Account Number 90130058 for Fiscal Years 1998 - 2009; THSC, §341.0315(c), 30 TAC §290.45(b)(1)(F)(iii), and TCEQ AO Docket Number 2005-0201-PWS-E, Ordering Provision Number 2.c.ii., by failing to provide two or more service pumps with a total rated capacity of 2.0 gallons per minute per connection (gpm); THSC, §341.033(a) and 30 TAC §290.46(e), by failing to operate the facility under the direct supervision of a waterworks operator who holds a Class "D" or higher license; 30 TAC §290.121(a) and (b), by failing to make available for commission review a complete, up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of manual disinfectant residual analyzers at least once every 30 days using chlorine solutions of known concentrations; 30 TAC §290.46(n)(2), by failing to maintain an up-to-date map of the distribution system so that valves and mains may be easily located during emergencies; 30 TAC §290.110(e)(4)(A), by failing to submit a Disinfectant Level Quarterly Operating Report to the commission each quarter by the tenth day of the month following the end of each quarter; 30 TAC §290.46, by failing to ensure that all electrical wiring at the facility is securely installed in compliance with a local or national electrical code; and 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and failing to submit to the TCEQ by July 1 of each year a copy of the CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; PENALTY: $6,401; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(8) COMPANY: Westlake Municipal Utility District Number 1; DOCKET NUMBER: 2009-1901-MWD-E; TCEQ ID NUMBER: RN103029286; LOCATION: 2631 Greenhouse Road, approximately 800 feet north of the intersection of Saums Road and Greenhouse Road, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011284001, Effluent Limitation and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits for the months of April and May 2009; TWC, §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number WQ0011284001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits for the month of June 2009; PENALTY: $18,875, Supplemental Environmental Project offset amount of $18,875 applied to Galveston Bay Foundation, the Galveston Bay Restoration Marsh Mania Project; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201006717

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 23, 2010

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 10, 2011.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 10, 2011.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Abdelrahim A. Zardeh dba Toney's Fina; DOCKET NUMBER: 2010-1020-PST-E; TCEQ ID NUMBER: RN102277415; LOCATION: 3319 East Belknap Street, Fort Worth, Tarrant County; TYPE OF FACILITY: three underground storage tanks (USTs) and a former convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no less than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $5,250; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: American Lift Truck and Tractor, Inc.; DOCKET NUMBER: 2010-0554-PST-E; TCEQ ID NUMBER: RN101555126; LOCATION: 222 South Loop 12, Irving, Dallas County; TYPE OF FACILITY: two out-of-service USTs; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to remove from service, no later than 60 days after the prescribed implementation date, a UST system for which any applicable component of the system was not brought into timely compliance with the upgrade requirements; PENALTY: $2,625; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: AMISH GROUP, INC. dba Truckers Enterprise; DOCKET NUMBER: 2010-1003-PST-E; TCEQ ID NUMBER: RN103010823; LOCATION: 9221 Wallisville Road, Houston, Harris County; TYPE OF FACILITY: five USTs and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification; 30 TAC §115.242(3)(G) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of any defects that would impair the effectiveness of the system; PENALTY: $8,043; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Juan Sanchez; DOCKET NUMBER: 2010-0612-LII-E; TCEQ ID NUMBER: RN105897557; LOCATION: 7519 Golden Thistle, Cypress, Harris County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §30.5(a), TWC, §37.003, Texas Occupations Code, §1903.251, by failing to hold an irrigator license prior to selling, designing, consulting, installing, altering, repairing or servicing an irrigation system; and 30 TAC §30.5(b) and TWC, §37.003, by failing to refrain from advertising or representing himself to the public as a holder of a license or registration; PENALTY: $1,245; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Oakhollow MH Park, LLC dba Oak Hollow Mobil Home Park and Gary Don Stahlheber dba Oak Hollow Mobile Home Park; DOCKET NUMBER: 2010-0701-PWS-E; TCEQ ID NUMBER: RN101453843; LOCATION: 16730 County Road 127, Trailer 1A, Pearland, Brazoria County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and failing to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR is correct and consistent with compliance monitoring data; PENALTY: $1,391; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Triple A Dump Truck Service, L.L.C.; DOCKET NUMBER: 2010-1012-MSW-E; TCEQ ID NUMBER: RN104566120; LOCATION: 4 1/4 miles north of Western Road, Mission, Hidalgo County; TYPE OF FACILITY: sand pit; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $2,500; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: WSAL Enterprises, Inc dba Big Star 5; DOCKET NUMBER: 2010-0929-PST-E; TCEQ ID NUMBER: RN101436475; LOCATION: 9100 West Loop 1604 North, San Antonio, Bexar County; TYPE OF FACILITY: two USTs and a convenience

store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii), (B), and (5)(B)(ii), by failing to renew a delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $10,111; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201006716

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 23, 2010

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Notice of Water Quality Applications

The following notice was issued on November 8, 2010 through November 19, 2010.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

TEXAS A&M UNIVERSITY which operates the Brayton Fire Training Field, has applied for a major amendment without renewal to TPDES Permit No. WQ0002585000 to authorize effluent limitations be recalculated for total aluminum based on a site-specific partition coefficient. The current permit authorizes the discharge of treated process water from stationary blaze pads, surface runoff from a bioremediation landfarm storm water, and groundwater at a daily average flow not to exceed 2,000,000 gallons per day via Outfall 001. The draft permit authorizes the discharge of treated process water from stationary blaze pads, storm water, and groundwater at a daily average flow not to exceed 2,000,000 gallons per day via Outfall 001. The facility is located on Nuclear Science Road, approximately 0.5 mile south of the intersection of Farm-to-Market Road 2347 and Nuclear Science Road, adjacent to Easterwood Airport, in the City of College Station, Brazos County, Texas 77845.

THE GOODYEAR TIRE AND RUBBER COMPANY which operates the Goodyear Tire and Rubber Beaumont Chemical Plant which manufactures synthetic rubber, adhesive resins, antioxidants, and isoprene, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0000519000 to increase the daily average effluent limitation for temperature at Outfall 001; authorize the effluent sampling at Outfall 001 to be either proportional to flow or proportional to time; and authorize an alternate sampling location for flow determinations at Outfall 001 during large rain events. The current permit authorizes treated process wastewater, process wastewater from the adjacent Sartomer Company facility, utility waters, domestic wastewater and process area storm water at a daily average flow not to exceed 6,000,000 gallons per day via Outfall 001; and process area storm water on an intermittent and flow variable basis via Outfall 003. The facility is located south of Interstate Highway 10 (between Interstate Highway 10 and State Highway 124), approximately nine (9) miles southwest of the City of Beaumont, Jefferson County, Texas 77720. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

DAIRY FARMERS OF AMERICA INC which operates Keller's Creamery, a milk processing plant, has applied for a renewal of Permit No. WQ0003390000, which authorizes the disposal of process wastewater and boiler blowdown on 128 acres of coastal bermuda and rye grass at an application rate not to exceed 2.2 acre-feet per acre irrigated per year (acre-feet/acre/year) and on 3.0 acres of landscaping in the vicinity of the wastewater treatment plant at an application rate not to exceed 2.0 acre-feet/acre/year; and sludge from the sequencing batch reactors on the 128 acres of irrigation tracts at an application rate not exceed 2.4 dry tons per acre applied per year. This permit will not authorize a discharge of pollutants into water in the State. The facility and disposal sites are located at 1015 East Broadway on the north side of State Highway 11, approximately 2,400 feet east of the intersection of State Highway 37 and State Highway 11 near the City of Winnsboro, Wood County, Texas 75494.

CITY OF BOGATA has applied for a renewal of TPDES Permit No. WQ0010065001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 332,000 gallons per day. The facility is located approximately 3,100 feet southwest of U.S. Highway 271 and 5,000 feet east of State Highway 37 in Red River County, Texas 75417.

THE CITY OF BONHAM has applied for a renewal of TPDES Permit No. WQ0010070001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The facility is located approximately 0.5 mile east of the City of Bonham on Seven Oaks Road in Fannin County, Texas 75418.

CITY OF PORT LAVACA has applied for a renewal of TPDES Permit No. WQ0010251001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located at the southeast corner of the intersection of Newlin Street and Commerce Street in the City of Port Lavaca, approximately 1.4 miles northeast from the intersection of State Highway 35 and U.S. Highway 87 in Calhoun County, Texas 77979.

CITY OF TEXARKANA has applied for a renewal of TPDES Permit No. WQ0010374005, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 18,000,000 gallons per day and marketing and distribution of sewage sludge. The facility is located along the east bank of Days Creek; adjacent to the west side of State Line Road, approximately one mile south of the intersection of Phillips Lane and State Line Road in Bowie County, Texas 75501.

CITY OF MCALLEN has applied for a major amendment to TPDES Permit No. WQ0010633003 to remove effluent limitations and monitoring requirements for selenium and mercury. The applicant has also applied to the TCEQ for approval of a substantial modification to its pretreatment program under the TPDES program. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 10,000,000 gallons per day. The facility is located at 4100 Idela, McAllen, Texas, approximately 1.5 miles west of Spur Highway 115 and approximately 2.5 miles southwest of the intersection of U. S. Highway 83 and Spur Highway 115 in the City of McAllen in Hidalgo County, Texas 78503.

THE CITY OF LAREDO has applied for a renewal of TPDES Permit No. WQ0010681006, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day in the Interim phase and 160,000 gallons per day in the Final phase. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 6.63 acres of non-public access land. The facility and irrigation site is located approximately 1 mile southwest of Farm-to-Market Road 1472 on an unnamed country road and 10.5 miles west-northwest of Farm-to-Market Roads 1472 and 3338, adjacent to the Rio Grande in Webb County, Texas 78040.

DELTA COUNTY MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0010744001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located approximately 0.5 mile west and 0.3 mile south of the intersection of Farm-to-Market Road 64 and Farm-to-Market Road 128 and immediately west of South Third Street in Delta County, Texas 75469.

TRINITY BAY CONSERVATION DISTRICT has applied for a renewal of TPDES Permit No. WQ0010851001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,980,000 gallons per day. The facility is located approximately 1.2 miles southeast of the intersection of State Highway 124 and Farm-to-Market Road 1406, approximately 0.7 mile east of State Highway 124 on Buccaneer Drive in the City of Winnie in Chambers County, Texas 77514.

WATERWOOD MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. WQ0011447001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 0.1 mile south of Waterwood Parkway at a point approximately 1.0 mile east of the intersection of Waterwood Parkway and Farm-to-Market Road 980 and approximately 6 miles north of the intersection of Farm-to-Market Road 980 and State Highway 190 in San Jacinto County, Texas 77320.

SEIS LAGOS UTILITY DISTRICT has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011451001, to authorize the use of the influent parshall flume meter to measure and record the volume of the flow. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located at 1007 Riva Ridge in the Seis Lagos Development approximately 0.8 mile southeast of the intersection of Farm-to-Market Road 3286 in Collin County, Texas 75098.

SYED NOORIDUN HYDER has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011778001 to authorize sludge transport to the City of Bryan's Still Creek Wastewater Treatment Facility, TPDES Permit No. WQ0010426002. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 45,000 gallons per day. The facility is located approximately 2.5 miles southwest of the intersection of Farm-to-Market Road 2818 and Farm-to-Market Road 1688 (Leonard Road), 2000 feet southwest of the intersection of Leonard Road and Jones Road, five miles southwest of the City of Bryan in Brazos County, Texas 77807.

KLEBERG COUNTY has applied for a renewal of TPDES Permit No. WQ0013374001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 33,000 gallons per day. The facility is located approximately 1.5 miles southeast of Loyola Beach and 1750 feet southeast of the intersection of Farm-to-Market Road 628 and County Road 1150 in Kleberg County, Texas 78379.

TERRELL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a renewal of TCEQ Permit No. WQ0014120001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day via surface irrigation on 28 acres of non-public access native grassland. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately one-fourth (1/4) mile north of the intersection of U.S. Highway 90 and Southern Pacific Railroad and approximately two and one-half (2 1/2) miles southeast of the Community of Sanderson in Terrell County, Texas 79849. The wastewater treatment facility and disposal site are located in the drainage basin of Sanderson Creek in the drainage area of the Rio Grande in Segment No. 2306 of the Rio Grande Basin.

TEEN CHALLENGE OF TEXAS has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014981001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 9,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0011689001 which expired June 1, 2010. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies. The facility is located at 2547 U.S. Highway 77 South, approximately two miles north of the intersection of Farm-to-Market Road 655 and U.S. Highway 77 in Nueces County, Texas 78351.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201006754
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 24, 2010

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Notice of Water Quality Applications

The following notice was issued on November 19, 2010 through November 24, 2010.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

VALLEY BY PRODUCTS INC which operates the Valley by Products Plant, has applied for a major amendment to Texas Commission on Environmental Quality (TCEQ) Permit No. WQ0001243000 to increase the daily average flow to the evaporation pond system from 1,000 gallons per day (gpd) to 2,000 gpd and to increase the daily maximum flow to the evaporation pond system from 2,000 gpd to 2,400 gpd. The current permit authorizes the disposal of process wastewater, boiler blowdown, and clean-up water with up to 1% caustic soda at a daily average flow not to exceed 1,000 gpd and a daily maximum flow not to exceed 2,000 gpd. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located at

7740 Keily Road, approximately 4,000 feet east-southeast of the intersection of State Highway 20 and Hemley Road, near the termination of Keily Road, El Paso County, Texas 79835.

LUMINANT MINING COMPANY LLC which operates the Monticello Lignite Mining Area, a lignite surface mining facility, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0002697000, which authorizes the discharge of mine water, surface water runoff, and treated domestic wastewater (via internal Outfall 201 - North Winfield sewage treatment plant) from active mine sedimentation ponds in the Sulphur/South Sulphur River (Segment No. 0303) watershed on an intermittent and flow variable basis via Outfall 001, and post mining area runoff and previously monitored effluents (PMEs; via the active mining area Outfall 001) from post mining sedimentation ponds in the Sulphur/South Sulphur River (Segment No. 0303) watershed on an intermittent and flow variable basis via Outfall 101; mine water and surface water runoff from active mine sedimentation ponds in the Big Cypress Creek Below Lake Bob Sandlin (Segment No. 0404) watershed on an intermittent and flow variable basis via Outfall 002, and post mining area runoff and PMEs (via the active mining area Outfall 002) from post mining sedimentation ponds in the Big Cypress Creek Below Lake Bob Sandlin (Segment No. 0404) watershed on an intermittent and flow variable basis via Outfall 102; and mine water, surface water runoff, and treated domestic wastewater (via internal Outfall 203 - South Winfield sewage treatment plant) from active mine sedimentation ponds in the Lake Bob Sandlin (Segment No. 0408) watershed on an intermittent and flow variable basis via Outfall 003, and post mining area runoff and PMEs (via the active mining area Outfall 003) from post mining sedimentation ponds in the Lake Bob Sandlin (Segment No. 0408) watershed on an intermittent and flow variable basis via Outfall 103. The location of the site is north and south of Interstate Highway 30, between the City of Winfield and the City of Mount Pleasant, Titus and Franklin Counties, Texas.

PILOT TRAVEL CENTERS LLC which operates the 367 Caddo Mills Plant, a wastewater treatment system for a retail fueling station and restaurant, has applied for a renewal of TPDES Permit No. WQ0004849000, which authorizes the discharge of treated restaurant wastewater and domestic wastewater from showers and toilets at a daily average flow not to exceed 12,000 gallons per day via Outfall 001. The facility is located at 2226 Farm-to-Market Road 1903 at Interstate 30 East in the City of Caddo Mills, Hunt County, Texas 78024.

THE CITY OF OMAHA has applied for a renewal of TPDES Permit No. WQ0010239001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 2,800 feet southwest of the intersection of U.S. Highways 67 and 259 in Morris County, Texas 75571.

CITY OF WOLFE CITY has applied for a renewal of TPDES Permit No. WQ0010383001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 195,000 gallons per day. The facility is located adjacent to Oyster Creek approximately 0.3 miles east of State Highway 34 and 0.5 miles south of Wolfe City in Hunt County, Texas

CITY OF LINDALE has applied for a renewal of TPDES Permit No. WQ0010412001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,300,000 gallons per day. The facility is located at 17940 County Road 4112, approximately 2,000 feet east of U.S. Highway 69 and approximately 4,000 feet north of Farm-to-Market Road 16 in Lindale, Smith County, Texas 75771.

CITY OF JOSEPHINE has applied for a renewal of TPDES Permit No. WQ0010887001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 70,000 gallons per day. The facility is located approximately 0.2 mile north and 0.7 mile east of the intersection of Farm-to-Market Road 6 and Farm-to-Market Road 1777 in Collin County, Texas 75164.

CITY OF SADLER has applied for a renewal of TPDES Permit No. WQ0011037001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 66,000 gallons per day. The facility is located on East Pecan Street, approximately 2,200 to about 2,600 feet (near to far side) east-southeast from the intersection of Farm-to-Market Road 901 with the Missouri-Kansas-Texas Railroad in Grayson County, Texas 76264.

RED RIVER AUTHORITY OF TEXAS has applied for renewal of TPDES Permit No. 11252-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,500 gallons per day. The facility is located approximately 0.7 mile east of the intersection of State Highway 86 and U.S. Highway 287, east of the City of Estelline, and south of the Fort Worth and Denver Railroad in Hall County, Texas 79233.

UNITED STATES DEPARTMENT OF THE AIR FORCE AND PETRUS ENVIRONMENTAL SERVICES INC has applied for a renewal of TPDES Permit No. WQ0012512001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 14,400 gallons per day. The facility is located approximately 8 miles north of the Town of Sandusky, on the southern shoreline of Lake Texoma in Grayson County, Texas 76273.

U S DEPARTMENT OF THE INTERIOR has applied for a renewal of TPDES Permit No. WQ0012865001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day and requests to move the facility 500 feet northwest of the current facility location. In the interim phase, the facility is located approximately 3,300 feet northwest of the Chisos Mountain Lodge in the Basin in Big Bend National Park in Brewster County, Texas 79834. In the final phase, the facility is located approximately 3,800 feet northwest of the Chisos Mountain Lodge in the Basin in Big Bend National Park in Brewster County, Texas 79834.

CITY OF HACKBERRY has applied for a renewal of TPDES Permit No. WQ0013434001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 710,000 gallons per day. The facility is located at the southern end of Maxwell Road in the City of Hackberry in Denton County, Texas 75034.

REUNION 20 TRAVEL VILLAGE LTD has applied for a renewal of TPDES Permit No. WQ0014152001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 56,000 gallons per day. The facility will be located approximately 1,000 feet east northeast of the intersection of Interstate Highway 20 and U.S. Highway 271 in Smith County, Texas 75708.

QUADVEST L P has applied for a renewal of TPDES Permit No. WQ0014711001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 320,000 gallons per day. The facility is located approximately 4,000 feet north-northeast of the intersection of Farm-to-Market Road 1488 and Community Road in Montgomery County, Texas 77354.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, toll free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201006814

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 1, 2010

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on November 17, 2010, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Syed Ali and Ahmed Realty GP, L.L.C. Both DBA Chevron HP #333; SOAH Docket No. 582-10-1411; TCEQ Docket No. 2006-1471-PST-E. The Commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Syed Ali and Ahmed Realty GP, L.L.C. Both DBA Chevron HP #333 on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201006755
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 24, 2010

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Texas Facilities Commission

Request for Proposals #303-1-20261

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General, announces the issuance of Request for Proposals (RFP) #303-1-20261. TFC seeks a five or ten year lease of approximately 11,525 square feet of office space in City of Tyler, Smith County, Texas.

The deadline for questions is December 13, 2010, and the deadline for proposals is December 20, 2010, at 3:00 p.m. The target award date is February 16, 2011. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Contract Specialist Sandy Williams at (512) 475-0453 or sandy.williams@tfc.state.tx.us. Any addendum to the original RFP will be posted to the Electronic State Business Daily. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=92035.*

TRD-201006701
Kay Molina
General Counsel
Texas Facilities Commission
Filed: November 22, 2010

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Request for Proposals #303-1-20262

The Texas Facilities Commission (TFC), on behalf of the Texas Health and Human Services Commission, the Department of Aging and Disability Services, and the Department of Family and Protective Services, announces the issuance of Request for Proposals (RFP) #303-1-20262. TFC seeks a five or ten year lease of approximately 24,875 square feet of office space in City of Arlington, Tarrant County, Texas.

The deadline for questions is January 3, 2011, and the deadline for proposals is January 10, 2011, at 3:00 p.m. The target award date is February 16, 2011. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Contract Specialist Sandy Williams at (512) 475-0453 or sandy.williams@tfc.state.tx.us. Any addendum to the original RFP will be posted to the Electronic State Business Daily. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=92037.*

TRD-201006700
Kay Molina
General Counsel
Texas Facilities Commission
Filed: November 22, 2010

♦ ♦ ♦

General Land Office

Notice of Violation - Derelict Vessel

Official Notice to Vessel Owner/Operator (Pursuant to §40.254, Texas Natural Resources Code)

This preliminary report and notice of violation was issued by Greg Pollock, Deputy Commissioner, Oil Spill Prevention and Response Division (OSPR), Texas General Land Office, on 23 November 2010.

PRELIMINARY REPORT

Region 5 staff conducted an investigation on 8 October 2009. The Deputy Commissioner of the General Land Office (GLO), Oil Spill Prevention and Response Division, has determined that this 40 foot wood-hulled Chris-Craft recreational vessel TX 4437AY (GLO Vessel 5-653), is in an abandoned, wrecked, and derelict condition without the consent of the commissioner. In addition, the Deputy Commissioner has determined, pursuant to OSPR §40.254(b)(2)(B), that the vessel has no intrinsic value. The vessel is currently located in a slip in the East Bay Marina, in the City of Palacios, in Matagorda County, Texas. It is currently located at latitude 28 degrees 42 minutes 33 seconds N, longitude 96 degrees 12 minutes 33 seconds W. The vessel is sunken in its slip, but is emergent. The GLO attempted to contact two apparent previous owners of the vessel, Mr. Jack Linney Jr. and Mr. Charles L. Wright. A certified letter sent to Mr. Linney Jr. in January 2010 was returned as undeliverable. The GLO attempted to contact Mr. Wright of Bay City, by phone, but he had moved with no known forwarding address or contact information. The GLO cannot determine the owner of or responsible person(s) for this abandoned vessel. The GLO further determined that, because of the vessel's condition and location, the vessel poses an unreasonable threat to public health, safety, and welfare and a hazard to the environment.

Violation

You are hereby given notice, pursuant to the provisions of §40.254 of the Texas Natural Resources Code (OSPRA) that you are in violation of OSPRA §40.108(a) that prohibits a person from leaving, abandoning,

or maintaining any structure or vessel in or on coastal waters, on public or private lands, or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition, and the Commissioner determines the vessel is involved in an actual or unauthorized discharge of oil, a threat to the public health, safety, and welfare, or a hazard to the environment or navigation. The Commissioner is authorized by OSPRA §40.108(b) to dispose of or contract for the disposal of any vessel described in §40.108(a).

Recommendation

The Commissioner recommends that the vessel be removed from Texas coastal waters and disposed of in accordance with OSPRA §40.108.

The owner or operator of this vessel can request a hearing to contest the violation and the removal and disposal of the vessel. If the owner or operator wants to request a hearing, a request in writing must be made within twenty (20) days of this notice being posted on the vessel. The request for a hearing must be sent to: Texas General Land Office, Oil Spill Prevention and Response Division, P.O. Box 12873, Austin, TX 78711. Failure to request a hearing may result in the removal and disposal of the vessel by the TGLO. If the TGLO removes and disposes of the vessel, the TGLO has authority under TNRC §40.108(b) to recover the costs of removal and disposal from the vessel's owner or operator.

For additional information contact Wm. D. "Bill" Grimes at (512) 475-1464.

TRD-201006775
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: November 30, 2010

♦ ♦ ♦

Notice of Violation - Derelict Vessel

Official Notice to Vessel Owner/Operator (Pursuant to §40.254, Texas Natural Resources Code)

This preliminary report and notice of violation was issued by Greg Pollock, Deputy Commissioner, Oil Spill Prevention and Response Division (OSPR), Texas General Land Office, on 12 October 2010.

Preliminary Report

Region 1 staff conducted an investigation on 4 October 2010. The Deputy Commissioner of the General Land Office (GLO), Oil Spill Prevention and Response Division, has determined that this approximately 35 foot fiberglass-hulled recreational vessel (GLO Vessel 1-996), is in an abandoned, wrecked, and derelict condition without the consent of the commissioner. In addition, the Deputy Commissioner has determined, pursuant to OSPR §40.254(b)(2)(B), that the vessel has no intrinsic value. The vessel is completely submerged, and is located on the Sabine River, adjacent to a residence located at 215 W. Front Street in the City of Orange, in Orange County, Texas. It is located at Latitude 30 degrees 05 minutes 26.0 seconds N, Longitude 93 degrees 43 minutes 50.0 seconds W. The GLO cannot determine the owner of or responsible person(s) for this abandoned vessel. The GLO further determined that, because of the vessel's condition and location, the vessel poses an unreasonable threat to public health, safety, and welfare, a hazard to the environment, and a threat to navigation.

Violation

You are hereby given notice, pursuant to the provisions of §40.254 of the Texas Natural Resources Code (OSPRA) that you are in violation of OSPRA §40.108(a) that prohibits a person from leaving, abandoning, or maintaining any structure or vessel in or on coastal waters, on public or private lands, or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition, and the Commissioner determines the vessel is involved in an actual or unauthorized discharge of oil, a threat to the public health, safety, and welfare, or a hazard to the environment or navigation. The Commissioner is authorized by OSPRA §40.108(b) to dispose of or contract for the disposal of any vessel described in §40.108(a).

Recommendation

The Commissioner recommends that the vessel be removed from Texas coastal waters and disposed of in accordance with OSPRA §40.108.

The owner or operator of this vessel can request a hearing to contest the violation and the removal and disposal of the vessel. If the owner or operator wants to request a hearing, a request in writing must be made within twenty (20) days of this notice being posted on the vessel. The request for a hearing must be sent to: Texas General Land Office, Oil Spill Prevention and Response Division, P.O. Box 12873, Austin, TX 78711. Failure to request a hearing may result in the removal and disposal of the vessel by the TGLO. If the TGLO removes and disposes of the vessel, the TGLO has authority under TNRC §40.108(b) to recover the costs of removal and disposal from the vessel's owner or operator.

For additional information contact Wm. D. "Bill" Grimes at (512) 475-1464.

TRD-201006776
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: November 30, 2010

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Corpus Christi	Flint Hills Resources Corpus Christi LLC	L06360	Corpus Christi	00	11/04/10
El Paso	Rio Grande Nuclear Pharmacy LLC	L06362	El Paso	00	11/08/10
Fort Worth	Gorrondona & Associates, Inc.	L06359	Fort Worth	00	11/02/10
Houston	St. Luke's Hospital at the Vintage LLC	L06348	Houston	00	11/08/10
Throughout TX	AGD Inspection Services	L06368	Houston	00	10/29/10

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Alvin	INEOS USA LLC	L01422	Alvin	70	10/21/10
Amarillo	Panhandle Nuclear Rx, Ltd.	L04683	Amarillo	24	11/01/10
Amarillo	Panhandle Nuclear Rx, Ltd.	L04683	Amarillo	25	11/12/10
Austin	Seton Healthcare dba Seton Medical Center Austin	L02896	Austin	113	11/10/10
Bastrop	Bastrop Blackhawk LLC dba Lakeside Hospital at Bastrop	L06311	Bastrop	02	11/02/10
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	128	11/02/10
Bishop	Ticona Polymers, Inc.	L02441	Bishop	46	11/02/10
Coppell	Logistics Systems Incorporated	L06337	Coppell	01	11/09/10
Corpus Christi	Triad Isotopes, Inc. dba Triad Isotopes-Corpus Christi	L05368	Corpus Christi	16	11/04/10
Dallas	Cardinal Health	L02048	Dallas	135	11/03/10
Dallas	Texas Heart Care P.A.	L06067	Dallas	05	10/29/10
Dallas	Media Physics, Inc. dba G.E. Healthcare	L05529	Dallas	29	11/01/10
Dallas	Media Physics, Inc. dba G.E. Healthcare	L05529	Dallas	30	11/08/10
Dallas	The University of Texas Southwestern Medical Center at Dallas	L00384	Dallas	105	11/05/10
Dallas	Mallinckrodt, Inc.	L03580	Dallas	71	11/04/10
Deer Park	Momentive Specialty Chemicals, Inc.	L05323	Dear Park	06	11/08/10
Denton	Molecular Insight Pharmaceuticals, Inc.	L06138	Denton	01	11/10/10
Fort Worth	Fort Worth Heart P.A.	L05480	Fort Worth	34	10/29/10
Fort Worth	Oncology Hematology Consultants P.A.	L05919	Fort Worth	16	11/10/10
Freeport	Rhodia, Inc.	L02807	Freeport	37	11/04/10
Henderson	East Texas Medical Center Henderson	L06281	Henderson	02	11/03/10
Houston	Memorial Hermann Healthcare System dba Hermann Hospital	L04655	Houston	41	11/02/10
Houston	E + Pet Imaging II LP dba Pet Imaging of Houston	L05620	Houston	10	11/01/10
Houston	Houston Refining LP	L00187	Houston	66	10/28/10
Houston	The Methodist Hospital	L00457	Houston	176	11/05/10
Houston	American Diagnostic Tech LLC	L05514	Houston	59	11/05/10
Houston	Mallinckrodt Medical Inc.	L03008	Houston	83	11/04/10
Houston	CHCA West Houston LP dba West Houston Medical Center	L05808	Houston	13	11/03/10
Houston	Institute of Biosciences and Technology	L04681	Houston	31	11/10/10
Houston	Ben Taub General Hospital	L01303	Houston	70	11/09/10
Houston	Houston Heart Clinic	L05671	Houston	07	11/09/10

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Kingwood	Millennium Physicians Association PLLC dba Millennium PET/CT Center	L05901	Kingwood	06	11/08/10
La Porte	INEOS USA LLC	L00088	La Porte	58	11/02/10
La Porte	Braskem PP Americas, Inc.	L06292	La Porte	02	11/04/10
Lake Jackson	Brazosport Cardiology dba Pearland Heart Institute	L05359	Lake Jackson	07	11/03/10
League City	Gulf Coast Heart Clinic PLLC	L06286	League City	02	11/10/10
Lubbock	Covenant Health System dba Joe Arrington Cancer Research and Treatment Center	L04881	Lubbock	51	11/01/10
Lubbock	Cardinal Health	L02737	Lubbock	61	11/01/10
Lubbock	Cardinal Health Nuclear Pharmacy Services	L06290	Lubbock	03	11/05/10
Odessa	Odessa Regional Hospital LP dba Odessa Regional Medical Center	L04885	Odessa	13	11/04/10
Richardson	Raytheon Company	L04096	Richardson	29	11/03/10
San Antonio	VHS San Antonio Partners LLC dba Baptist Health System	L00455	San Antonio	202	11/02/10
San Antonio	Southwest General Hospital LLP dba Southwest General Hospital	L02689	San Antonio	39	11/02/10
San Antonio	Methodist Healthcare System of San Antonio, Ltd. dba The Gamma Knife Center	L05076	San Antonio	28	11/10/10
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	125	11/11/10
Spring	Supply Chain Solutions Ltd. dba Antares USA Ltd.	L06253	Spring	02	11/10/10
Taylor	Scott & White Hospital-Taylor	L03657	Taylor	29	11/09/10
Temple	Texas A&M University System Health Science Center	L05494	Temple	14	11/10/10
Throughout TX	Desert Industrial X-Ray LP	L04590	Abilene	113	11/02/10
Throughout TX	Global X-Ray & Testing Corporation	L03663	Aransas Pass	114	11/10/10
Throughout TX	Lower Colorado River Authority	L02738	Austin	46	11/05/10
Throughout TX	IESCO LLC	L06351	Corpus Christi	01	11/04/10
Throughout TX	APAC-Texas, Inc.	L04503	Dallas	14	11/08/10
Throughout TX	IRISNDT, Inc.	L04769	Deer Park	91	11/08/10
Throughout TX	Cardinal Health	L01999	El Paso	113	11/09/10
Throughout TX	QC Laboratories, Inc.	L04750	Houston	26	11/03/10
Throughout TX	Protechnics Division of Core Laboratories, LP	L03835	Houston	56	11/05/10
Throughout TX	QISI, Inc. dba Quality Inspection Services	L06219	LaPorte	04	11/08/10
Throughout TX	QISI, Inc. dba Quality Inspection Services	L06219	LaPorte	05	11/10/10
Throughout TX	RNLS LLC dba Renegade Services	L06307	Levelland	05	11/08/10
Throughout TX	Sivalls, Inc.	L02298	Odessa	40	11/01/10
Throughout TX	Quantum Technical Services, Inc.	L03731	Pasadena	34	11/01/10
Throughout TX	Tracerco	L03096	Pasadena	74	11/10/10
Tomball	Northwest Houston Heart Center	L05958	Tomball	08	11/10/10
Tyler	The University of Texas Health Science Center at Tyler	L01796	Tyler	66	11/05/10
Tyler	Cardiovascular Associates of East Texas P.A.	L04800	Tyler	24	11/05/10
Wichita Falls	Jerry K. Myers, M.D. Associated dba Breast Center of Texoma	L06221	Wichita Falls	03	10/27/10

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Proportional Technologies, Inc.	L04747	Houston	27	10/29/10

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
McAllen	McAllen Pet Imaging Center LLC	L05460	McAllen	08	11/05/10
San Antonio	Snip and Ference P.A.	L00106	San Antonio	24	11/02/10
Throughout TX	City of Eagle Pass	L05758	Eagle Pass	02	11/09/10
Throughout TX	LFC, Inc.	L05970	Houston	05	11/03/10
Throughout TX	SYMB Environment LLC	L06197	Wallisville	02	11/04/10

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289, regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, TX 78714-9347. For information call (512) 834-6688.

TRD-201006707
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: November 23, 2010

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Texas Department of Insurance

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of RICHARD A. BEALE, INC. (DOING BUSINESS AS BEALE PROFESSIONAL SERVICES), a foreign third party administrator. The home office is OKLAHOMA CITY, OKLAHOMA.

Application of HEALTH E SYSTEMS, LLC, a foreign third party administrator. The home office is TAMPA, FLORIDA.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-201006773

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: November 29, 2010

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Texas Department of Licensing and Regulation

Public Notice - Deadline Extended for Public Comments

In the November 12, 2010, issue of the *Texas Register* (35 TexReg 10061), the Texas Department of Licensing and Regulation filed a notice of intent to review and consider for readoption, revision, or repeal, 16 Texas Administrative Code Chapter 66, Registration of Property Tax Consultants in accordance with the requirements of Texas Government Code, §2001.039.

The deadline for receipt of comments regarding this rule review was originally set for December 13, 2010. This notice is to extend the public comment period to 5:00 p.m. on January 13, 2011.

Any questions or written comments pertaining to this rule review may be submitted by mail to Caroline Jackson, Legal Assistant Team Lead, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us.

TRD-201006818

William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: December 1, 2010

♦ ♦ ♦

Public Notice - Deadline Extended for Public Comments

In the November 12, 2010, issue of the *Texas Register* (35 TexReg 10062), the Texas Department of Licensing and Regulation filed a notice of intent to review and consider for readoption, revision, or repeal, 16 Texas Administrative Code Chapter 71, Warrantors of Vehicle Protection Products in accordance with the requirements of Texas Government Code, §2001.039.

The deadline for receipt of comments regarding this rule review was originally set for December 13, 2010. This notice is to extend the public comment period to 5:00 p.m. on January 13, 2011.

Any questions or written comments pertaining to this rule review may be submitted by mail to Caroline Jackson, Legal Assistant Team Lead, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us.

TRD-201006816
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: December 1, 2010

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Public Notice - Deadline Extended for Public Comments

In the November 12, 2010, issue of the *Texas Register* (35 TexReg 10062), the Texas Department of Licensing and Regulation filed a notice of intent to review and consider for readoption, revision, or repeal, 16 Texas Administrative Code Chapter 77, Service Contract Providers and Administrators in accordance with the requirements of Texas Government Code, §2001.039.

The deadline for receipt of comments regarding this rule review was originally set for December 13, 2010. This notice is to extend the public comment period to 5:00 p.m. on January 13, 2011.

Any questions or written comments pertaining to this rule review may be submitted by mail to Caroline Jackson, Legal Assistant Team Lead, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us.

TRD-201006817
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: December 1, 2010

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Public Notice - Deadline Extended for Public Comments

In the November 12, 2010, issue of the *Texas Register* (35 TexReg 10063), the Texas Department of Licensing and Regulation filed a notice of intent to review and consider for readoption, revision, or repeal, 16 Texas Administrative Code Chapter 79, Weather Modification in accordance with the requirements of Texas Government Code, §2001.039.

The deadline for receipt of comments regarding this rule review was originally set for December 13, 2010. This notice is to extend the public comment period to 5:00 p.m. on January 13, 2011.

Any questions or written comments pertaining to this rule review may be submitted by mail to Caroline Jackson, Legal Assistant Team Lead, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us.

TRD-201006815
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: December 1, 2010

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Public Notice - Deadline Extended for Public Comments

In the November 12, 2010, issue of the *Texas Register* (35 TexReg 10063), the Texas Department of Licensing and Regulation filed a notice of intent to review and consider for readoption, revision, or repeal, 16 Texas Administrative Code Chapter 80, Licensed Court Interpreters in accordance with the requirements of Texas Government Code, §2001.039.

The deadline for receipt of comments regarding this rule review was originally set for December 13, 2010. This notice is to extend the public comment period to 5:00 p.m. on January 13, 2011.

Any questions or written comments pertaining to this rule review may be submitted by mail to Caroline Jackson, Legal Assistant Team Lead, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us.

TRD-201006819
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: December 1, 2010

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Public Notice - Deadline Extended for Public Comments

In the November 12, 2010, issue of the *Texas Register* (35 TexReg 10064), the Texas Department of Licensing and Regulation filed a notice of intent to review and consider for readoption, revision, or repeal, 16 Texas Administrative Code Chapter 82, Barbers in accordance with the requirements of Texas Government Code, §2001.039.

The deadline for receipt of comments regarding this rule review was originally set for December 13, 2010. This notice is to extend the public comment period to 5:00 p.m. on January 13, 2011.

Any questions or written comments pertaining to this rule review may be submitted by mail to Caroline Jackson, Legal Assistant Team Lead, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us.

TRD-201006821
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: December 1, 2010

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Public Notice - Deadline Extended for Public Comments

In the November 12, 2010, issue of the *Texas Register* (35 TexReg 10064), the Texas Department of Licensing and Regulation filed a notice of intent to review and consider for readoption, revision, or repeal, 16 Texas Administrative Code Chapter 83, Cosmetologists in accordance with the requirements of Texas Government Code, §2001.039.

The deadline for receipt of comments regarding this rule review was originally set for December 13, 2010. This notice is to extend the public comment period to 5:00 p.m. on January 13, 2011.

Any questions or written comments pertaining to this rule review may be submitted by mail to Caroline Jackson, Legal Assistant Team Lead, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us.

TRD-201006820

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: December 1, 2010

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Texas Lottery Commission

Instant Game Number 1350 "Bingo Multi-Prize"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1350 is "BINGO MULTI-PRIZE." The play style for the game BINGO is "bingo."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1350 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1350.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 2X, 5X, 10X and FREE.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1350 - 1.2D

PLAY SYMBOL	CAPTION
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74	
75	
2X	PRIZE
5X	PRIZE
10X	PRIZE
FREE	

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $25.00, $30.00, $40.00, $50.00, $75.00, $100, $200 or $500.

H. High-Tier Prize - A prize of $1,000, $2,000, $5,000, $20,000 or $50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1350), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1350-0000001-001.

K. Pack - A pack of "BINGO MULTI-PRIZE" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BINGO MULTI-PRIZE" Instant Game No. 1350 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BINGO MULTI-PRIZE" Instant Game is determined once the latex on the ticket is scratched off to expose 195 (one hundred ninety-five) play symbols. The player must scratch off the CALLER'S CARD area to reveal 24 (twenty-four) Bingo Numbers and six (6) Bonus Numbers. The player must scratch all of the Bingo Numbers and Bonus Numbers on CARDS 1 through 6 that match the Bingo Numbers on the CALLER'S CARD. Each "CARD" has a corresponding prize legend. Players win by matching those same numbers on the six Player's Cards. If the player finds a diagonal, vertical or horizontal straight line, the four corners of the grid, or an X pattern, the player wins a prize according to the legend of the respective playing grid. Examples of play: If a player matches all bingo numbers plus the Free Space in a complete horizontal, vertical or diagonal line pattern in any one card, the player wins prize according to the legend of the respective playing card. If the player matches all bingo numbers in all four (4) corners pattern in any one card, the player wins prize according to the legend of the respective playing card. If the player matches all bingo numbers plus Free Space to make a complete "X" pattern in any one card, the player wins prize according to the legend of the respective playing card. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 198 (one hundred ninety-eight) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 198 (one hundred ninety-eight) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 198 (one hundred ninety-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 198 (one hundred ninety-eight) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a pack will not have identical patterns.

B. A ticket will win as indicated by the prize structure.

C. A ticket can win up to six times.

D. BINGO CARDS: There will never be more than one win on a single BINGO CARD.

E. BINGO CARDS: The highest prize won per card will be paid.

F. BINGO CARDS: No duplicate numbers will appear on the CALLER'S CARD.

G. BINGO CARDS: No duplicate numbers will appear on each individual BINGO CARD.

H. BINGO CARDS: The number range used for each letter will be as follows: B: 01-15, I: 16-30, N: 31-45, G: 46-60, 0: 61-75.

I. BINGO CARDS: Each BINGO CARD on the same ticket must be unique.

J. BINGO CARDS: The 24 CALLER'S CARD numbers and 6 BONUS NUMBERS will match 53 to 83 numbers per ticket.

K. BINGO CARDS: The majority of the tickets will have unique configurations.

L. BINGO CARDS: There will be at least one (1) 'near win' on each of the six (6) BINGO CARDS on each non-winning ticket.

M. BINGO CARDS: A 'near win' is one number short of a complete horizontal, vertical, diagonal line or 4 corners, except for the 'X' where there are two numbers less, one in each diagonal line (one of which must be a corner).

N. MULTI-PRIZE CARD: All numbers within the MULTI-PRIZE CARD will be unique.

O. MULTI-PRIZE CARD: Only one completed combination per MULTI-PRIZE CARD per ticket (i.e. on any ticket, if the "5X PRIZE" row is completed, the "2X PRIZE" and "10X PRIZE" rows will not be completed).

P. MULTI-PRIZE CARD: Winning tickets that do not include a win on the MULTIPRIZE CARD will have at least one (1) near-win in this area, where a near-win is defined as one number short of a horizontal line in either the 2X PRIZE, 5X PRIZE or 10X PRIZE rows in the following approximate breakdown: "2X PRIZE" 30%, "5X PRIZE" 30%, "10X PRIZE" 40%.

2.3 Procedure for Claiming Prizes.

A. To claim a "BINGO MULTI-PRIZE" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $25.00, $30.00, $40.00, $50.00, $75.00, $100, $200 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, required to pay a $25.00, $30.00, $40.00. $50.00, $75.00, $100, $200 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BINGO MULTI-PRIZE" Instant Game prize of $1,000, $2,000, $5,000, $20,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BINGO MULTI-PRIZE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is

not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "BINGO MULTI-PRIZE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "BINGO MULTI-PRIZE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,000,000 tickets in the Instant Game No. 1350. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1350 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	2,550,000	5.88
$10	700,000	21.43
$15	350,000	42.86
$20	300,000	50.00
$25	145,000	103.45
$30	40,625	369.23
$40	37,500	400.00
$50	64,375	233.01
$75	16,250	923.08
$100	31,625	474.31
$200	13,750	1,090.91
$500	3,625	4,137.93
$1,000	90	166,666.67
$2,000	28	535,714.29
$5,000	42	357,142.86
$20,000	16	937,500.00
$50,000	16	937,500.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.53. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1350 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1350, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201006663
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 19, 2010

♦ ♦ ♦

Instant Game Number 1352 "$250,000 Bingo"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1352 is "$250,000 BINGO." The play style for the game SLOTS is "key symbol match." The play style for the game INSTANT BONUS is "auto win." The play style for the game BINGO is "bingo."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1352 shall be $10.00 per ticket.

1.2 Definitions in Instant Game No. 1352.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are $10.00, $20.00, $50.00, $100, $500, CHERRIES SYMBOL, LEMON SYMBOL, STACK OF BILLS SYMBOL, CROWN SYMBOL, HORSESHOE SYMBOL, SHAMROCK SYMBOL, POT OF GOLD SYMBOL, GOLD BAR SYMBOL, BELL SYMBOL, TEN SYMBOL, TWENTY SYMBOL, FIFTY SYMBOL, SVY FIV SYMBOL, ONE HUN SYMBOL, TWO FTY SYMBOL, FIV HUN SYMBOL, TRY SYMBOL, MAYBE SYMBOL, B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57,

G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75 and FREE.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1352 - 1.2D

PLAY SYMBOL	CAPTION
B01	
B02	
B03	
B04	
B05	
B06	
B07	
B08	
B09	
B10	
B11	
B12	
B13	
B14	
B15	
I16	
I17	
I18	
I19	
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74	
75	
FREE	
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUN
$500	FIV HUN
CHERRIES SYMBOL	CHERRY
LEMON SYMBOL	LEMON
STACK OF BILLS SYMBOL	BILLS
CROWN SYMBOL	CROWN
HORSESHOE SYMBOL	HRSHOE
SHAMROCK SYMBOL	SHMRCK
POT OF GOLD SYMBOL	GOLD
GOLD BAR SYMBOL	BAR
BELL SYMBOL	BELL
TEN SYMBOL	DOLLARS
TWENTY SYMBOL	DOLLARS
FIFTY SYMBOL	DOLLARS
SVY FIV SYMBOL	DOLLARS
ONE HUN SYMBOL	DOLLARS
TWO FTY SYMBOL	DOLLARS
FIV HUN SYMBOL	DOLLARS
TRY SYMBOL	AGAIN
MAYBE SYMBOL	NEXT TIME

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $50.00, $75.00, $100, $125, $175, $250 or $500.

H. High-Tier Prize - A prize of $750, $1,000, $2,500, $10,000 or $250,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1352), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 1352-0000001-001.

K. Pack - A pack of "$250,000 BINGO" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed. All packs will be tightly shrinkwrapped. There will be no breaks between the tickets in a pack.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$250,000 BINGO" Instant Game No. 1352 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket.

A prize winner in the "$250,000 BINGO" Instant Game is determined once the latex on the ticket is scratched off to expose 193 (one hundred ninety-three) play symbols. For the game SLOTS, if a player reveals 3 matching play symbols in any one PULL, the player wins PRIZE for that pull. For the game INSTANT BONUS, if a player reveals a prize amount play symbol, the player wins that amount instantly. For the game BINGO, the player must scratch off the CALLER'S CARD area to reveal 30 (thirty) Bingo Numbers. The player must scratch all the Bingo Numbers on CARDS 1 through 6 that match the Bingo Numbers on the CALLER'S CARD. Each "CARD" has a corresponding prize legend. Players win by matching those same numbers on the six Player's Cards. If the player finds a diagonal, vertical or horizontal straight line, the four corners of the grid, or an X pattern, the player wins a prize according to the legend of the respective playing grid. Examples of play: If a player matches all bingo numbers plus the Free Space in a complete horizontal, vertical or diagonal line pattern in any one card, the player wins prize according to the legend of the respective playing card. If the player matches all bingo numbers in all four (4) corners pattern in any one card, the player wins prize according to the legend of the respective playing card. If the player matches all bingo numbers plus Free Space to make a complete "X" pattern in any one card, the player wins prize according to the legend of the respective playing card. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 193 (one hundred ninety-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 193 (one hundred ninety-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 193 (one hundred ninety-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 193 (one hundred ninety three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a pack will not have identical patterns.

B. A ticket will win as indicated by the prize structure.

C. A ticket can win up to three times.

D. BINGO: There will never be more than one win on a single BINGO CARD.

E. BINGO: The highest prize won per card will be paid.

F. BINGO: No duplicate numbers will appear on the CALLER'S CARD.

G. BINGO: No duplicate numbers will appear on each individual BINGO CARD.

H. BINGO: The number range used for each letter (B, I, N, G, O) will be as follows: B(01-15), I(16-30), N(31-45), G(46-60), O(61-75).

I. BINGO: Each BINGO CARD on the same ticket must be unique.

J. BINGO: The 30 CALLER'S CARD numbers will match 53 to 83 numbers per ticket.

K. BINGO: The majority of the tickets will have unique configurations.

L. BINGO: There will be at least one (1) 'near win' on each of the six (6) BINGO CARDS on each non-winning ticket.

M. BINGO: A 'near win' is one number short of a complete horizontal, vertical, diagonal line or 4 corners, except for the 'X' where there are two numbers less, one in each diagonal line (one of which must be a corner).

N. SLOTS: The Play area consists of nine (9) play symbols and three (3) PRIZE symbols.

O. SLOTS: There will never be three (3) identical symbols in a vertical or diagonal line.

P. SLOTS: No prize amount will appear more than once in this play area except as required on multiple win tickets.

Q. SLOTS: Non-winning tickets will never contain more than two (2) of the same play symbols over the entire play area.

R. SLOTS: Consecutive non-winning tickets within a pack will not have identical PULLS. For instance if the first ticket contains CHERRIES, CROWN, POT OF GOLD in any PULL then the next ticket may not contain CHERRIES, CROWN and POT OF GOLD in any row in any order.

S. SLOTS: Non-winning tickets will not have identical games. For example if PULL 1 is CHERRIES, CROWN, and POT OF GOLD then PULL 2 and PULL 3 will not contain CHERRIES, CROWN, and POT OF GOLD in any order.

T. SLOTS: Winning tickets will contain three (3) matching Play Symbols in a horizontal row.

U. SLOTS: On winning tickets, non-winning games will have different prize amounts from the winning prize amounts in this play area.

V. INSTANT BONUS: The Play area consists of one (1) Play Symbol.

W. INSTANT BONUS: Winning tickets will display a prize amount: TEN DOLLARS, TWENTY DOLLARS, FIFTY DOLLARS, SVY FIV DOLLARS, ONE HUN DOLLARS, TWO FTY DOLLARS OR FIV HUN DOLLARS.

2.3 Procedure for Claiming Prizes.

A. To claim a "$250,000 BINGO" Instant Game prize of $10.00, $20.00, $30.00, $50.00, $75.00, $100, $125, $175, $250, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, required to pay a $30.00, $50.00, $75.00, $100, $125, $175, $250 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$250,000 BINGO" Instant Game prize of $750, $1,000, $2,500, $10,000 or $250,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$250,000 BINGO" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "$250,000 BINGO" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "$250,000 BINGO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available

in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,120,000 tickets in the Instant Game No. 1352. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1352 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$10	686,400	4.55
$20	187,200	16.67
$30	13,000	240.00
$50	67,600	46.15
$75	7,800	400.00
$100	13,000	240.00
$125	5,200	600.00
$175	5,200	600.00
$250	4,225	738.46
$500	3,055	1,021.28
$750	143	21,818.18
$1,000	18	173,333.33
$2,500	5	624,000.00
$10,000	4	780,000.00
$250,000	5	624,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.14. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1352 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1352, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201006664

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 19, 2010

♦ ♦ ♦

Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transaction

Land Acquisition - Val Verde County (Devils River Ranch)

In a meeting on Monday, December 20, 2010, the Texas Parks and Wildlife Commission (the Commission) will consider and may take action regarding the acquisition of approximately 17,638 acres in Val Verde County. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at Texas Parks and Wildlife

Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or through the Texas Parks and Wildlife Department's web site at www.tpwd.state.tx.us.

TRD-201006812
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: December 1, 2010

♦ ♦ ♦

Notice of Request for Proposals

Section 6 Competitive ("Nontraditional") Grants

FY 2011 Request for Proposals

The Texas Parks and Wildlife Department (TPWD) requests proposals for Fiscal Year 2011 Competitive ("Nontraditional") Section 6 funds. These are funds made available to state wildlife agencies through the Cooperative Endangered Species Conservation Fund (CESCF) from Section 6 of the Endangered Species Act (Department of Interior, U.S. Fish and Wildlife Service; hereafter "USFWS") for the conservation of threatened and endangered species. The CESCF programs are authorized through Endangered Species Act of 1973, 16 U.S.C. §1361 et seq., as amended. The codified program regulations can be found at 50 CFR 81. A full description of the federal RFP is available at http://www.fws.gov/endangered/esa-library/pdf/FY%2011%20CESCF_RFP_Grant%20Announcement_Standard_Format.PDF.

These are competitive, nationwide (U. S.) funds - there are no funds directly earmarked for Texas. These funds are not directly available to individual organizations, but are indirectly available through partnership with TPWD. In Texas, all proposals must be submitted through TPWD and must strictly follow guidelines indicated or identified in this notice.

Proposals submitted by TPWD will compete with other proposals regionally (Recovery Land Acquisitions) and nationally (Habitat Conservation Planning, and HCP Land Acquisitions).

For the FY11 Grant Cycle: The USFWS is committing resources to addressing climate change, and if a project proposal has a climate change component then the project narrative should articulate how the project addresses that topic. As part of this commitment the USFWS is encouraging Regional Offices to include the context of climate change when evaluating new proposals (for more information see section in federal RFP, entitled "Changes to the Nontraditional Programs for Fiscal Year 2011").

Funding (approx. $85 million for FY11, total) is available for the following programs:

FY2011 Program Funding Availability

Grant Program	Purpose	Species Benefitting	Competition	Financial Match Requirement*
Recovery Land Acquisition	acquisition of habitat in support of approved recovery goals or objectives	federally listed threatened or endangered species	regional	25% of estimated project cost; or 10% when two or more States or Territories implement a joint project
Habitat Conservation Planning Assistance	support development of Habitat Conservation Plans (HCPs)	federally listed threatened or endangered species, proposed and candidate species, and unlisted species proposed to be covered by the HCP**	national	25% of estimated project cost; or 10% when two or more States or Territories implement a joint project
Habitat Conservatipn Plan Land Acquisition	acquisition of land associated with approved HCPs	federally listed threatened or endangered species, unlisted (including State-listed species), proposed and candidate species covered by the HCP**	national	25% of estimated project cost; or 10% when two or more States or Territories implement a joint project

*As required under Section 6 of the Endangered Species Act, grants to states and territories must include a minimum contribution by the project's non-Federal partners. These contributions can be in-kind staff time or donations.

**A species covered by the HCP is any species (listed or unlisted) that is included in the section 10(a)(1)(B) permit, thus receiving incidental take authorization.

The grant requires a 75:25 cost share, so applicants will need to provide the 25% match. The match is based upon Total Project Costs, and must be from non-federal funding sources.

Awards for these CESCF "Nontraditional" grants (i.e., Competitive Section 6) will be announced through a national press release and a memorandum to the Regional Directors of the Service for further notification of the applicants' selection for an award. Notification of an award through a press release or letter from a USFWS Regional Office is not an authorization to begin performance. The successful applicant (thereafter referred to as "subrecipient" or "subgrantee") to TPWD in response to the program announced here will be asked to sign an agreement (state contract) that specifies the project requirements, such as the cost share, the project design, the time commitment for maintaining the project's benefits, and the reporting requirements, and that provides for USFWS access to the project area in order to check on its progress.

The subrecipient is reimbursed based on the cost-sharing formula in the agreement. An applicant should not initiate a project proposal in expectation of CESCF funding, nor should they purchase materials or begin work until such time as they receive the final grant award document signed by an authorized Service official.

Please Note: the federal RFP instructs applicants to fill out a Standard Form-424, but you may disregard this request as TPWD will submit it for you.

Keep in mind the federal ranking criteria, as described under Application Review Information (Section V of the federal RFP), while developing your proposal. Project descriptions that clearly address the

specific ranking criteria in an organized manner will facilitate proposal review and scoring. If you have any questions regarding organization and structuring of your proposal please do not hesitate to contact us.

The following is a brief synopsis of the three available grants (Please read carefully).

IMPORTANT: there is now a strict three (3) year time limit for completion of projects in any of the categories listed below. If you are uncertain whether your project would be completed within a 3-year timeframe then you should consider not applying for these grants.

Habitat Conservation Planning Assistance Grants - This category provides funds to States and Territories to support the development of Habitat Conservation Plans (HCPs), or Regional Habitat Conservation Plans (RHCPs, which cover broader geographic areas, such as counties; but hereafter HCP refers also to RHCP). Competition for these grants is held at the National level. The purpose of an HCP is to ensure adequate protection for threatened and endangered species, while at the same time providing for economic growth and development. These grants provide support for baseline surveys and inventories, document preparation, outreach, and similar planning activities. In all cases it is expected that work funded from this grant would assist with recovery of covered species. Draft HCP documents prepared for an awarded HCP Planning grant are expected to meet issuance criteria for incidental take under Section 10(a) of the Endangered Species Act (1973, as amended). Applicants are strongly advised to consult with their local USFWS Field Office prior to submitting a final proposal in order to fully understand the documentation requirements leading to 10(a) permit issuance. The USFWS is the sole authority in determining whether issuance criteria have been met.

HCP Land Acquisition Grants *- These grants provide funds to States and Territories to acquire land associated with approved HCPs. Grants do not fund the mitigation required of an HCP permittee, but rather, support acquisitions by the state or local governments that complement actions associated with the HCP. Competition for these grants is held at the National level. The HCP Land Acquisition program supports both single-species and multiple-species HCPs. For fiscal year 2011, 10 percent of the funding available through the HCP Land Acquisition program will be targeted to support single-species HCP land acquisition projects.

The HCP Land Acquisition program has three primary purposes: 1) to fund land acquisitions that complement, but do not replace, private mitigation responsibilities contained in HCPs, 2) to fund land acquisitions that have important benefits for listed, proposed, and candidate species**, and 3) to fund land acquisitions that have important benefits for ecosystems that support listed, proposed and candidate species. The HCP Land Acquisition program supports both single-species and multiple-species HCPs.

New for FY11: HCP Planning Assistance Grant Cap- The Service will be implementing a $1 million cap on HCP Planning Assistance proposals. HCP Planning Assistance proposals should request no more than $1 million in Federal funds as the maximum amount that will be awarded annually per HCP planning effort is $1 million.

Recovery Land Acquisition Grants *- These grants provide funds to States and Territories for acquisition of threatened and endangered species habitat in support of approved and draft species recovery plans. Acquiring habitat in order to secure long term protection is often the critical element in a comprehensive recovery effort for a listed species. Generally, proposals benefiting multiple important taxa are ranked higher. Competition for these grants is held at the Regional level.

* For land acquisition grants (HCP Lands and Recovery Lands) it is important to note that development inholdings (i.e., within the boundaries of the subject property) are generally prohibited, except under the strictest of circumstances (e.g., single family dwelling, small footprint, minimal impact) on a case-by-case basis; no commercial development will be allowed.

** Candidate Species as defined at 50 CFR §424.02(b) means "any species being considered by the Secretary for listing as an endangered or a threatened species, but not yet the subject of a proposed rule." Therefore, any species identified by the State or Territorial agency that has entered into a cooperative agreement with the Service may be considered a candidate for the purposes of the CESCF grant programs provided that upon selecting a project for an award, or in forwarding that project for consideration for an award, the Regional Director will affirm that the species is being considered for listing, and upon conclusion of the grant project, make a determination of whether the species should or should not continue to be considered for listing as an endangered or threatened species.

Proposals (Project Statement)

Application proposals to TPWD for consideration under this grant program should strictly follow the guidelines below. Failure to follow format instructions will automatically disqualify the application package.

Project Statement Guidelines (Times New Roman, 11 pt, single spaced):

Title Page. Include Title, Name and Contact information for applicants.

Need. Why is the project being undertaken? (NOT TO EXCEED ONE PAGE)

Objective. What is to be accomplished during the period of the grant pursuant to the stated need? Specify what is to be accomplished within the time, money, and staffing allocated; identify a recognizable end point; and be quantifiable or verifiable. (NOT TO EXCEED ONE SENTENCE) Example: "To acquire by conservation easement 1,500 acres (Johnson Ranch) of prime watershed within the Barton Springs Edwards Aquifer, Texas."

Expected Results or Benefits. What will be the results or benefits of accomplishing the objective? Try to provide quantifiable or verifiable resource benefits, such as listed and unlisted species benefited. (NOT TO EXCEED ½ PAGE)

Approach. How will the objective be attained? Include only specific, numbered procedures, arranged chronologically. Keep procedures brief, simple and understandable.

Contact information. Provide telephone numbers and email addresses of key project personnel and cooperators.

Location. Where (city, county, etc, as applicable) will the work (HCP, land acquisition) be performed? Attach location map, if needed (see Attachments below).

Estimated Cost. Provide breakdown of what it will cost to attain the objective. See following page for detailed example.

Milestone Schedule. Timetable for initiation and completion of procedures outlined in Approach.

Literature Cited.

Attachments. For HCP grants, attach list(s) of species benefited, maps, etc. For land acquisitions (fee simple or conservation easement) must attach map(s) of lands with accurate boundaries to be acquired, letters of support (including a Willing Seller letter), and other relevant documentation.

Willing Seller letter: must be written and signed by the seller, stating the intent to sell subject property at current fair market value (see be-

low) to be determined in accordance with Federal standards. If such a letter is not available prior to submission of the proposal to TPWD then, in the event of the project being awarded funds, the transfer of funds to TPWD (approval of Standard Federal Application form 424) from USFWS shall not occur until such letter has been received.

Fair Market Value: subject property is appraised by an independent, certified appraiser which is then reviewed by an independent certified review appraiser; both are to follow Uniform Appraisal Standards for Federal Land Acquisitions ("Yellow Book").

Estimated Cost

Example budget (See instructions for each item).

Example Budget
(See instructions for each item below)

Item No.	Budgeted Item	Federal Share	Non-Federal Share (match)	Total
1	Personnel	$80,000.00	$20,000.00	$100,000.00
2	Travel	$29,000.00	$9,000.00	$38,000.00
3	Equipment	$8,000.00	$5,000.00	$13,000.00
4	Supplies	$10,000.00	$9,000.00	$19,000.00
5	Contractual	$18,000.00	$2,000.00	$20,000.00
6	Other	$5,000.00	$5,000.00	$10,000.00
7	TOTALS	$150,000.00	$50,000.00	$200,000.00
	Percentages	75%	25%	100%

Personnel: List names of all individuals or agencies collaborating on project along with personnel/agency titles, estimated hours on project, and rates per hour. Does not include third-party contractors (see Contractual below). Fringe Benefits: additional personnel costs, including FICA, Retirement, Insurance, etc. Indirect Charges: subcontractee administrative overhead, include rate as a percent & attach institutional rate agreement.

Travel: Lodging, mileage, meals, per diem (as appropriate) per individual.

Equipment: Capital expenses for equipment to be used for project.

Supplies: Routine costs for items needing replenishment throughout project.

Contractual: expenses for services under contract with third parties, list names and contact information.

Other: Items not listed above. Itemize and include justification. For In-kind contributions provide signed commitment letters which include verifiable monetary valuations.

Total Project Costs: sum of Federal Share and Nonfederal Share; at least 25% of this amount represents the match.

Personnel: List names of all individuals or agencies collaborating on project along with personnel/agency titles, estimated hours on project, and rates per hour. Does not include third-party contractors (see Contractual below). Fringe Benefits: additional personnel costs, including

FICA, Retirement, Insurance, etc. Indirect Charges: subcontractee administrative overhead, include rate as a percent & attach institutional rate agreement.

Travel: Lodging, mileage, meals, per diem (as appropriate) per individual.

Equipment: capital expenses for equipment to be used for project.

Supplies: routine costs for items needing replenishment throughout project.

Contractual: expenses for services under contract with third parties, list names and contact information.

Other: Items not listed above. Itemize and include justification. For In-kind contributions provide signed commitment letters which include verifiable monetary valuations.

Total Project Costs: sum of Federal Share and Nonfederal Share; at least 25% of this amount represents the match.

Proposal package (Project Statement, related materials, if any) should be emailed in Microsoft Word, or compatible (no .pdf), format to craig.farquhar@tpwd.state.tx.us. If the entire electronic Project Statement exceeds 4 Mb it will need to be delivered by surface mail to the address below.

Deadline for TPWD receipt of proposals is 10 January 2011.

Contact Information:

Dr. Craig Farquhar

Endangered Species Grants Coordinator

Wildlife Division

Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, TX 78744

Office telephone: (512) 389-4933; Office fax: (512) 389-8043

TRD-201006758
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: November 29, 2010

♦ ♦ ♦

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on November 18, 2010, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act.

Project Title and Number: Application of Northland Cable Television, Inc. to Amend its State-Issued Certificate of Franchise Authority, Project Number 38907.

The requested amendment is to expand the service area footprint to include the city of Madisonville, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) 1-800-735-2989. All inquiries should reference Project Number 38907.

TRD-201006688
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 22, 2010

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Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on November 19, 2010, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act.

Project Title and Number: Application of Cebridge Acquisition, L.P. d/b/a Suddenlink Communications to Amend its State-Issued Certificate of Franchise Authority, Project Number 38909.

The requested amendment is to expand the service area footprint to include the city limits of Gainesville and Sweetwater, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) 1-800-735-2989. All inquiries should reference Project Number 38909.

TRD-201006739
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 23, 2010

♦ ♦ ♦

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on November 22, 2010, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act.

Project Title and Number: Application of Comcast of Houston, LLC to Amend its State-Issued Certificate of Franchise Authority, Project Number 38918.

The requested amendment is to expand the service area footprint to include all areas within the boundaries of Mont Belvieu and Beach City, Texas, including any future annexations.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) 1-800-735-2989. All inquiries should reference Project Number 38918.

TRD-201006743
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 23, 2010

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Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on November 22, 2010, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act.

Project Title and Number: Application of Allegiance Communications, LLC for a State-Issued Certificate of Franchise Authority, Project Number 38915.

The requested CFA service area is for Ballinger and Dalhart, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) 1-800-735-2989. All inquiries should reference Project Number 38915.

TRD-201006742
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 23, 2010

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Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 19, 2010, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act.

Docket Title and Number: Application of Sara Telecom LLC for a Service Provider Certificate of Operating Authority, Docket Number 38911.

Applicant intends to provide resale-only telecommunications services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 17, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 38911.

TRD-201006740
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 23, 2010

♦ ♦ ♦

Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 19, 2010, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act.

Docket Title and Number: Application of Truevine Communications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 38913.

Applicant intends to provide resale-only telecommunications services.

Applicant's requested SPCOA geographic area includes all of the exchanges and LATAs within the State of Texas currently being served by AT&T Texas and Windstream Communications Southwest.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 17, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 38913.

TRD-201006741
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 23, 2010

♦ ♦ ♦

Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 24, 2010, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Triton Networks, LLC for a Service Provider Certificate of Operating Authority, Docket Number 38925.

Applicant intends to provide facilities-based and resale telecommunications services.

Applicant's requested SPCOA geographic area comprises the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 17, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 38925.

TRD-201006808
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 30, 2010

♦ ♦ ♦

Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 24, 2010, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of DILIGEN TECHNOLOGIES GROUP, INC. for a Service Provider Certificate of Operating Authority, Docket Number 38926.

Applicant intends to provide data, facilities-based, and resale telecommunications services.

Applicant's requested SPCOA geographic area comprises the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 17, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 38926.

TRD-201006809
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 30, 2010

♦ ♦ ♦

Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 30, 2010, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act.

Docket Title and Number: Application of Voxbeam Telecommunications Inc. for a Service Provider Certificate of Operating Authority, Docket Number 38931.

Applicant intends to provide facilities-based and resale telecommunications services.

Applicant's requested SPCOA geographic area comprises the service areas within the State of Texas of Southwestern Bell Telephone Company d/b/a AT&T Texas, Verizon Southwest, Central Telephone Company of Texas, Inc. d/b/a CenturyLink and United Telephone Company of Texas, Inc. d/b/a CenturyLink.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 17, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 38931.

TRD-201006813
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 1, 2010

♦ ♦ ♦

Notice of Application for Waiver from Requirements

Notice is given to the public of an application filed on November 23, 2010 with the Public Utility Commission of Texas for waiver from the requirements in P.U.C. Substantive Rule §26.420(f)(3)(A).

Docket Style and Number: Application of Virgin Mobile USA, L.P. for Waiver to Apply Safe Harbor Percentage to Calculate Texas Universal Service Fund (TUSF) Assessment Pursuant to P.U.C. Substantive Rule §26.420(f). Docket Number 38920.

The Application: Virgin Mobile USA, L.P. (Virgin Mobile) is a provider of prepaid cellular services. Virgin Mobile stated that it has elected to use the safe-harbor percentage approved by the commission for its classification of telecommunications service provided. Because actual jurisdictional billing data is not currently produced or maintained, Virgin Mobile indicated it has no method to determine assessable TUSF intrastate receipts other than by the use of the safe harbor percentage. Virgin Mobile requests that the commission grant it a permanent waiver from the requirements contained in P.U.C. Substantive Rule §26.420(f)(3)(A) to allow Virgin Mobile to use the commission-ordered safe-harbor TUSF assessment methodology to calculate TUSF assessments.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by December 21, 2010, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 38920.

TRD-201006807
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 30, 2010

♦ ♦ ♦

Notice of Application to Amend Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on November 29, 2010, to amend designation as an eligible telecommunications provider (ETP) and eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.417 and §26.418, respectively.

Docket Title and Number: Application of AMA TechTel Communications to Amend its Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider. Docket Number 38928.

The Application: AMA TechTel seeks to amend its ETC/ETP designation to include select wire centers of the non-rural ILEC, Verizon Southwest. A list of those wire centers is included with the application as Attachment B.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by December 27, 2010. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 38928.

TRD-201006810
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 30, 2010

♦ ♦ ♦

Teacher Retirement System of Texas

Report of Fiscal Transactions, Accumulated Cash and Securities, and Rate of Return on Assets and Actuary's Certification of Actuarial Valuation and Actuarial Present Value of Future Benefits

Section 825.108(a) of the Government Code requires the Teacher Retirement System of Texas (TRS) to publish a report in the *Texas Register* no later than December 15 of each year containing the following information: (1) the retirement system's fiscal transactions for the preceding fiscal year; (2) the amount of the system's accumulated cash and securities; and (3) the rate of return on the investment of the system's cash and securities during the preceding fiscal year.

In addition, §825.108(b) of the Government Code requires TRS to publish a report in the *Texas Register* no later than March 1 of each year containing the balance sheet as of August 31 of the preceding school year and containing an actuarial valuation of the system's assets and liabilities, including the extent to which the system's liabilities are unfunded.

TRS publishes the following reports as required by subsections (a) and (b) of §825.108 of the Government Code:

EXHIBIT I

Statement of Fiduciary Net Assets

AUGUST 31, 2010

(With Comparative Data for Pension and Other Employee Benefit Trust Funds for August 31, 2009)

	FIDUCIARY FUND TYPES	
	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS	
	Pension Trust Fund	Health Benefits Trust Fund Retired Plan
ASSETS		
Cash:		
Cash in State Treasury	$ 861,438,121	$ 873,606,719
Cash in Bank	84,868,536	
Cash on Hand	3,672,003	
TOTAL CASH	$ 949,978,660	$ 873,606,719
Receivables:		
Sale of Investments	$ 147,800,560	$
Interest and Dividends	223,483,544	889,171
Member and Retiree	84,071,923	37,924,707
Reporting Entities	48,983,324	8,414,571
Other	423,453	11,233,522
Due from State's General Fund	27,970,203	13,901,694
Due from Employees Retirement System of Texas	971,294	
TOTAL RECEIVABLES	$ 533,704,301	$ 72,363,665
Investments:		
Short-Term	$ 8,175,829,363	$
Short-Term Derivative	(467,338)	
Equities	42,805,497,400	
Fixed Income	19,502,462,264	
Alternative Investments	21,070,904,758	
Derivative Investments	(123,664,947)	
Pooled Investments	3,494,599,035	
TOTAL INVESTMENTS	$ 94,925,160,535	$ -0-
Invested Securities Lending Collateral	$ 23,601,464,926	$
Capital Assets:		
Land	$ 1,658,310	$
Building, Capital Projects, Leasehold Improvements, Equipment and Intangibles, at Cost, Net of Accumulated Depreciation/Amortization	29,339,363	
TOTAL CAPITAL ASSETS	$ 30,997,673	$ -0-
TOTAL ASSETS	$ 120,041,306,095	$ 945,970,384

	FIDUCIARY FUND TYPES	
TOTAL - PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS		
2010	2009	Agency Funds
$ 1,735,044,840	$ 1,669,629,251	$ 4,107
84,868,536	124,042,211	
3,672,003	2,152,196	
$ 1,823,585,379	$ 1,795,823,658	$ 4,107
$ 147,800,560	$ 339,937,324	$
224,372,715	247,090,927	
121,996,630	118,401,836	
57,397,895	58,455,696	
11,656,975	5,873,837	
41,871,897	101,357,061	
971,294	791,929	
$ 606,067,966	$ 871,908,610	$ -0-
$ 8,175,829,363	$ 8,996,775,374	$
(467,338)		
42,805,497,400	43,046,546,588	
19,502,462,264	16,577,616,180	
21,070,904,758	17,314,897,399	
(123,664,947)	302,282,839	
3,494,599,035	1,474,814,193	
$ 94,925,160,535	$ 87,712,932,573	$ -0-
$ 23,601,464,926	$ 21,852,868,153	$
$ 1,658,310	$ 1,658,310	$
29,339,363	28,831,028	
$ 30,997,673	$ 30,489,338	$ -0-
$ 120,987,276,479	$ 112,264,022,332	$ 4,107

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EXHIBIT I

Statement of Fiduciary Net Assets

AUGUST 31, 2010

(With Comparative Data for Pension and Other Employee Benefit Trust Funds for August 31, 2009) (concluded)

	FIDUCIARY FUND TYPES	
	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS	
	Pension Trust Fund	Health Benefits Trust Fund Retired Plan
LIABILITIES		
Accounts Payable	$ 3,871,150	$ 1,056,342
External Manager Fees Payable	14,488,487	
Payroll Payable	3,934,465	147,944
Benefits Payable	578,168,075	
Health Care Claims Payable		127,607,686
Investments Purchased Payable	119,435,388	
Securities Lending Collateral	23,581,689,266	
Due to State's General Fund	17,394,384	2,017,053
Due to Employees Retirement System of Texas	5,126,112	
Reinstatement Installment Receipts	21,223,985	
Compensable Absences Payable	5,361,881	177,056
Deferred Rent	2,207,893	
Funds Held for Others		
TOTAL LIABILITIES	$ 24,352,901,086	$ 131,006,081
NET ASSETS HELD IN TRUST FOR PENSION/OTHER EMPLOYEE BENEFITS	$ 95,688,405,009	$ 814,964,303

		FIDUCIARY FUND TYPES
TOTAL - PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS		
2010	2009	Agency Funds
$ 4,927,492	$ 3,760,467	$
14,488,487	16,754,738	
4,082,409	3,484,349	
578,168,075	549,796,590	
127,607,686	128,716,328	
119,435,388	159,557,070	
23,581,689,266	21,915,032,131	
19,411,437		
5,126,112	5,025,029	
21,223,985	21,126,610	
5,538,937	5,262,441	
2,207,893	2,386,505	
		4,107
$ 24,483,907,167	$ 22,810,902,258	$ 4,107
$ 96,503,369,312	$ 89,453,120,074	$ -0-

EXHIBIT II

Statement of Changes in Fiduciary Net Assets

FOR THE FISCAL YEAR ENDED AUGUST 31, 2010 (With Comparative Data for August 31, 2009)

	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS	
	Pension Trust Fund	Health Benefits Trust Fund Retired Plan
ADDITIONS:		
Contributions:		
Member	$ 2,205,017,425	$ 181,512,856
State - General Fund	1,574,621,766	253,625,889
State - Federal Funds/Private Grants	306,782,830	25,624,658
Reporting Entities	412,268,503	155,918,241
Health Care Premiums		332,481,933
TOTAL CONTRIBUTIONS AND PREMIUMS	$ 4,498,690,524	$ 949,163,577
Investment Income:		
From Investing Activities:		
Net Appreciation (Depreciation) in Fair Value of Investments	$ 7,542,738,000	$
Interest	914,151,731	11,679,229
Dividends	958,159,969	
TOTAL INVESTING ACTIVITIES INCOME (LOSS)	$ 9,415,049,700	$ 11,679,229
Less: Investing Activity Expenses	(111,918,654)	
NET INCOME (LOSS) FROM INVESTING ACTIVITIES	$ 9,303,131,046	$ 11,679,229
From Securities Lending Activities:		
Securities Lending Income	$ 164,683,341	$
Securities Lending Expenses:		
Borrower Rebates	(40,036,033)	
Management Fees	(16,331,481)	
Net Income from Securities Lending Activities	$ 108,315,827	$ -0-
TOTAL NET INVESTMENT INCOME (LOSS)	$ 9,411,446,873	$ 11,679,229
Other Additions:		
Reinstatement of Contribution Refunds	$ 37,442,030	$
Reinstatement Fees	47,077,732	
Legislative Appropriations	2,805,955	
Legislative Appropriations for Excess Benefits	1,504,510	
Miscellaneous Revenues	788,787	
On Behalf Fringe Benefits Paid by the Federal Government		70,795,686
On Behalf Fringe Benefits Paid by the State	160,975	101,511
TOTAL OTHER ADDITIONS	$ 89,779,989	$ 70,897,197
TOTAL ADDITIONS	$ 13,999,917,386	$ 1,031,740,003

TOTAL - PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS	
2010	2009
$ 2,386,530,281	$ 2,280,914,214
1,828,247,655	1,727,455,038
332,407,488	297,042,689
568,186,744	562,290,709
332,481,933	329,723,191
$ 5,447,854,101	$ 5,197,425,841
$ 7,542,738,000	$ (16,030,794,035)
925,830,960	794,158,394
958,159,969	1,108,384,911
$ 9,426,728,929	$ (14,128,250,730)
(111,918,654)	(68,990,517)
$ 9,314,810,275	$ (14,197,241,247)
$ 164,683,341	$ 371,868,589
(40,036,033)	(93,966,133)
(16,331,481)	(35,047,788)
$ 108,315,827	$ 242,854,668
$ 9,423,126,102	$ (13,954,386,579)
$ 37,442,030	$ 37,880,721
47,077,732	36,661,692
2,805,955	
1,504,510	1,553,381
788,787	3,899
70,795,686	61,530,735
262,486	95,929
$ 160,677,186	$ 137,726,357
$ 15,031,657,389	$ (8,619,234,381)

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EXHIBIT II

Statement of Changes in Fiduciary Net Assets

FOR THE FISCAL YEAR ENDED AUGUST 31, 2010 (With Comparative Data for August 31, 2009)
(concluded)

	PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS	
	Pension Trust Fund	Health Benefits Trust Fund Retired Plan
DEDUCTIONS:		
Benefits	$ 6,667,800,352	$
Refunds of Contributions	265,186,589	
Health Care Claims		971,356,805
Health Care Claims Processing		42,535,601
Administrative Expenses, Net of Investing Activity Expenses	29,992,608	3,031,686
Excess Benefits	1,504,510	
TOTAL DEDUCTIONS	$ 6,964,484,059	$ 1,016,924,092
Net Increase (Decrease)	$ 7,035,433,327	$ 14,815,911
NET ASSETS HELD IN TRUST FOR PENSION/OTHER EMPLOYEE BENEFITS - BEGINNING OF YEAR	$ 88,652,971,682	$ 800,148,392
NET ASSETS HELD IN TRUST FOR PENSION/OTHER EMPLOYEE BENEFITS - END OF YEAR	$ 95,688,405,009	$ 814,964,303

TOTAL - PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS	
2010	2009
$ 6,667,800,352	$ 6,342,010,323
265,186,589	266,695,076
971,356,805	885,132,865
42,535,601	40,364,063
33,024,294	31,226,707
1,504,510	1,553,381
$ 7,981,408,151	$ 7,566,982,415
$ 7,050,249,238	$ (16,186,216,796)
$ 89,453,120,074	$ 105,639,336,870
$ 96,503,369,312	$ 89,453,120,074

EXHIBIT III

Statement of Net Assets

PROPRIETARY FUNDS

AUGUST 31, 2010 (With Comparative Data for August 31, 2009)

	Enterprise Funds	
	Major Fund	Nonmajor Fund
	TRS-ActiveCare	403(b) Certification Program
ASSETS		
Current Assets:		
Cash:		
Cash in State Treasury	$ 387,286,693	$ 275,095
TOTAL CASH	$ 387,286,693	$ 275,095
Accounts Receivable:		
Interest	$ 418,967	$ 269
Health Care Premiums	63,409,356	
ARRA Cobra Premiums	446,080	
TOTAL ACCOUNTS RECEIVABLE	$ 64,274,403	$ 269
TOTAL ASSETS	$ 451,561,096	$ 275,364
LIABILITIES		
Current Liabilities:		
Accounts Payable	$ 122,946	$
Payroll Payable	103,409	12,362
Premiums Payable to HMOs	5,308,671	
Health Care Claims Payable	146,100,209	
Compensable Absences Payable	76,899	8,470
TOTAL CURRENT LIABILITIES	$ 151,712,134	$ 20,832
Noncurrent Liabilities:		
Compensable Absences Payable	$ 38,835	$ 8,755
TOTAL LIABILITIES	$ 151,750,969	$ 29,587
NET ASSETS		
Restricted for Administrative Expenses	$	$ 245,777
Unrestricted	299,810,127	
TOTAL NET ASSETS	$ 299,810,127	$ 245,777

Total Enterprise Funds	
2010	2009
$ 387,561,788	$ 487,128,433
$ 387,561,788	$ 487,128,433
$ 419,236	$ 788,890
63,409,356	56,584,741
446,080	170,219
$ 64,274,672	$ 57,543,850
$ 451,836,460	$ 544,672,283
$ 122,946	$ 260,249
115,771	112,462
5,308,671	5,336,353
146,100,209	128,255,190
85,369	72,508
$ 151,732,966	$ 134,036,762
$ 47,590	$ 41,369
$ 151,780,556	$ 134,078,131
$ 245,777	$ 355,260
299,810,127	410,238,892
$ 300,055,904	$ 410,594,152

EXHIBIT IV

Statement of Revenues, Expenses, and Changes in Fund Net Assets

PROPRIETARY FUNDS

FOR THE FISCAL YEAR ENDED AUGUST 31, 2010 (With Comparative Data for August 31, 2009)

	Enterprise Funds	
	Major Fund	Nonmajor Fund
	TRS-ActiveCare	403(b) Certification Program
OPERATING REVENUES:		
Health Care Premiums	$1,329,171,411	$
Administrative Fees	125,321	
ARRA Cobra Reimbursements	1,225,158	
Certification Fees		30,000
Product Registration Fees		21,000
TOTAL OPERATING REVENUES	$1,330,521,890	$ 51,000
OPERATING EXPENSES:		
Health Care Claims	$1,313,114,197	$
Health Care Claims Processing	67,906,654	
Premium Payments to HMOs	64,532,253	
Administrative Expenses	1,881,291	155,610
Compensable Absences	1,857	17,225
TOTAL OPERATING EXPENSES	$ 1,447,436,252	$ 172,835
OPERATING (LOSS)	$ (116,914,362)	$ (121,835)
NONOPERATING REVENUES:		
Investment Income	$ 6,421,269	$ 4,318
On Behalf Fringe Benefits Paid by the State	64,328	8,034
TOTAL NONOPERATING REVENUES	$ 6,485,597	$ 12,352
Change in Net Assets	$ (110,428,765)	$ (109,483)
TOTAL NET ASSETS - BEGINNING	$ 410,238,892	$ 355,260
TOTAL NET ASSETS - ENDING	$ 299,810,127	$ 245,777

Total Enterprise Funds	
2010	2009
$ 1,329,171,411	$ 1,172,011,048
125,321	187,813
1,225,158	170,219
30,000	6,000
21,000	9,000
$ 1,330,572,890	$ 1,172,384,080
$ 1,313,114,197	$ 1,122,646,958
67,906,654	60,934,432
64,532,253	64,820,440
2,036,901	1,949,949
19,082	
$ 1,447,609,087	$ 1,250,351,779
$ (117,036,197)	$ (77,967,699)
$ 6,425,587	$ 11,606,550
72,362	64,975
$ 6,497,949	$ 11,671,525
$ (110,538,248)	$ (66,296,174)
$ 410,594,152	$ 476,890,326
$ 300,055,904	$ 410,594,152

EXHIBIT V

Statement of Cash Flows

PROPRIETARY FUNDS

FOR THE FISCAL YEAR ENDED AUGUST 31, 2010 (With Comparative Data for August 31, 2009)

	Enterprise Funds	
	Major Fund	Nonmajor Fund
	TRS-ActiveCare	403(b) Certification Program
CASH FLOWS FROM OPERATING ACTIVITIES:		
Receipts from Health Care Premiums	$ 1,323,200,799	$
Receipts from Long-Term Care Administrative Fees	125,321	
Receipts from Certification/Product Registration Fees		51,000
Payments for Administrative Expenses	(1,860,691)	(142,546)
Payments for Health Care Claims	(1,295,363,008)	
Payments for Health Care Claims Processing	(67,812,825)	
Payments for HMO Premiums	(64,559,935)	
NET CASH (USED) BY OPERATING ACTIVITIES	$ (106,270,339)	$ (91,546)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Interest Received	$ 6,790,730	$ 4,510
NET CASH PROVIDED BY INVESTING ACTIVITIES	$ 6,790,730	$ 4,510
Net (Decrease) in Cash	$ (99,479,609)	$ (87,036)
CASH AND CASH EQUIVALENTS - SEPTEMBER 1	$ 486,766,302	$ 362,131
CASH AND CASH EQUIVALENTS - AUGUST 31	$ 387,286,693	$ 275,095
RECONCILIATION OF OPERATING (LOSS) TO NET CASH (USED) BY OPERATING ACTIVITIES		
Operating (Loss)	$ (116,914,362)	$ (121,835)
Adjustments to Reconcile Operating (Loss) to Net Cash Provided (Used) by Operating Activities:		
(Increase) in Health Care Premiums Receivable	$ (7,100,475)	$
(Decrease) in Premiums Payable to HMOs	(27,682)	
Increase in Health Care Claims Payable	17,845,019	
Increase (Decrease) in Accounts Payable	(129,971)	(7,332)
Increase (Decrease) in Payroll Payable	(9,053)	12,362
Increase (Decrease) in Compensable Absences Payable	1,857	17,225
On Behalf Fringe Benefits Paid by the State	64,328	8,034
Total Adjustments	$ 10,644,023	$ 30,289
Net Cash (Used) by Operating Activities	$ (106,270,339)	$ (91,546)

Total Enterprise Funds	
2010	2009
$ 1,323,200,799	$ 1,165,530,400
125,321	187,813
51,000	15,000
(2,003,237)	(1,846,513)
(1,295,363,008)	(1,107,449,363)
(67,812,825)	(60,896,335)
(64,559,935)	(65,036,559)
$ (106,361,885)	$ (69,495,557)
$ 6,795,240	$ 12,084,181
$ 6,795,240	$ 12,084,181
$ (99,566,645)	$ (57,411,376)
$ 487,128,433	$ 544,539,809
$ 387,561,788	$ 487,128,433
$ (117,036,197)	$ (77,967,699)
$ (7,100,475)	$ (6,793,268)
(27,682)	(216,119)
17,845,019	15,235,692
(137,303)	172,819
3,309	11,867
19,082	(3,824)
72,362	64,975
$ 10,674,312	$ 8,472,142
$ (106,361,885)	$ (69,495,557)

EXHIBIT VI

Balance Sheet

GOVERNMENTAL FUND

AUGUST 31, 2010 (With Comparative Data for August 31, 2009)

	School Employee Children's Health Insurance Program Special Revenue Fund*	
	2010	2009
TOTAL ASSETS	$ -0-	$ -0-
TOTAL LIABILITIES AND FUND BALANCE	$ -0-	$ -0-

** This fund has activity presented on the Statement of Revenues, Expenditures, and Changes in Fund Balance.*

EXHIBIT VII

Statement of Revenues, Expenditures, and Changes in Fund Balance

GOVERNMENTAL FUND

FOR THE FISCAL YEAR ENDED AUGUST 31, 2010 (With Comparative Data for August 31, 2009)

	School Employee Children's Health Insurance Program Special Revenue Fund*	
	2010	2009
REVENUES:		
Legislative Appropriations	$	$ 13,192,708
TOTAL REVENUES	$ -0-	$ 13,192,708
EXPENDITURES:		
Administrative Expenditures	$	$
TOTAL EXPENDITURES	$ -0-	$ -0-
Excess of Revenues Over Expenditures	$ -0-	$ 13,192,708
OTHER FINANCING SOURCES (USES):		
Transfer Out to HHSC	$ -0-	$(13,192,708)
TOTAL OTHER FINANCING SOURCES (USES)	$ -0-	$(13,192,708)
FUND BALANCE - BEGINNING	$ -0-	$ -0-
FUND BALANCE - ENDING	$ -0-	$ -0-

** The interagency contract with the Health and Human Services Commission (HHSC) for the Children's Health Insurance Program became effective September 1, 2007. Legislative appropriations were received by TRS in fiscal year 2009 and transferred to HHSC in September 2008.*

EXHIBIT A

Combining Statement of Changes in Assets and Liabilities

AGENCY FUNDS

FOR THE FISCAL YEAR ENDED AUGUST 31, 2010

	Balances September 1, 2009	Additions	Deductions	Balances August 31, 2010
Employees' Savings Bond Account				
Assets:				
Cash in State Treasury	$ 450	$ 5,450	$ 5,400	$ 500
Liabilities:				
Funds Held for Others	$ 450	$ 5,450	$ 5,400	$ 500
Child Support Employee Deductions				
Assets:				
Cash in State Treasury	$ 2,862	$ 40,665	$ 39,920	$ 3,607
Liabilities:				
Funds Held for Others	$ 2,862	$ 40,665	$ 39,920	$ 3,607
Totals - All Agency Funds				**(Exhibit I)**
Assets:				
Cash in State Treasury	$ 3,312	$ 46,115	$ 45,320	$ 4,107
TOTAL ASSETS	$ 3,312	$ 46,115	$ 45,320	$ 4,107
Liabilities:				
Funds Held for Others	$ 3,312	$ 46,115	$ 45,320	$ 4,107
TOTAL LIABILITIES	$ 3,312	$ 46,115	$ 45,320	$ 4,107

EXHIBIT B

Rate of Return on Assets

YEAR ENDED AUGUST 31, 2010

	Pension Trust Fund	Health Benefits Plans and 403(b) Program
Cash and Short-Term Investments *	1.24%	0.45%
Long-Term Investments: **		
Global Equities	8.24%	
Stable Value *	18.57%	
Real Return	9.01%	

* *The rate of return for Cash and Short-Term Investments are included in the Stable Value Portfolio.*

** *Investment performance is calculated using a time-weighted rate of return. Returns are calculated, net of all fees, by State Street Bank and Trust Company, the fund's custodian bank, using industry best practices.*

GRS Gabriel Roeder Smith & Company
Consultants & Actuaries
5605 N. MacArthur Blvd.
Suite 870
Irving, TX 75038-2631
469.524.0000 phone
469.524.0003 fax
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November 1, 2010

BOARD OF TRUSTEES
Teacher Retirement System of Texas
1000 Red River Street
Austin, TX 78701-2698

Subject: Actuary's Certification of the Actuarial Valuation as of August 31, 2010

We certify that the information included herein and contained in the 2010 Actuarial Valuation Report is accurate and fairly presents the actuarial position of the Teacher Retirement System of Texas (TRS) as of August 31, 2010.

All calculations have been made in conformity with generally accepted actuarial principles and practices, and with the Actuarial Standards of Practice issued by the Actuarial Standards Board. In our opinion, the results presented comply with the requirements of the Texas statutes and, where applicable, the Internal Revenue Code, ERISA, and the Statements of the Governmental Accounting Standards Board. The undersigned are independent actuaries. Mr. White and Mr. Newton are members of the American Academy of Actuaries, and are also Enrolled Actuaries. All are experienced in performing valuations for large public retirement systems.

Actuarial Valuations

The primary purpose of the valuation report is to determine the adequacy of the current State contribution rate through measuring the resulting funding period, to describe the current financial condition of the System, and to analyze changes in the System's condition. In addition, the report provides information required by the System in connection with Governmental Accounting Standards Board Statement No. 25 (GASB No. 25), and it provides various summaries of the data.

Valuations are prepared annually, as of August 31 of each year, the last day of the System's plan and fiscal year.

Financing Objective of the Plan

Contribution rates are established by Law that, over time, are intended to remain level as a percent of payroll. The employee and State contribution rates have been set by Law. The actuarially determined contribution rates determined in this actuarial valuation are intended to provide for the normal cost plus the level percentage of payroll required to amortize the unfunded actuarial accrued liability over a period not in excess of 30 years.

Progress Toward Realization of Financing Objective

The actuarial accrued liability, the unfunded actuarial accrued liability (UAAL), and the calculation of the resulting funding period illustrate the progress toward the realization of financing objectives. Based on this actuarial valuation as of August 31, 2010, the System's under-funded status has increased to $22.9 billion from $21.6 billion as of August 31, 2009. This increase in the UAAL is due to a loss on the actuarial value of assets of the System.

This valuation shows a normal cost equal to 10.42% of pay. The State set its contribution rate to 6.644% of pay as of September 1, 2009, which combined with the member contribution rate of 6.40% of pay provides a total contribution rate of 13.044% of pay. Therefore, there is 2.624% of pay available to amortize the UAAL. If payroll grows as expected, the contributions provided by this portion of the contribution rate are insufficient to amortize the current unfunded actuarial accrued liabilities of the System over any period of time (i.e. the funding period is never). Further, if the current assumptions are met (the trust earns an average 8.0% per annum) and the current 6.40% member and 6.644% State contribution rates continue, the fund is projected to remain solvent until the year 2072, after which the funding would return to a pay-as-you-go status. Therefore, for the current benefit structure to be sustainable, the contribution level will need to be increased if all of the current assumptions are met.

The actuarial valuation report as of August 31, 2010 reveals that while the System has an unfunded liability of $22.9 billion, it still has a funded ratio (the ratio of actuarial assets to actuarial accrued liability) of 82.9%. However, because of the significant shortfall in investment income in FY2009, the System is still deferring net investment losses of $15.6 billion compared to the last valuation when the System was deferring $17.7 billion in deferred losses. Therefore, in the absence of actuarial gains in the future, the funded status of the System should decline as these deferred investment losses are recognized.

The System earned a 10.7% return on a dollar-weighted market value of assets basis for the plan year ending August 31, 2010, net of expenses. The System experienced a loss on the actuarial value of assets of $1.2 billion and a gain on the actuarial liabilities of $0.7 billion for a total experience related loss of $0.5 billion.

In the absence of significant actuarial gains in the near future, the contribution rate needed to amortize the UAAL over 30 years will increase over the next few valuation cycles.

Plan Provisions

The plan provisions used in the actuarial valuation are described in Table 21 of the valuation report. There have been no changes to the benefit provisions of the System since the prior valuation.

Disclosure of Pension Information

Effective for the fiscal year ending August 31, 1996, the Board of Trustees adopted compliance with the requirements of Governmental Accounting Standards Board (GASB) Statement No. 25. The required disclosure information is included in the body of the valuation report.

Actuarial Methods and Assumptions

The actuarial methods and assumptions have been selected by the Board of Trustees of the Teacher Retirement System of Texas based upon our analysis and recommendations. These assumptions and methods are detailed in Table 22 of the valuation report. The Board of Trustees has sole authority to determine the actuarial assumptions used for the plan. The actuarial methods and assumptions are based on a study of actual experience for the four year period ending August 31, 2007 and were adopted on April 11, 2008. There have been no changes to these assumptions since the prior valuation.

The results of the actuarial valuation are dependent on the actuarial assumptions used. Actual results can and almost certainly will differ, as actual experience deviates from the assumptions. Even seemingly minor changes in the assumptions can materially change the liabilities, calculated contribution rates and funding periods. The actuarial calculations are intended to provide information for rational decision making.

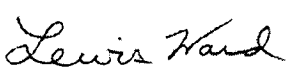
In our opinion, the actuarial assumptions used are appropriate for purposes of the valuation and are internally consistent and reasonably related to the experience of the System and to reasonable expectations. The actuarial assumptions and methods used in this report comply with the parameters for disclosure that appear in GASB 25.

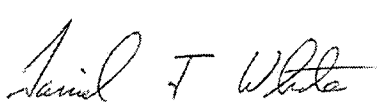
Data

In preparing the August 31, 2010 actuarial valuation, we have relied upon member and asset data provided by the Teacher Retirement System of Texas. We have not subjected this data to any auditing procedures, but have examined the data for reasonableness and for consistency with prior years' data.

The schedules shown in the actuarial section and the trend data schedules in the financial section of the TRS financial report include selected actuarial information prepared by TRS staff. Six year historical information included in these schedules was based upon our work. For further information please see the full actuarial valuation report.

Respectfully submitted,
Gabriel, Roeder, Smith & Company





Lewis Ward
Consultant

Joseph P. Newton, FSA, EA, MAAA
Senior Consultant

Daniel J. White, FSA, EA, MAAA
Senior Consultant

Gabriel Roeder Smith & Company

GRS

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October 25, 2010

BOARD OF TRUSTEES
Teacher Retirement System of Texas
1000 Red River Street
Austin, TX 78701-2698

Subject: GASB 43 Actuarial Valuation as of August 31, 2010 for TRS-Care

Submitted in this report are the results of an Actuarial Valuation of the liabilities associated with the employer financed retiree health benefits provided through TRS-Care, a benefit program designed to provide post retirement medical benefits for certain members of the Teacher Retirement System of Texas (TRS). The date of the valuation was August 31, 2010. This report was prepared at the request of TRS.

The actuarial calculations were prepared for purposes of complying with the requirements of Statements 43 and 45 of the Governmental Accounting Standards Board (GASB). The calculations reported herein have been made on a basis consistent with our understanding of these accounting standards. Determinations of the liability associated with the benefits described in this report for purposes other than satisfying the financial reporting requirements of TRS-Care and participating employers may produce significantly different results.

The valuation was based upon information, furnished by TRS, concerning retiree health benefits, members' census, and financial data. Data was checked for internal consistency but was not otherwise audited. Certain demographic and economic assumptions are identical to the set of demographic and economic assumptions adopted by the Board based on the 2008 Experience Study of TRS. Assumptions applicable only to TRS-Care have not changed since the prior report, and they are disclosed in the assumptions section of this report.

To the best of our knowledge, this report is complete and accurate and was made in accordance with generally recognized actuarial methods.

One or more of the undersigned are members of the American Academy of Actuaries and meet the Qualification Standards of the Academy of Actuaries to render the actuarial opinion herein.

Respectfully submitted,

William J. Hickman
Senior Consultant

Joseph P. Newton, FSA, MAAA
Senior Consultant

Mehdi Riazi, ASA, MAAA
Actuary

Actuarial Present Value of Future Benefits

PENSION TRUST FUND

ACTUARIAL VALUATION - AUGUST 31, 2010 (With Comparative Data for August 31, 2009)

	2010	2009
Present Value of Benefits Presently Being Paid:		
Service Retirement Benefits	$ 56,633,460,577	$ 53,709,973,268
Disability Retirement Benefits	891,512,713	879,916,286
Death Benefits	754,052,179	766,356,875
Present Survivor Benefits	197,246,581	198,255,242
TOTAL PRESENT VALUE OF BENEFITS PRESENTLY BEING PAID	$ 58,476,272,050	$ 55,554,501,671
Present Value of Benefits Payable in the Future to Present Active Members:		
Service Retirement Benefits	$ 95,802,642,330	$ 91,873,230,382
Disability Retirement Benefits	1,265,949,485	1,208,634,286
Termination Benefits	6,067,357,073	5,708,049,103
Death and Survivor Benefits	1,513,834,539	1,446,008,078
TOTAL ACTIVE MEMBER LIABILITIES	$ 104,649,783,427	$ 100,235,921,849
Present Value of Benefits Payable in the Future to Present Inactive Members:		
Inactive Vested Participants		
Retirement Benefits	$ 1,798,775,860	$ 1,658,895,358
Death Benefits	122,792,410	115,999,840
TOTAL INACTIVE VESTED BENEFITS	$ 1,921,568,270	$ 1,774,895,198
Refunds of Contributions to Inactive Non-vested Members	$ 294,211,296	$ 279,784,905
Future Survivor Benefits Payable on Behalf of Present Annuitants	$ 1,103,421,506	$ 1,054,137,786
TOTAL INACTIVE LIABILITIES	$ 3,319,201,072	$ 3,108,817,889
TOTAL ACTUARIAL PRESENT VALUE OF FUTURE BENEFITS	$ 166,445,256,549	$ 158,899,241,409

Summary of Cost Items

	2010	2009
Actuarial Present Value of Future Benefits	$ 166,445,256,549	$ 158,899,241,409
Present Value of Future Normal Costs	(32,254,146,314)	(30,869,937,598)
Actuarial Accrued Liability	$ 134,191,110,235	$ 128,029,303,811
Actuarial Value of Assets	(111,292,527,887)	(106,383,566,018)
UNFUNDED ACTUARIAL ACCRUED LIABILITY	$ 22,898,582,348	$ 21,645,737,793

Actuarial Present Value of Future Benefits

HEALTH BENEFITS TRUST FUND - RETIRED PLAN

ACTUARIAL VALUATION - AUGUST 31, 2010 (With Comparative Data for August 31, 2009)

	2010	2009
Present Value of Benefits Being Paid:		
Future Medical Claims	$ 7,098,035,116	$ 6,943,767,460
Future Rx Claims	8,484,675,649	6,975,762,195
Retiree Premiums Collected	(4,664,226,865)	(4,277,647,489)
NET PRESENT VALUE OF BENEFITS FOR CURRENT RETIREES	$ 10,918,483,900	$ 9,641,882,166
Present Value of Benefits Payable in the Future to Present Active Members:		
Future Medical Claims	$ 21,258,228,041	$ 20,759,485,903
Future Rx Claims	20,923,712,165	20,543,501,184
Retiree Premiums Collected	(12,748,598,151)	(12,427,826,780)
NET PRESENT VALUE OF BENEFITS FOR FUTURE RETIREES	$ 29,433,342,055	$ 28,875,160,307
TOTAL ACTUARIAL PRESENT VALUE OF FUTURE BENEFITS	$ 40,351,825,955	$ 38,517,042,473

Summary of Cost Items

	2010	2009
Actuarial Present Value of Future Benefits	$ 40,351,825,955	$ 38,517,042,473
Present Value of Future Normal Costs	(14,544,057,386)	(14,159,550,909)
Actuarial Accrued Liability	$ 25,807,768,569	$ 24,357,491,564
Actuarial Value of Assets	(814,964,303)	(800,148,392)
UNFUNDED ACTUARIAL ACCRUED LIABILITY	$ 24,992,804,266	$ 23,557,343,172

These reports include the actuarial valuation of the Texas Public School Retired Employees Group Benefits Program (TRS-Care) dated August 31, 2010. This actuarial valuation was prepared for the purposes of complying with the requirements of Statements 43 and 45 of the Governmental Accounting Standards Board (GASB) and Chapter 2266 of the Government Code, including Subchapter C of that chapter relating to Other Postemployment Benefits.

TRD-201006765

Ronnie Jung

Executive Director

Teacher Retirement System of Texas

Filed: November 29, 2010

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Texas State Technical College System

Request for Proposals for Bond Counsel

Texas State Technical College System (TSTC) is requesting proposals for bond counsel services relating to a tuition revenue bond refunding and reissuance and other financial matters. The term of the proposed services will extend from the date of appointment for a period of two years. The deadline for proposal submission is 1:00 p.m., Monday, January 10, 2011.

TSTC's Board of Directors (the Board) will make its selection based upon demonstrated competence and qualifications. Firms responding to the Request for Proposal must maintain a Texas office staffed with personnel who are responsible for providing bond counsel services to TSTC. All things being equal, the Board will give first consideration to firms headquartered in Texas. By the Request for Proposal, however, the Board has not committed itself to employ bond counsel nor does the suggested scope of service or term of agreement therein require that the bond counsel be employed for any or all of those purposes. The Board reserves the right to make those decisions after receipt of proposals and the Board's decision on these matters is final. The Board reserves the right to negotiate individual elements of the firm's proposal and to reject any and all proposals.

Copies of the Request for Proposal may be obtained from the Electronic State Business Daily website at: http://esbd.cpa.state.tx.us/bid_cfm?bidid=92081.

TRD-201006750

J. Gary Hendricks

Vice Chancellor for Financial and Administrative Services

Texas State Technical College System

Filed: November 24, 2010

♦ ♦ ♦

Request for Proposals for Financial Advisor

Texas State Technical College System (TSTC) is requesting proposals for financial advisory services relating to a tuition revenue bond refunding and reissuance and for other financial matters. The term of the proposed services will extend from the date of appointment for a period of two years. The deadline for proposal submission is 1:00 p.m., Monday, January 10, 2011.

TSTC's Board of Directors (the Board) will make its selection based upon demonstrated competence and qualifications. Firms responding to the Request for Proposal must maintain a Texas office staffed with personnel who are responsible for providing financial advisor services to TSTC. All things being equal, the Board will give first consideration to firms headquartered in Texas. By the Request for Proposal, however, the Board has not committed itself to employ a financial advisor nor does the suggested scope of service or term of agreement therein require that the financial advisor be employed for any or all of those purposes. The Board reserves the right to make those decisions after receipt of proposals and the Board's decision on these matters is final. The Board reserves the right to negotiate individual elements of the firm's proposal and to reject any and all proposals.

Copies of the Request for Proposal may be obtained from Electronic State Business Daily website at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=92080.

TRD-201006749

J. Gary Hendricks

Vice Chancellor for Financial and Administrative Services

Texas State Technical College System

Filed: November 24, 2010

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Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Engineering Services

The City of Bridgeport, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Bridgeport Municipal Airport during the course of the next five years through multiple grants.

Current Project: City of Bridgeport. TxDOT CSJ No.: 1102BRGPT. Current Scope: provide engineering design services to extend/widen/overlay Runway 17-35; install PAPI-2 Runway 35; replace Medium Intensity Runway Lights; relocate parallel taxiway; overlay cross taxiways and apron; pipeline protection; and update the Airport Layout Plan.

The DBE goal for the current project is 7%. TxDOT Project Manager is Ed Mayle.

Future scope work items for engineering/design services within the next five years may include the following:

1. Rehabilitate entrance road
2. Install obstruction lighting and marker balls
3. Install threshold lights
4. Approach surface earthwork
5. Install Jet-A fuel system
6. Install culvert Runway 35 RSA

The City of Bridgeport reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent Airport Layout Plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Bridgeport Municipal Airport." The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at http://www.txdot.gov/business/projects/aviation.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **January 4, 2011 at 4:00 p.m.** Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at http://www.txdot.gov/business/projects/aviation.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Edie Stimach, Grant Manager. For technical questions, please contact Ed Mayle, Project Manager.

TRD-201006801

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 30, 2010

♦ ♦ ♦

Aviation Division - Request for Proposal for Professional Engineering Services

The City of Bryan, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the City of Bryan Coulter Field during the course of the next five years through multiple grants.

Current Project: City of Bryan Coulter Field. TxDOT CSJ No.: 11HGBRYAN.

Scope of Work: Engineering/design and construction services to construct a maintenance hangar at City of Bryan Coulter Field.

The DBE goal for the current project is 10%. The TxDOT Project Manager is Ed Mayle.

Future scope work items for engineering/design services within the next five years may include the following:

1. Rehabilitate apron and apron access Taxiway

2. Rehabilitate and mark parallel Taxiway

3. Rehabilitate T-hangar access Taxiways

4. Rehabilitate and mark Runway

The City of Bryan reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, and most recent Airport Layout Plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Coulter Field." The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at http://www.txdot.gov/business/projects/aviation.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **January 11, 2011 at 4:00 p.m.** Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow, Grant Manager.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at http://www.txdot.gov/business/projects/aviation.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager, x4516. For technical questions, please contact Ed Mayle, Project Manager, x4528.

TRD-201006802
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 30, 2010

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Public Notice - Advertising in Texas Department of Transportation Travel Literature and *Texas Highways* Magazine

The Texas Department of Transportation (department) is authorized by Transportation Code, Chapter 204 to publish literature for the purpose of advertising the highways of this state and attracting traffic thereto, and to include paid advertising in such literature. Title 43, Texas Administrative Code, §23.10 and §23.29 describe the policies governing advertising in department travel literature and *Texas Highways* magazine, list acceptable and unacceptable subjects for advertising in department travel literature and the magazine, and describe the procedures by which the department will solicit advertising.

As required by 43 TAC §23.10(e)(4)(A) and 43 TAC §23.29(d)(1) the department invites any entity or individual interested in advertising in department travel literature and *Texas Highways* magazine to request to be added to the department's mailing list. Written requests may be mailed to the Texas Department of Transportation, Travel Information Division, Travel Publications Section, P.O. Box 141009, Austin, Texas 78714-1009. Requests may also be made by telephone to (512) 486-5880 or sent by fax to (512) 486-5879.

The department is now accepting advertising for the 2012 edition of the *Texas State Travel Guide,* scheduled to be printed and available in January 2012, and the four quarterly issues of the *Texas Events Calendar,* beginning with the Summer 2011 calendar. The Summer 2011 calendar lists events scheduled for June, July, and August 2011. The Fall 2011 calendar lists September, October, and November 2011 events. The Winter 2011-2012 calendar lists December 2011, January 2012, and February 2012 events; and the Spring 2012 calendar lists events scheduled for March 2012, April 2012, and May 2012. The depart-

ment is now accepting advertising for all monthly 2011 issues of *Texas Highways* magazine.

All entities and individuals on the mailing list will be contacted by mail sent out on January 10, 2011, and will have an opportunity to request a media kit. The media kit will contain rate card information, an order form, and samples of the respective travel literature. On and after February 10, 2011, the department will accept all insertion orders (in accordance with 43 TAC §23.10) received prior to the publication deadline on a first-come, first served basis or until all advertising space is filled. Insertion orders postmarked or received prior to February 10, 2011, for the *Texas State Travel Guide* will not be accepted.

All insertion orders will be stamped with the date they are received. Orders for premium space for the *Texas State Travel Guide* will be accepted only by mail postmarked on or after February 10, 2011. Advertisers must indicate ranked preference on all desired premium positions for the *Texas State Travel Guide.* If more than one insertion order for any premium position is received on the same day, the department will determine selection by a drawing held on February 25, 2011. Insertion orders for an inside front cover spread and inside back cover spread will take precedence over an inside front cover and inside back cover insertion order.

The advertising due dates for the *Texas Events Calendar* vary depending on the issue involved. The publication deadline for accepting advertising space in the *Texas Events Calendar* is February 11, 2011, for the Summer 2011 issue; May 13, 2011, for the Fall 2011 issue; August 12, 2011, for the Winter 2011-2012 issue; and November 14, 2011, for the Spring 2012 issue. The deadline for accepting materials for the *Texas Events Calendar* is February 25, 2011, for the Summer 2011 issue; May 27, 2011, for the Fall 2011 issue; August 26, 2011, for the Winter 2011-2012 issue; and November 28, 2011, for the Spring 2012 issue. The publication deadline for accepting advertising space in *Texas Highways* magazine is the 27th of the third month preceding the issue date. The deadline for accepting materials for *Texas Highways* magazine is seven days after space closing. When material or space closing dates fall on a Saturday, Sunday, or on a holiday, space and/or materials are due the preceding workday.

The *Texas State Travel Guide* is designed to encourage readers to explore and travel in Texas. The guide lists cities and towns alphabetically, featuring population figures and recreational travel sites for each, along with maps and 4-color photography. The guide also includes sections listing Texas state parks, state and national forests, and hunting and fishing information. The State of Texas distributes this vacation guide to travelers in Texas and to those who request information while planning to travel in Texas.

The *Texas Events Calendar* is published quarterly, corresponding with the seasons, to provide information about events happening in Texas throughout the year. The *Texas Events Calendar* includes festivals, art exhibits, rodeos, indoor and outdoor music and theatre productions, concerts, nature tours, and more, depending on the season. The State of Texas distributes this quarterly calendar to travelers in Texas and to those who request information on events happening around the state.

Texas Highways magazine is a monthly publication designed to encourage recreational travel within the state and to tell the Texas story to readers around the world. Accordingly, the content of the magazine is focused on Texas vacation, recreational, travel, or tourism related subjects, shopping opportunities in Texas and for Texas related products, various outdoor events, sites, facilities, and services in the state, transportation modes and facilities in the state, and other sites, products, facilities, and services that are travel related or Texas based, and that are determined by the department to be of cultural, educational, historical, or recreational interest to *Texas Highways* readers.

The *Texas Accommodations Guide* is the state's official lodging guide and includes information on hotels/motels, condominiums, bed & breakfasts, cabin/guest homes, and guest ranches. This publication is distributed in the standard package sent to requestors seeking information about Texas and also is distributed through the 12 Travel Information Centers operated by the Texas Department of Transportation.

The rate card information for potential advertisers in the *Texas State Travel Guide*, the *Texas Events Calendar*, *Texas Highways* magazine, and the *Texas Accommodations Guide* are included in this notice.

TEXAS STATE TRAVEL GUIDE

Year 2012 Rate Base: 900,000
Space Closing: October 4, 2011
Materials Due: October 11, 2011
First Distribution: January 2012

Advertising Rates

ROP:	Gross	Net*
Full Page	$23,667	$20,116
Two Thirds (2/3) Page	$16,907	$14,371
Half (1/2) Page	$14,217	$12,084
One Third (1/3) Page	$ 8,526	$ 7,247
One Sixth (1/6) Page	$ 5,376	$ 4,569
Premium Positions:	**Gross**	**Net***
Cover 2 (Inside Front)	$34,125	$29,006
Cover 3 (Inside Back)	$31,773	$27,007
Cover 4 (Back)	$42,624	$36,231
Spread (Inside Front Cover Inside Back Cover)	$57,792	$49,123

*Commission: 15% to recognized agencies providing camera-ready materials.

Note: All rates are 4-color (no black and white). Run-of-book spreads are 2 times the page rate. Rates for inserts, gatefolds, multi-title frequency advertising, and other special advertising will be quoted on request. Multiple fractional ads will be priced at the equivalent page rate.

Early Reservation Discount: Organizations reserving their space by Friday, August 5, 2012 will receive a 5% discount off the net space price.

Umbrella Plan A: 5% discount for 1x Texas State Travel Guide, 3x Texas Highways Magazine, 2x Texas Events Calendar
Umbrella Plan B: 10% discount for 1x Texas State Travel Guide, 6x Texas Highways Magazine, 4x Texas Events Calendar
Umbrella Plan C: 10% discount for 1x Texas State Travel Guide, 12x Texas Highways Magazine, 2x Texas Events Calendar

2012 advertisers will receive a full year listing in the marketplace section of www.texashighways.com and be allowed to update the image and copy 4xs during calendar year 2012. Advertisers committing to 1/2 page or greater will also receive two free section page banners during calendar year 2012.

Payment: Cash with order or net 30 from invoice date. All orders must be paid in full by October 13, 2012.

TEXAS EVENTS CALENDAR

Advertising Rates/Due Dates

Year 2011/2012 Rate Base: 90,000 Circulation: Spring, Summer, Fall
75,000 Circulation: Winter

Black/White

	1X		2X		4X	
	Gross	Net	Gross	Net	Gross	Net
FULL PAGE	$1,680	$1,428	$1,628	$1,384	$1,575	$1,339
HALF PAGE	$1,155	$ 982	$1,129	$ 960	$1,076	$ 915
THIRD PAGE	$ 840	$ 714	$ 814	$ 692	$ 761	$ 647

4-Color

	1X		2X		4X	
	Gross	Net	Gross	Net	Gross	Net
FULL PAGE	$2,352	$1,999	$2,279	$1,937	$2,205	$1,874
HALF PAGE	$1,617	$1,374	$1,580	$1,343	$1,507	$1,281
THIRD PAGE	$1,176	$1,000	$1,139	$ 968	$1,066	$ 906

COVERS (4-COLOR)

	1X		2X		4X	
	Gross	Net	Gross	Net	Gross	Net
COVER 2	$3,675	$3,124	$3,413	$2,901	$3,150	$2,678
COVER 3	$3,150	$2,678	$2,888	$2,454	$2,625	$2,231
COVER 4	$4,410	$3,749	$4,200	$3,570	$3,990	$3,392

Net rate reflects 15% commission to recognized agencies or advertisers providing camera-ready materials. Cash with order or net 30 from invoice date. All orders must be paid in full by material due date. Rates for inserts, multi-title frequency advertising, and other special advertising will be quoted on request.

Advertising Due Dates:

Issue Date	**Space Closing**	**Materials Due**
Summer 2011 (Jun, Jul, Aug-2011)	Feb. 11, 2011	Feb. 25, 2011
Fall 2011 (Sep, Oct, Nov-2011)	May 13, 2011	May 27, 2011
Winter 2011-12 (Dec-2011, Jan, Feb-2012)	Aug. 12, 2011	Aug. 26, 2011
Spring 2012 (Mar, Apr, May-2012)	Nov. 14, 2011	Nov. 28, 2011

TEXAS HIGHWAYS MAGAZINE

Texas Rate Card (All Rates Gross)

Four-Color	1x	3x	6x	12x	18x	24x
Full Page	$7120	$6764	$6550	$6337	$6123	$5910
2/3 Page	$5880	$5586	$5410	$5233	$5057	$4880
1/2 Page	$4626	$4395	$4256	$4117	$3978	$3840
1/3 Page	$3326	$3160	$3060	$2960	$2860	$2761
1/6 Page	$1830	$1739	$1684	$1629	$1574	$1519
Cover 2	$9100	$8645	$8372	$8099	$7826	$7553
Cover 3	$8700	$8265	$8004	$7743	$7482	$7221

Section Guides (Holiday, Product, and Destination): $1300 per insertion

Commission:	15% to recognized agencies providing print ready materials.
Payment:	Cash with order or net 30 from invoice date.
Space Deadline:	27th of the third month preceding issue date.
Materials Deadline:	Seven days after space closing. When material or space closing dates fall on a Saturday, Sunday, or a holiday, space or materials are due the preceding workday.

2012 advertisers who spend a minimum of $4,600 gross on one order will receive a full year listing in the marketplace section of www.texashighways.com and be allowed to update the image and copy 4xs during calendar year 2012.

GO TEXAN Discount: Go Texan members receive 20 percent off the appropriate rate, based on size and frequency.

Web Site Advertising

Home page banner: $2,000/month (180 x 300 pixels) (up to 2 positions available each month)

Section page banners: $300/mo (180 x 300 pixels), $200/mo (180 x 150 pixels)

Marketplace listings: $600/year

TEXAS HIGHWAYS MAGAZINE

National Rate Card (All Rates Gross)

Four-Color	1x	3x	6x	12x	18x	24x
Full Page	$11,867	$11,273	$10,917	$10,562	$10,205	$9,850
2/3 Page	$9,800	$9,310	$9,016	$8,722	$8,428	$8,133
1/2 Page	$7,710	$7,325	$7,093	$6,682	$6,630	$6,400
1/3 Page	$5,543	$5,267	$5,100	$4,933	$4,767	$4,601
1/6 Page	$3,050	$2,898	$2,807	$2,715	$2,623	$2,532
Cover 2	$15,167	$14,408	$13,953	$13,498	$13,043	$12,588
Cover 3	$14,500	$13,775	$13,340	$12,905	$12,470	$12,035

Section Guides (Holiday, Product, and Destination): $2,167 per insertion

Commission:	15% to recognized agencies providing print ready materials.
Payment:	Cash with order or net 30 from invoice date.
Space Deadline:	27th of the third month preceding issue date.
Materials Deadline	Seven days after space closing. When material or space closing dates fall on a Saturday, Sunday, or a holiday, space or materials are due the preceding workday.

2012 advertisers who spend a minimum of $4,600 gross on one order will receive a full year listing in the marketplace section of www.texashighways.com and be allowed to update the image and copy 4xs during calendar year 2012.

Web Site Advertising

Home page banner: $3,333/mo. Advertisers with 6x Full Page commitment in a 12 month period will receive 3 months of home page banners free on a first come, first served basis. (up to 2 positions available each month)

Section page banners: $500/mo (180 x 300 pixels), $400/mo (180 x 150 pixels)

Marketplace: $1,000/year

Texas Accommodations Guide
Listing Fees

Individual Property Listing Fee: $225
Individual Property Listing Fee for TH&LA Members: $125

Corporate Property Listing Fee: $125
Corporate Property Listing Fee for TH&LA Members: $115
Terms: Payee must pay on a single invoice with a minimum of 25 listings

TACVB Property Listing Fee: $135
TACVB Property Listing Fee for properties that are TH&LA Members: $125
Terms: Payee must pay on a single invoice with a minimum of 5 listings

Upgrades: All Cap $25.00 2nd Color $25.00

TRD-201006800
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 30, 2010

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Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and 43 Texas Administrative Code §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

http://www.txdot.gov/public_involvement/hearings_meetings.

Or visit www.txdot.gov, click on Public Involvement and click on Hearings and Meetings.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-201006738
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: November 23, 2010

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The University of Texas System

Notice of Intent to Seek Consultant Services

The University of Texas Health Science Center at Houston

In accordance with the provisions of *Texas Government Code*, Chapter 2254, The University of Texas Health Science Center at Houston will be seeking Invitation for Offers to hire a consultant to conduct a Comprehensive Feasibility and Risk Analysis and Develop a Strategic Plan for an Integrated Early Childhood Information Exchange System.

The President of the University of Texas Health Science Center at Houston has made a finding of fact that the consulting services are necessary. The University of Texas Health Science Center at Houston does not currently have the in-house expertise to complete this project.

An award will be made to the proposer that submits the highest ranked proposal based on evaluation criteria developed by the University.

Parties interested in a copy of the Invitation for Offers should contact:

Michael Ochoa, C.P.M.

Purchasing Contracts Administrator

Procurement Services

The University of Texas Health Science Center at Houston

1851 Crosspoint, OCB 1.160

Houston, TX 77054

Voice: (713) 500-4713

Email: michael.ochoa@uth.tmc.edu

The proposal submission deadline will be Friday, January 7, 2011 at 2:00 p.m. Central Prevailing Time.

Addendum 1

DATE: December 1, 2010

PROJECT: Consultant Services

IFO NO: IFO 744-1108 Consultant Services

OWNER: The University of Texas Health Science Center at Houston

Houston, Texas

TO: Prospective Proposers

1. Revision to Section 2.4 - Key Events Schedule

The date for the Pre-Proposal Conference has been changed to Wednesday, December 15, 2010 at 9:00 a.m. CST.

2. Revision to Section 2.6 - Pre-Proposal Conference

The date for the Pre-Proposal Conference has been changed to Wednesday, December 15, 2010 at 9:00 a.m. CST.

Location remains unchanged.

TRD-201006781
Art Martinez
Executive Director for Board Services
The University of Texas System
Filed: November 30, 2010

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Workforce Solutions Brazos Valley Board

Notice of Release of Request for Proposal for Brazos Valley Child Care Management Services

On December 1, 2010 the Workforce Solutions Brazos Valley Board (WSBVB) will release a Request for Proposal (RFP) for a contractor to operate the Child Care Management Services program. The Board is seeking a single contractor for the operation of Child Care Management Services Programs. The contractor selected through this procurement will be required to provide the following services in an environment of declining federal funding. Services include:

Child Care Client Services - to offer child care to eligible families and to improve the quality, availability and affordability of child care in the Brazos Valley.

Provider Management - to recruit eligible child care providers in all seven counties on a monthly basis to expand the availability of child care within the Brazos Valley workforce development area and to improve the quality of child care services provided.

Financial Management - to provide financial management services for Child Care Client Services and Operations, and Child Care Provider Management.

These services are provided for the residents of Brazos, Washington, Robertson, Burleson, Madison, Leon, and Grimes counties. Workforce Solutions Brazos Valley Board (BVWDB) will receive proposals from private and public organizations or individuals to provide management as an independent contractor for the seven Workforce Centers in the Brazos Valley Region, effective April 1, 2010.

A Bidder's Conference will be held through a telephone conference call on Wednesday, December 15, 2010 from 1:00 p.m. to 2:00 p.m. CST. Individuals and organizations interested in calling in should contact Richard Rogers no later than 9:00 a.m. on the day of the call (see contact information below) to receive the phone number and pass code for the call. To view and download the RFP go to www.bvjobs.org after December 1, 2010 at 9:00 a.m.

The contact person for this procurement is Board Consultant Richard Rogers, (512) 963-4895, or email richard@swtexas.net. Difficulties downloading the RFP document should be referred to Kathleen Turner at (979) 595-2800.

Proposals in response to this RFP are due no later than 4:00 p.m. January 4, 2011 to Workforce Solutions Brazos Valley at 3991 East 29th Street, Bryan, Texas 77802. Mailed proposals should be addressed to: WSBVB, P.O. Box 4128, Bryan, Texas 77805. Proposals arriving after the due date and time will not be accepted, regardless of postmarked date.

WSBVB is an equal opportunity employer and provides equal opportunity programs. Auxiliary aids are available upon request to disabled individuals. Texas relay (800) 735-2989 TDD (800) 735-2988 voice.

TRD-201006756
Tom Wilkinson
Executive Director
Workforce Solutions Brazos Valley Board
Filed: November 24, 2010

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Notice of Release of Request for Proposal for Management of Brazos Valley Workforce Center System

On December 1, 2010 the Workforce Solutions Brazos Valley Board (WSBVB) will release a Request for Proposal (RFP) for Management of the Brazos Valley Workforce Center System providing access to these workforce development programs. These services are provided for the residents and employers of Brazos, Washington, Robertson, Burleson, Madison, Leon, and Grimes counties. Brazos Valley Workforce Development Board (BVWDB) will receive proposals from private and public organizations or individuals to provide management as an independent contractor for the seven Workforce Centers in the Brazos Valley Region, effective April 1, 2010. The Workforce Centers use the One-Stop concept to integrate a variety of Federal and State workforce development programs. The Board's intent by this solicitation is to obtain a management entity that will provide on-site leadership of the workforce center system in a manner that will enhance the performance of the center system as well as improve the quality of customer service.

A Bidder's Conference will be held through a telephone conference call on Wednesday, December 15, 2010 from 10:00 a.m. to 11:00 a.m. CST. Individuals and organizations interested in calling in should contact Richard Rogers no later than 9:00 a.m. on the day of the call (see contact information below) to receive the phone number and pass code for the call. To view and download the RFP go to www.bvjobs.org on December 1, 2011 after 9:00 a.m.

The contact person for this procurement is Board Consultant Richard Rogers, (512) 963-4895, or email richard@swtexas.net. Difficulties downloading the RFP document should be referred to Kathleen Turner at (979) 595-2800.

Proposals in response to this RFP are due no later than 4:00 p.m. January 4, 2011 to Workforce Solutions Brazos Valley at 3991 East 29th Street, Bryan, Texas 77802. Mailed proposals should be addressed to: WSBVB, P.O. Box 4128, Bryan, Texas 77805. WSBVB is an equal opportunity employer and provides equal opportunity programs. Auxiliary aids are available upon request to disabled individuals. Texas relay (800) 735-2989 TDD (800) 735-2988 voice.

TRD-201006753
Tom Wilkinson
Executive Director
Workforce Solutions Brazos Valley Board
Filed: November 24, 2010

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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/open/index.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.texas.gov

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 35 (2010) is cited as follows: 35 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "35 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 35 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*