TEXAS REGISTER

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This month's front cover artwork:

Artist: *Maribel Martinez*
5th Grade
Kennedy-Powell Elementary

School children's artwork has decorated the blank filler pages of the *Texas Register* since 1987. 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.

We will display artwork on the cover of each *Texas Register*. The artwork featured on the front cover is chosen at random.

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*. The artwork does not add additional pages to each issue and does not increase the cost of the *Texas Register*.

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GOVERNOR

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EMERGENCY RULES

PROPOSED RULES

ADOPTED RULES

Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.
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To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is http://www.oag.state.tx.us. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site. http://www.state.tx.us/Government

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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.

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.

Executive Order

RP 10

Relating to the creation of the Governor's Council on Science and Biotechnology Development.

WHEREAS, like the pervasiveness of semi-conductors, biotechnology is an increasingly broad field, touching crop science and animal health, patient care and biopharmaceutical development; and

WHEREAS, fields historically thought of as information technology and engineering take on a new bio-identity when they are targeted for use in the fast growing areas of bioinformatics, genomics, and nanotechnology; and

WHEREAS, intellectual property is the lifeblood of innovation, entrepreneurship, and economic growth; and

WHEREAS, Texas universities are engines of intellectual property creation; and

WHEREAS, technology transfer of university intellectual property has been found to be a critical resource to long term productivity gains as well as social and economic progress; and

WHEREAS, Texas currently possesses many of the building blocks of a top tier biotechnology and life sciences industry, but has not yet fully leveraged those resources to their full potential; and

WHEREAS, through thoughtful and deliberate action, Texas can build a solid foundation to become a global leader in biotechnology;

NOW, THEREFORE, I Rick Perry, Governor of Texas, by virtue of the power vested in me, do hereby create and establish the Governor's Council on Science and Biotechnology Development, hereafter referred to as the "Council."

The Council shall consist of members appointed by the Governor. Each member shall serve at the pleasure of the Governor. The Council shall:

(1) Identify opportunities and means to promote cooperation and collaboration among universities to bring more federal research funds to Texas and to improve the universities and to contribute to economic growth; and

(2) Propose state policies and actions that promote technology development and transfer in Texas including the creation of partnerships that support and benefit the establishment of new technology industries in all areas of Texas; and

(3) Analyze and propose state policies that encourage ready availability and accessibility of venture capital and commercial lending, especially in areas of the state seeking to increase high tech development through the establishment of Regional Councils; and

(4) Promote connectivity and synergy among sectors, including access to capital to create a statewide approach to make Texas a top biotech destination; and

(5) Produce an annual report tracking the Council's progress to be presented to the Governor; and

(6) Perform other duties as assigned by the Governor.

The members of the Council shall receive neither compensation nor per diem, but shall receive reimbursement in an amount not to exceed the amount authorized by the Texas General Appropriations Act for reasonable and necessary travel expenses incurred in the direct performance of their official duties.

The Office of the Governor may provide staff support as necessary for the Council. This executive order repeals GWB 96-6, which created the Texas Science and Technology Council, and shall remain in effect until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 17th day of January, 2002.

Rick Perry, Governor

TRD-200200309

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OFFICE OF THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code. Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the ***Texas Register***. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0487

The Honorable M.P. "Dexter" Eaves, Victoria County Criminal District Attorney, 210 West Constitution, Victoria, Texas 77901

Re: Effect of amendments to section 623.011, Texas Transportation Code, regarding the authority of the Texas Department of Transportation to issue permits for travel on county roads and load-limit bridges (Request No. 0487-JC)

Briefs requested by February 17, 2002

RQ-0488

Ms. Gwyn Shea, Secretary of State, State of Texas, P.O. Box 12697, Austin, Texas 78711

Re: Whether a 1999 amendment to article XVI, section 65, Texas Constitution, which removed the staggered terms for certain county offices, substantively affected county offices created since that date (Request No. 0488-JC)

Briefs requested by February 17, 2002

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

TRD-200200343
Rick Gilpin
Assistant Attorney General
Office of the Attorney General
Filed: January 23, 2002

♦ ♦ ♦

EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the ***Texas Register***, or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

Symbology in amended emergency sections. New language added to an existing section is indicated by the text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 2. GENERAL POLICIES AND PROCEDURES

SUBCHAPTER C. GRANT POLICIES

DIVISION 6. LOAN STAR LIBRARIES GRANTS, GUIDELINES FOR PUBLIC LIBRARIES

13 TAC §§2.160 - 2.165

The Texas State Library and Archives Commission adopts on an emergency basis new rules, §§2.160-2.165. These sections establish the guidelines for the administration of a new grant program for Texas public libraries, Loan Star Libraries Grants, whose general purpose is to assist local governments to improve their library services. These sections set forth the general terms, conditions, criteria, and funding formula for awarding these grants. Grants will aid local communities to maintain, improve, and enhance local library services, and will provide Texans who are not residents of a particular local community access to and services from the many participating public libraries.

This new rule is adopted on an emergency basis to ensure that grant funding can be awarded to the state's public libraries with the least delay and inefficiency. Without the adoption of this new rule on an emergency basis, many local libraries would likely not be able to expend the grant funds fully, efficiently, or effectively.

This new rule is adopted on an emergency basis under the authority of Government Code §441.0091, concerning the Grant Program for Local Libraries, that provides the Commission authority to provide for grants to meet specific information needs of residents and specific needs of local libraries, and to adopt by rule the guidelines for awarding grants.

§2.160. Goals and Purposes.

This grant program provides direct grants-in-aid to public libraries that are members of the Texas Library System for the following purpose: to provide an incentive for local communities to extend public library services without charge to those residing outside each library's local legal service area in order to improve library services statewide and improve access to public library resources and services for all Texans.

§2.161. Definitions.

(a) "Public library service without charge" has the relevant meaning defined in §1.72(a) of this part.

(b) "Non-resident" means any adult or child who does not already live in the public library's local legal service area and who can provide satisfactory proof of Texas residency.

(c) "In accordance with the same policies and procedures the library has adopted for its local resident customers" means the library shall provide the same library services and may impose the same restrictions on non-resident customers as it does for those customers who live locally.

§2.162. Eligible Applicants.

(a) Public libraries and local public library systems, through their governing authority (city, county, or corporation) are eligible to apply for grants. To receive a grant, applicants must be members of the Texas Library System for the fiscal year the grant contracts are issued.

(b) To be eligible for a full grant, the governing authority of a public library must certify that it will provide public library service without charge to non-residents in accordance with the same policies and procedures the library has adopted for its local resident customers.

§2.163. Eligible Expenses.

(a) This grant program will fund public library operating expenditures such as salary, supplies, library materials, equipment, contractual services, and minor renovations. To be eligible, grant expenses must be reasonable and in accordance with appropriate state or local operating policies and procedures. Further, all grant expenses must be designed to maintain, improve, expand, or enhance the resources or services of the public library.

(b) This grant will not fund the following:

(1) Capital expenditures related to the purchase of real property, buildings, or motor vehicles.

(2) Capital expenditures related to the construction or expansion of library facilities.

(3) Capital expenditures related to major renovation costs (projects exceeding $250,000).

(4) Other expenditures not allowed by the Uniform Grant and Contract Management Act (Government Code Chapter 783).

§2.164. Funding Formula.

(a) The State Library will annually set and allocate a total amount of appropriated funding to be awarded by this grant program.

(b) Loan Star Libraries grants will be awarded according to the following formula:

(1) Base Grant. One-quarter (25%) of the total funds allocated for Loan Star Libraries Grants constitutes a base award and will be divided equally among those libraries eligible for the program that either:

(A) provide library services to non-residents without charge, or

(B) participate in the TexShare Library Consortium card program.

(2) Matching Grant. Three-quarters (75%) of the total funds allocated for Loan Star Libraries Grants constitutes a matching award and will be awarded to eligible libraries as a percentage match on their total local operating expenditures (as reported in the most recently collected report, as required by §1.85 of this part) minus any indirect costs (as reported in the most recent state collected public library annual report) as follows:

(A) Libraries that provide library services to non-residents without charge will be allocated 100% of their eligible match.

(B) Libraries that do not provide library services to non-residents without charge, but participate in the TexShare card program will be allocated 85% of their eligible match.

(C) Libraries that do not provide library services to non-residents without charge, and do not participate in the TexShare card program will be allocated 75% of their eligible match.

(D) The funds in this matching category not allocated to the libraries receiving only 75% or 85% of their match are added to the amount allocated to libraries receiving 100% of their match, and are distributed among these libraries based on their share of the total local operating expenditures.

§2.165. Application Review and Awarding Process.

(a) Eligible libraries must submit the following documentation as part of the review and award process:

(1) Status form - this form is submitted annually by a deadline to be determined each year, to indicate whether a library will change its status for the following fiscal year regarding services to non-residents or participation in the TexShare card program.

(2) Assurance of Compliance form - this form certifies that a public library provides services to non-residents without charge; it is submitted once, generally upon removal of non-resident fees, and remains valid until revoked in writing by the local governing authority.

(3) Plan of Action form - this form is submitted annually by a deadline to be determined each year, to detail the library's plans for spending the grant funds; this plan will be incorporated into the grant award contract.

(b) Errors in the calculation of an award to an individual library will be corrected in the following fiscal year by adjusting the award to that library by a comparable amount.

(c) If a library has certified that it provides service to non-residents without charge or it has elected to participate in the TexShare card program, the library must maintain these services for the duration of the contract that it received.

(d) Willful falsification of documents or reports, as determined by the Commission, shall cause the library to be disqualified for not less than one year in the first occurrence and disqualified for not less than three years in the second occurrence.

(e) Funds will not be awarded to a library until all requirements for all preceding contracts have been fulfilled.

This agency hereby certifies that the emergency adoption 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 January 17, 2002.

TRD-200200233
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Effective Date: January 18, 2002
Expiration Date: May 18, 2002
For further information, please call: (512) 463-5459

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PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the ***Texas Register*** at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

TITLE 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. REGIONAL PLANS--STANDARDS

1 TAC §251.9

The Commission on State Emergency Communications (CSEC) proposes an amendment to §251.9, concerning the use and distribution of 9-1-1 funds for database maintenance by local governments. The amendments are proposed in order to more efficiently accommodate a broad range of local needs and requests for maintaining the database location information, recognizing that it forms the foundation of enhanced 9-1-1 databases which are crucial to delivering effective and efficient responses to emergency calls.

Section 251.9, Guidelines for Database Maintenance Funds, defines the 9-1-1 database maintenance project and delineates funding parameters in support of the local governmental entities that perform this important function. This rule was designed to provide for continued maintenance of the initial 9-1-1 data developed in the rural addressing program as defined in §251.3, Guidelines for Addressing Funds. As the program has progressed and a statewide database has been implemented, the CSEC recognizes that modifications may be needed in order to transition this rule into the next phase of 9-1-1 database maintenance. In taking this step, CSEC staff has worked with the Texas Association of Regional Councils (TARC) Regional 9-1-1 Coordinators subcommittee to attempt to modify the language and specific funding parameters of the rule.

CSEC proposes that all references to "addressing maintenance" be changed to database maintenance" to reflect a move in a new direction to a more comprehensive approach to maintaining the location information that is so crucial to providing and enhanced level of 9-1-1 service. The amendment also changes the title of the rule to "Guidelines for Database Maintenance".

Paul Mallett, executive director, has determined that for the first five-year period the section is in effect there may be limited fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Mallett also has determined that for each year of the first five years the section is to be in effect, the public benefit anticipated as a result of enforcing the section will be better utilization of funds for local addressing maintenance needs. The maintenance of maps and records associated with a database system enable efficient operation of an E9-1-1 system and the delivery of a caller's location. There will be no effect on small businesses. There are no anticipated economic cost to persons who are required to comply with the section as proposed. There is no anticipated local employment impact as a result of enforcing the section.

Initial comments on the proposed rule may be submitted in writing within 30 days after publication of the proposal in the *Texas Register* and reply comments may be submitted within 45 days of that publication date to Paul Mallett, Executive Director, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

The amendment is proposed pursuant to the Health and Safety Code, Chapter 771, §§771.051, 771.055, 771.057, 771.071, 771.0711, 771.072, 771.075, and 771.078 which authorize the Commission, among other things, to adopt policies, procedures, and minimum performance standards for providing 9-1-1 service and prescribing the use of the 9-1-1 funds for providing 9-1-1 service.

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

§251.9. Guidelines for Database [~~Addressing~~] Maintenance Funds.

The [~~Advisory~~] Commission on State Emergency Communications (Commission) has adopted a policy regarding database [~~rural addressing~~] maintenance and the use of state funds. These guidelines address the use and distribution of 9-1-1 Funds and other related funds. The maintenance of street addresses is essential to E9-1-1 systems utilizing the Automatic Location Identification (ALI) feature, which displays the locations of 9-1-1 callers.

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

(A) 9-1-1 Database Record--A physical record, which includes the telephone subscriber information to include the caller's telephone number, related locational information, and class of service, and also conforms to NENA adopted database standards.

(B) 9-1-1 Funds--Funds assessed and disbursed in accordance with the Texas Health and Safety Code, Chapter 771.

(C) Addressing Completion--A county addressing project has developed a comprehensive MSAG, assigned street addresses and notified the residents of their 9-1-1 address, provided the MSAG and new or changed address information associated with the particular telephone numbers to the applicable telephone companies, submitted corrected address errors to the telco, and established a maintenance methodology [~~A county addressing project, based upon the inventory, has corrected address errors, assigned street address, provided all new or changed addresses to telephone companies, and established a maintenance method~~].

[~~(D) Capital Replacement Cost--The non-recurring cost of replacing equipment purchased with 9-1-1 funds amortized over a selected period of time.~~]

(D) [~~(E)~~] Digital Map--A computer generated and stored data set based on a coordinate system, which includes geographical and attribute information pertaining to a defined location. A digital map includes street name and locational information; data sets related emergency service provider boundaries, as well as other associated data.

(E) [~~(F)~~] Emergency Communications District--A public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service; or a district created under Texas Health and Safety Code, Chapter 772, Subchapter B, C, D, or E.

(F) [~~(G)~~] Graphical Display of Location Information--The ability to display a map on a telecommunicator's terminal in response to a 9-1-1 call or inquiry that relates to the caller's location. Features may include the display of an address or geographic based coordinate locations and the ability to zoom, pan, and show other related geographical information or features.

(G) [~~(H)~~] Geographic Information System (GIS)--A system necessary to map emergency service number (ESN) boundaries and reflect annexations and other feature changes; to list emergency service provider translations for ESNs; to provide and maintain master street address guide (MSAG) format; to validate and resolve database discrepancies; to project new addresses and block ranges as an initial assignment or correction; for ongoing issuance of new addresses; and for locator maps for emergency services providers.

(H) Master Street Addressing Guide (MSAG)--A database maintained by the local government agencies or regional planning commissions which lists all street segments and their associated address information for the purpose of validating and updating telephone number records. An MSAG record consists of: street directional (when applicable); street name; house number low and high ranges; whether the range is odd ranges (O) even (E) or contains both odd and even ranges (B); the associated community name; state; Emergency Service Number (ESN); and telephone exchange. MSAG records will meet NENA standards or a statewide standard as determined by the Commission.

(I) Regional Planning Council (RPC)--A commission established under Local Government Code, Chapter 391, also referred to as a regional council of governments (COG).

(J) Strategic Plan--As part of a regional plan, a document identifying 9-1-1 equipment and related activity, by strategic plan component, required to support planned levels of 9-1-1 service within a defined area of the state. The strategic plan shall cover a two year planning period and specifically projects 9-1-1 costs and revenues associated with this section including equalization surcharge requirements.

(i) Strategic Plan Component--Within a 9-1-1 implementation priority level, a category of 9-1-1 activity and/or equipment generally associated with 9-1-1 implementation cost.

(ii) Strategic Plan Level--A Commission established statewide implementation priority generally associated with a level of 9-1-1 service - e.g., Automatic Number Identification (ANI).

(K) Unaddressed County--A county in Texas which has not completely assigned new addresses and provided all new or changed addresses to telephone companies under a county addressing process.

(2) Policy and Procedures. As authorized by the Texas Health and Safety Code, Chapter 771, the Commission may impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the state of Texas. The implementation of such service involves the procurement, installation, and operation of equipment designed to either support or facilitate the delivery of an emergency call to an appropriate emergency response agency. In addition, the Commission has funded addressing projects throughout the state to allow for the implementation of Automatic Location Identification (ALI) level of service. In the funding of such projects, it has been the policy of the Commission to fund geographic information systems and the development of digital maps to support such activities. The Commission recognizes that the maintenance of addressing systems is essential to the proper operation of an E9-1-1 system and the delivery of a caller's location. If not properly maintained, the maps and records associated with an addressing system will soon become unreliable and problematic.

(A) A regional planning council or emergency communication district applying on behalf of a county which is operating 9-1-1 service and has completed a county addressing project is considered eligible.

(B) Interlocalagreements shall be executed between the regional planning council and the county. The agreement shall identify the responsibilities of all parties and provide for the reporting of performance measures.

(C) A database [~~An addressing~~] maintenance plan shall be submitted by the regional planning council in conjunction with the approved strategic plan. The maintenance plan shall provide an overview of all projected activities, identify all parties involved and their associated responsibilities. As a standard minimum, the RPC will report, by county, the following database maintenance activity listed in clauses (i)-(ix) of this subparagraph to CSEC on the regularly scheduled performance reports submitted at least quarterly:

(i) number of new subdivisions addressed;

(ii) total number of lots in these subdivisions;

(iii) number of new streets verified against, and added to, the MSAG and/or map;

(iv) number of MSAG changes/inserts/deletes;

(v) number of address requests from citizens;

(vi) number of new addresses assigned and/or data-points added to computer map;

(vii) number of errors submitted for correction;

(viii) number of street signs replaced;

(ix) number of map updates distributed.

(D) Budgets shall be developed by the local governments each fiscal year, identifying all projected database [addressing] maintenance expenditures. These budgets will be reviewed during the strategic plan review process. [Activities performed by the regional planning council shall be identified within its administrative budget.]

(E) Database [Addressing] maintenance funds will be allocated based on need as justified by the local government and approved by the Commission. [If equalization surcharge funds are required for addressing maintenance, they shall be allocated first to eligible recipients requiring such funds for administrative budgetary purposes, followed by Level I, II and III activities, in that order.]

(F) Budgeted costs associated with Database [Addressing] Maintenance shall be monitored by the Commission staff for consistency with approved strategic plans.

(3) Requesting Database [Addressing] Maintenance Funds. [A strategic plan amendment from a regional planning council or a request from an emergency communication district is required as a means of requesting funds under this program.]

(A) A [strategic plan amendment from a regional planning council or a] request from a regional planning council or an emergency communication district must contain the following:

(i) Certification of a [A] fully executed interlocal agreement between the regional planning council and the county;

(ii) A database [An addressing] maintenance plan identifying all activities and responsible parties involved; and

(iii) an [An] approved budget outlining database [addressing] maintenance components and projected expenditures.

(B) Funds requested by a regional planning council or an emergency communication district shall be reflected as an expenditure on the Commission Financial Status Report.

(4) Budget Components. A regional planning council or an emergency communication district must submit an database [addressing] maintenance budget to the Commission for approval. Database [Addressing] maintenance budgets are limited to allocated Strategic Plan Addressing Maintenance budget amounts and may only include the following cost components listed in subparagraphs (A)-(K) of this paragraph. Fund distribution among these components is at the discretion of the regional planning council to best fit the needs of the region.

(A) Personnel--[Unless otherwise justified, 0.5 FTE will be the maximum allowable for each county.] For each staff position, the following must be provided:

(i) Position title;

(ii) Duties related to database [addressing] maintenance;

(iii) Total salary for the budget period;

(iv) Chargeable salary (total salary less release time);

(v) Percentage of time to be charged to database [addressing] maintenance; and

(vi) Total salary chargeable to database [addressing] maintenance.

(B) Travel--Total local travel estimated for the budget period multiplied by the current reimbursement rate for use of personally owned vehicles as defined by the State of Texas. List the cost rate for county owned vehicles. Out-of-State travel for training and conferences for county personnel is not allowable.

(C) Supplies--Total costs associated with consumable office supplies to be purchased during the budget period. Also, total costs associated with the reproduction of maps for use by local emergency service agencies may be reflected as part of this item.

(D) Rent--Total square feet of space devoted to database [addressing] maintenance times the rental rate to be charged during the budget period.

(E) Maintenance and Repairs--Total maintenance costs for database [addressing] maintenance equipment during the budget period. Computers, printers, plotters, distance measuring devices (DMD), global positioning satellite (GPS) equipment and sign-making machines may be included.

(F) Communications--Total costs for communications including telephone, fax, courier, etc., during the budget period.

(G) Postage and Mailing--Total costs for postage and mailing services expected during the budget period.

(H) Utilities--Total costs for utilities such as electricity, gas, water, etc., expected during the budget period.

(I) Training--Total costs for training associated with database [addressing] maintenance functions expected during the budget period.

[(J) Other--Total costs for other items not identified in subparagraphs (A)-(I) of this paragraph.]

(J) [(K)] Street Sign Replacement--Cost share of the replacement of existing street signs located in the unincorporated areas of the county. This item shall not include the purchase of new signs in the county subsequent to the completion of rural addressing.

[(5) Capital Replacement. Costs for the replacement of equipment purchased with 9-1-1 funds shall be reflected within the regional planning council strategic plan Capital Recovery (Addressing) component. Computers, printers, plotters, distance measuring devices (DMD), global positioning satellite (GPS) equipment and sign-making machines may be included. A capital replacement schedule will be submitted to the Commission by the regional planning council.]

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 January 18, 2002.

TRD-200200266
Paul Mallett
Executive Director
Commission on State Emergency Communications
Earliest possible date of adoption: March 3, 2002
For further information, please call: (512) 305-6933

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TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §501.70

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.70, concerning Independence.

The amendment to §501.70 will apply all applicable independence standards to a CPA or licensed firm in a concise format.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the independence standards are already applied to CPAs and firm license holders.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the independence standards are already applied to CPAs and firm license holders.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the independence standards are already applied to CPAs and firm license holders.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be efficient application and construction of independence standards to CPAs and firm license holders.

The probable economic cost to persons required to comply with the amendment will be zero because the independence standards are already applied to CPAs and firm license holders.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on February 15, 2002. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the independence standards are already applied to CPAs and firm license holders by the existing rule.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 2001) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§501.70. Independence.

A certificate or registration holder in the performance of professional services, including those who are not members of the AICPA, shall conform in fact and in appearance to the independence standards established by the AICPA and the board, and, where applicable, the U.S. Securities and Exchange Commission, the General Accounting Office and other regulatory or professional standard setting bodies.

~~[(a) A certificate or registration holder must be independent in fact and in appearance when performing an engagement in which the certificate or registration holder will issue a report on financial statements of any client, except for a report in which lack of independence may be cured by disclosure under applicable professional standards.]~~

~~[(b) Independence will be considered to be impaired if, for example, during the period of the professional engagement or at the time of expressing an opinion, the certificate or registration holder:]~~

~~[(1) had or was committed to acquire any direct or material indirect financial interest in the client;]~~

~~[(2) was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the client;]~~

~~[(3) had any joint closely-held business investment with the client or any officer, director, partner, or principal stockholder thereof which was material in relation to the net worth of the certificate or registration holder; or]~~

~~[(4) had any loan to or from the client or any officer, director, partner, or principal stockholder thereof other than certain "grandfathered loans" and "other permitted loans" which will not be considered to impair independence.]~~

~~[(A) Grandfathered loans-Loans from a financial institution made under that institution's normal lending procedures, terms, and requirements, and that meet the other specified conditions stated herein. Grandfathered loans must, at all times, be current as to all terms and such terms shall not be renegotiated after the latest of the dates in clauses (i)-(iv) of this subparagraph. Grandfathered loans include those which:]~~

~~*[(i)* existed as of January 1, 1997;]~~

~~*[(ii)* were obtained from a financial institution prior to its becoming a client requiring independence;]~~

~~*[(iii)* were obtained from a financial institution for which independence was not required and that were later sold to a client for which independence is required; or]~~

~~*[(iv)* were obtained from a firm's financial institution client requiring independence, by a borrower prior to his or her becoming a member of the firm or registration holder, such as:]~~

~~*[(I)* loans obtained by the certificate or registration holder which are not material to the net worth of the borrower;]~~

[(II) home mortgages; and]

[(III) other secured loans in which the collateral must equal or exceed the remaining balance of the loan at January 1, 1997, and at all times thereafter.]

[(B) Other permitted loans-Personal loans obtained from a financial institution client from which independence is required which were made under that institution's normal lending procedures, terms and requirements. Such loans must, at all times, be kept current as to all terms. Other permitted loans include:]

[(i) automobile loans and leases collateralized by the automobile;]

[(ii) loans of the surrender value under terms of an insurance policy;]

[(iii) loans fully collateralized by cash deposits at the same financial institution; and]

[(iv) credit cards and cash advances on checking accounts with an aggregate balance not paid currently of $5,000 or less.]

[(c) Independence also will be considered to be impaired if, during the period covered by the financial statements, during the period of the professional engagement, or at the time of issuing his report, the certificate or registration holder:]

[(1) was connected with the client as a promoter, underwriter, or voting trustee, a director or officer, or in any capacity equivalent to that of a member of management or of any employee;]

[(2) was a trustee for any pension or profit-sharing trust of the client;]

[(3) receives or had a commitment to receive from the client or third party, with respect to services or products procured or to be procured by or for the client, compensation for other than the performance of professional services that is material in relation to the aggregate normally-recurring fees charged annually to the client for reports on financial statements;]

[(4) had a commitment from the client for a contingent fee in violation of §501.72 of this title (relating to Contingency Fees); or]

[(5) had an engagement to provide for the supervision of an individual as provided for in §511.124(a)(1) of this title (relating to Acceptable Supervision).]

[(d) Independence will be presumed to be impaired if the certificate or registration holder performs audit services, other than for charitable organizations, for a fee that is less than the direct labor cost reasonably expected, at the time the engagement was accepted, to be incurred in performing such services. For this purpose direct labor costs means the total compensation of the person or persons expected to perform the service for the time they are expected to serve on the audit plus all payroll expenses related to such compensation.]

[(e) A certificate or registration holder's independence may be impaired by a close relative's association with a client. Close relatives are defined as spouses and dependent persons, whether or not related, and defined as dependent and non-dependent children, grandchildren, stepchildren, brothers, sisters, parents, grandparents, parents-in-law, and their respective spouses.]

[(1) Certificate and registration holders must consider whether the strength of personal and business relationships between the certificate or registration holder and the close relative would lead a reasonable person who is aware of all the facts to conclude that the situation poses an unacceptable threat to the certificate or registration holder's objectivity and appearance of independence. In reaching this conclusion, the certificate or registration holder should consider the specific association with the client.]

[(2) A certificate or registration holder's independence will be presumed to be impaired with respect to a client if:]

[(A) during the period of the professional engagement or at the time of expressing an opinion, the certificate or registration holder participating in the engagement has knowledge of a close relative who has a material financial interest in the client;]

[(B) during the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion:]

[(i) the certificate or registration holder participating in the engagement has a close relative who could exercise significant influence over the operative, financial, or accounting policies of the client or is otherwise employed in a position in which the close relative's activities are normally an element of or subject to significant internal accounting controls;]

[(ii) a proprietor, shareholder, or individual in a managerial position in a certificate or registration holder's office, has a close relative who could exercise significant influence over the client's operating, financial, or accounting policies, if that proprietor, shareholder or individual participates in a significant portion of the engagement.]

[(f) The examples of impaired independence described in subsections (b)-(e) of this section are not intended to be all-inclusive.]

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 January 17, 2002.

TRD-200200258
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: March 3, 2002
For further information, please call: (512) 305-7848

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SUBCHAPTER D. RESPONSIBILITIES TO THE PUBLIC

22 TAC §501.81

The Texas State Board of Public Accountancy proposes an amendment to §501.81, concerning Firm License Requirements.

The amendment to §501.81 will clarify that the rule also applies to sole proprietorships.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the rule was intended to apply to sole proprietorships and was so applied.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the rule was intended to apply to sole proprietorships and was so applied.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the rule was intended to apply to sole proprietorships and was so applied.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be efficient administration of the rule through the explicit inclusion of sole proprietorships.

The probable economic cost to persons required to comply with the amendment will be zero because the rule was intended to apply to sole proprietorships and was so applied.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on February 15, 2002. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the rule is only clarifying an existing application of the rule.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 2001) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§501.81. Firm License Requirements.

(a) A Firm, including a sole proprietorship, may not provide attest services or use the title "CPA," "CPAs,"[~~"CPA's,"~~] "CPA Firm," "Certified Public Accountants," "Certified Public Accounting Firm," or "Auditing Firm" or any variation of those titles unless the firm holds a firm[~~Firm~~] license.

(b) An individual may not provide attest services unless:

(1) the individual has a license or registration issued under the Act; and

(2) the individual offers the attest services through an entity holding a firm license.

(c) Each advertisement or written promotional statement that refers to a CPA's designation and his or her association with an unlicensed entity in the client practice of public accountancy must include the disclaimer: "This firm is not a CPA firm." The disclaimer must be included in conspicuous proximity to the name of the unlicensed entity and be printed in type not less bold than that contained in the body of the advertisement or written statement. If the advertisement is in audio format only, the disclaimer shall be clearly declared at the conclusion of each such presentation.

(d) The requirements of subsection (c) of this section do not apply with regard to a certificate or registration holder performing services:

(1) as a licensed attorney at law of this state while in the practice of law or as an employee of a licensed attorney when acting within the scope of the attorney's practice of law; or

(2) as an employee, officer, or director of a federally-insured depository institution, when lawfully acting within the scope of the legally permitted activities of the institution's trust department.

(e) On the third determination by the board that a certificate holder has practiced without a license or through an unregistered entity in violation of subsection (c) of this section, the individual's certificate shall be subject to revocation and may not be reinstated for at least 12 months from the date of the revocation.

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 January 17, 2002.

TRD-200200259
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: March 3, 2002
For further information, please call: (512) 305-7848

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22 TAC §501.83

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.83, concerning Firm Names.

The amendment to § 501.83 will permit the names of non-CPA owners to be included in licensed CPA firm names.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment will require no action on the part of the state.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment will require no action on the part of the state or local governments.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment will require no action on the part of the state or local governments.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the public will not be confused as to the ownership of a licensed firm by permitting non-CPA owners to include their names in the name of a licensed CPA firm.

The probable economic cost to persons required to comply with the amendment will be zero because the amendment requires no more cost by non-CPAs than CPAs.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on February 15, 2002. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment requires no more cost by non-CPAs than CPAs.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 2001) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§501.83. Firm Names.

(a) A firm name may not include descriptive words relating to the quality of services offered or that is misleading about the legal form of the firm, or about the persons who are partners, officers, or shareholders of the firm, or about any other matter. However, names of one or more former partners or shareholders may be included in the name of a firm or its successor.

(b) A firm name is misleading if:

(1) it is not the lawful and registered name of the firm;

(2) the name contains a misrepresentation of facts;

(3) the name indicates character or grade of service which is not based upon verifiable facts;

(4) the name is likely to mislead or deceive because it fails to make full disclosure of relevant facts; the following are examples, but are not inclusive:

(A) the name indicates a geographic area of service which is not based on verifiable facts; or

(B) the firm name includes a non-owner firm employee [~~or a non-CPA~~].

(5) the name is intended or likely to create false or unjustified expectations of favorable results;

(6) the name implies special expertise;

(7) the name implies educational or professional attainment or licensing recognition of the firm and/or of its owners, partners, or shareholders which are not supported in fact;

(8) the name of the firm that is incorporated does not include the words "corporation," "incorporated," "professional corporation," or "company," or an abbreviation thereof as a part of the firm name; the words "professional corporation," or "PC" are not included with the firm name each time it is used; and the name of a firm organized under the limited liability partnership rules does not include the words "professional limited liability company" or "professional limited liability partnership" as appropriate, or an abbreviation thereof as part of the firm name unless the entity was organized prior to September 1, 1993;

(9) the name includes the designation "and company," "company," "group," "associates" or "and associates" or abbreviations thereof or similar names implying more than one employed licensee in the firm unless there are at least two licensees involved full time in the practice;

(10) the name of a firm that is a partnership or professional corporation fails to contain the personal name or names of one or more individuals presently or previously a partner, officer, or shareholder thereof; except that an acronym may be used for a firm name if the acronym is composed exclusively of the first letters of the surnames of current or past partners or shareholders of the firm;

(11) the name of a firm that is a sole proprietorship fails to contain the name of the sole proprietor; [~~or~~]

(12) the name implies that a non-CPA owner is a CPA; or

(13) [~~(12)~~] the name contains other representations or implications that in reasonable probability will cause a reasonably prudent person to misunderstand or be deceived.

(c) A partner surviving the death or withdrawal of all other partners may continue to practice under a partnership name for up to two years after becoming a sole practitioner.

(d) The name of any former partner or former shareholder may not be used in a registered firm name during the period when the former partner or former shareholder has been prohibited from practicing public accountancy or prohibited from using the title "CPA" or "PA."

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 January 17, 2002.

TRD-200200260
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: March 3, 2002
For further information, please call: (512) 305-7848

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22 TAC §501.84

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.84, concerning Form of Practice.

The amendment to §501.84 will broaden the permissible business structures of licensed firms to reflect that non-CPAs may own interests in licensed firms.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment will require no action on the part of the state.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment will require no action on the part of the state or local governments.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment will require no action on the part of the state or local governments.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that appropriate business structures will be utilized by licensed firms owned by non-CPAs.

The probable economic cost to persons required to comply with the amendment will be zero because the amendment requires no more cost by non-CPAs than CPAs.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on February 15, 2002. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment requires no more cost by non-CPAs than CPAs.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 2001) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§501.84. Form of Practice.

A certificate or registration holder may practice public accountancy only in a proprietorship, a partnership, a limited liability company, a registered limited liability partnership, a professional public accounting corporation, or business corporation organized under the laws of the State of Texas or an equivalent law of another state, territory, or foreign country, or as an employee of one of these entities.

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 January 17, 2002.

TRD-200200261
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: March 3, 2002
For further information, please call: (512) 305-7848

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 99. OCCUPATIONAL DISEASES

25 TAC §99.1

The Texas Department of Health (department) proposes an amendment to §99.1, concerning Occupational Diseases.

Government Code, §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The section has been reviewed and the department has determined that reasons for adopting the section continue to exist; however changes were necessary as described in this preamble.

The amendment changes the current name of the division responsible to receive reports of reportable occupational conditions. The division name has changed from Noncommunicable Disease Epidemiology and Toxicology Division to Environmental Epidemiology and Toxicology Division. Minor editorial changes were made to improve the accuracy of the section.

The department published a Notice of Intention to Review the section as required by Government Code §2001.039 in the *Texas Register* on April 13, 2001 (26 TexReg 2855). No comments were received.

Bea Sneed, Chief of Staff, has determined that for each year of the first five-years the section is in effect, there will be no fiscal implication to state or local government as a result of enforcing or administering the section as proposed.

Bea Sneed 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 or administering the amendment will be at no cost, and informs the public of the proper name of the division within the department which deals with occupational diseases, facilitating better communication. There will be no cost effects on micro businesses or small businesses since the amendment is only changing the name of the division. There are no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Diana Salzman, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7269, fax (512) 458-7699. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Health and Safety Code, §84.003, which authorizes the board of health (board) to adopt rules relating to the reporting of occupational diseases and Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health.

The amendment affects Health and Safety Code, Chapters 84 and 12; and implements Government Code, §2001.039.

§99.1. General Provisions.

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

(c) Reporting requirements

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

(4) The local health authority shall collect the reports and transmit the information at weekly intervals to the Environmental Epidemiology and Toxicology Division [~~Noncommunicable Disease Epidemiology and Toxicology Division~~], Bureau of Epidemiology, Texas Department of Health, 1100 West [~~W.~~] 49th Street, Austin, Texas 78756. Transmission may be made by mail, courier, or electronic transfer.

(A) If by mail or courier, the reports shall be placed in a sealed envelope addressed to the attention of the Environmental Epidemiology and Toxicology Division [~~Noncommunicable Disease Epidemiology and Toxicology Division~~], Bureau of Epidemiology, Texas Department of Health, 1100 West [~~W.~~] 49th Street, Austin, Texas 78756, and marked "Confidential Medical Records."

(B) (No change.)

(5) (No change.)

(d) - (f) (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.

Filed with the Office of the Secretary of State on January 18, 2002.

TRD-200200280
Susan Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: March 3, 2002
For further information, please call: (512) 458-7236

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PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 412. LOCAL AUTHORITY RESPONSIBILITIES

SUBCHAPTER Z. JAIL DIVERSION PILOT PROGRAM

25 TAC §§412.951 - 412.958

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes §§412.951-412.958 of new Chapter 412, Subchapter Z, concerning jail diversion pilot program.

The proposed sections describe TDMHMR's process for local authorities to conduct mental health evaluations through interactive audiovisual telecommunications. The mental health evaluations are conducted as part of a jail diversion pilot program required by SB 789 of the 77th Texas Legislature, codified in Texas Health and Safety Code, §§533.101 and 533.102. Austin Travis County MHMR, Austin, and Tri-County MHMR, Conroe, will participate in the pilot program, which uses interactive audiovisual telecommunications to identify persons who are clinically eligible for diversion from jail to mental health services prior to being charged with a crime or detained in jail. The authorizing legislation provides for both prebooking and postbooking diversion, but the rules apply to prebooking mental health evaluations only.

Cindy Brown, chief financial officer, has determined that for each year of the first five years the proposed sections are in effect, enforcing or administering the sections does not have foreseeable implications relating to costs or revenues of the state or local governments because this pilot will facilitate the delivery of services already in place at the two pilot sites.

Mike Maples, assistant director, Behavioral Health Services, has determined that for each year of the first five years the proposed sections are in effect, the public benefit expected is the implementation of procedures that will enable participating local authorities to evaluate whether a person is clinically eligible for diversion from jail to mental health services prior to being charged with a crime or detained in jail and to test and evaluate the effectiveness of using telecommunication technology for this purpose. It is anticipated that there would be no additional economic cost to persons required to comply with the proposed sections because mental health evaluations are required to be provided by all local mental health authorities. The cost of the equipment will be funded through a grant.

It is not anticipated that the proposed sections will affect a local economy because no funds in addition to those already provided to local mental health authorities will be used.

It is not anticipated that the proposed sections will have an adverse economic effect on small businesses or micro-businesses because the sections do not place requirements on small or micro-businesses.

Written comments on the proposed sections may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

These new sections are proposed under the Texas Health and Safety Code, §532.015, which provides the Texas Board of Mental Health and Mental Retardation (board) with broad rulemaking authority, and Texas Health and Safety Code, §533.102, which requires TDMHMR to promulgate rules governing prebooking mental health evaluations using interactive audiovisual telecommunications.

The proposed sections would affect the Texas Health and Safety Code, Chapter 533, §§533.101-533.102.

§412.951. Purpose.

The purpose of this subchapter is to provide procedures for evaluations governing the use of interactive audiovisual telecommunications in the pilot program established under Texas Health and Safety Code, §§533.101-533.102, to determine if a person is clinically eligible for diversion from jail to mental health services prior to the person being charged with a crime or being detained in jail.

§412.952. Application.

This subchapter applies to local mental health authorities (LMHAs) participating in the jail diversion pilot program established under the Texas Health and Safety Code, Chapter 533, §§533.101-533.102.

§412.953. Definitions.

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

(1) Booking center staff member--A person employed by a booking center.

(2) Interactive audiovisual telecommunication--Electronic media involving both hearing and sight, by both the person being evaluated and the evaluator, used to conduct a mental health evaluation.

(3) Law enforcement officer--A representative of a municipal, county, or state law enforcement agency who is certified by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) and who is responsible for enforcement of law or civil commitment actions.

(4) Local mental health authority (LMHA)--An entity to which the Texas Board of Mental Health and Mental Retardation delegates its authority and responsibility within a specified region for the planning, policy development, coordination, resource development and allocation, and/or for supervising and ensuring the provision of mental health community services to people with mental illness in one or more local service areas.

(5) Mental illness--An illness, disease, or condition (other than a sole diagnosis of epilepsy, senility, substance use disorder or dependency, mental retardation, autism, or pervasive developmental disorder) that:

(A) substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs an individual's behavior as demonstrated by recent disturbed behavior.

(6) Mental health evaluation--The clinical process of obtaining and evaluating relevant historical, social, functional, psychiatric, developmental, or other information from a person sufficient to determine priority population eligibility, treatment needs, the intensity of those needs, and the nature of the person's current support system.

(7) Person--An individual who has been detained by a law enforcement officer.

(8) Qualified mental health professional (QMHP)--An individual who is credentialed to provide QMHP-CS services, including those referenced in §§412.314(a)-(b) and 412.315(a) of this title (relating to Crisis Services and to Assessment and Treatment Planning, respectively), who has demonstrated competency in the work to be performed, and who:

(A) has a bachelor's degree from an accredited college or university with a minimum number of hours equivalent to a major as determined by the LMHA in accordance with §412.312(c) of this title (relating to Competency and Credentialing) from an accredited college or university in psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human growth and development, physician assistant, gerontology, special education, educational psychology, early childhood education, or early childhood intervention; or

(B) is a registered nurse.

§412.954. Determination of Clinical Eligibility for Diversion: Mental Health Evaluation.

(a) A QMHP conducts a mental health evaluation using interactive audiovisual telecommunication in accordance with §412.315(a) of this title (relating to Assessment and Treatment Planning).

(b) The LMHA ensures that a person referred by a law enforcement officer or booking center staff person and consent is obtained, receives a mental health evaluation through interactive audiovisual telecommunication prior to being charged with a crime or detained in jail.

(c) Based on the results of the mental health evaluation, the QMHP determines if the person is clinically eligible for diversion.

§412.955. Obtaining Informed Consent for the Evaluation.

(a) The QMHP requests and documents the person's informed consent, or withholding of informed consent, to participate in a mental health evaluation using interactive audiovisual telecommunications.

(b) The QMHP ensures that the person is not videotaped or audiotaped during the mental health evaluation for any purpose.

§412.956. Recommendations and Documentation.

(a) The QMHP makes a verbal and written report to the referring law enforcement officer or booking center staff person concerning:

(1) the person's clinical eligibility or ineligibility for treatment services; (2) the LMHA's capacity or lack of capacity to treat a person who is clinically eligible for treatment services;

(3) the person's informed consent or lack of informed consent to receive LMHA treatment services; and

(4) the QMHP's treatment recommendations.

(b) The LMHA maintains documentation of each mental health evaluation conducted through interactive audiovisual telecommunication.

§412.957. References.

The following laws and rules are referenced in this subchapter:

(1) Texas Health and Safety Code, Chapter 533;

(2) Chapter 404, Subchapter E, of this title, governing Rights of Persons Receiving Mental Health Services; and

(3) Chapter 412, Subchapter G, of this title, governing Mental Health Community Services Standards.

§412.958. Distribution.

(a) This subchapter is distributed to:

(1) all members of the Texas Board of Mental Health and Mental Retardation;

(2) executive, management, and program staff of TDMHMR Central Office;

(3) executive directors of all local authorities; and

(4) advocacy organizations.

(b) The executive director of each LMHA participating in the pilot program is responsible for disseminating copies of this subchapter to all appropriate staff and contractors.

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 January 17, 2002.

TRD-200200264
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: March 3, 2002
For further information, please call: (512) 206-4516

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

CHAPTER 290. PUBLIC DRINKING WATER

The Texas Natural Resource Conservation Commission (agency, commission, or TNRCC) proposes amendments to Subchapter D, Rules and Regulations for Public Water Systems, §§290.38, 290.39, 290.41, 290.42, and 290.44 - 290.47; and Subchapter F, Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems, §§290.102 - 290.104, 290.106 - 290.115, 290.117 - 290.119, 290.121, and 290.122.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission adopted major revisions to Chapter 290 in the November 17, 2000, issue of the *Texas Register* (25 TexReg 11408), to implement state rules conforming to the federal Interim Enhanced Surface Water Treatment Rule (IESWTR) and the Stage I Disinfectant and Disinfection By-Product Rule (Stage 1 DBPR) as required by federal law (Safe Drinking Water Act (SDWA), 42 United States Code (USC), §§300g *et seq.*), and federal regulations under 40 Code of Federal Regulations (CFR) Parts 9, 141, and 142. After adopting these amendments, the commission discovered several minor typographical errors that needed to be corrected. With the current amendments, the commission proposes primarily technical and grammatical corrections to Chapter 290, Subchapters D and F. In addition to these corrections, the commission proposes amendments to incorporate the federal Public Notification Rule (40 CFR Parts 9, 141, 142, and 143; 65 Federal Register (FR) 25981-26049, May 4, 2000); incorporate the federal Lead/Copper Minor Revisions Rule (40 CFR Parts 9, 141, and 142; 65 FR 1949-2015, January 12, 2000); implement House Bill (HB) 217, §2, 77th Legislature, 2001, deleting the exemption for small municipalities to have plumbing inspections performed by a licensed plumber; update references to lab related terminology prompted by HB 2912, §18.02, transferring certification of drinking water laboratories from Texas Department of Health (TDH) to TNRCC; and propose language from SDWA, 42 USC, §300g-1(b)(10), allowing two-year extensions to the effective dates for new regulations for maximum contaminant levels (MCLs) and treatment technique (TT) requirements when capital improvements are necessary to comply with the new requirements.

TNRCC has reviewed the public health effects of using treatment techniques other than the control of total organic carbon (TOC) for limiting the formation of disinfection by-products. These alternatives may involve the use of disinfectants such as ozone, ultraviolet light, and chloramine that form fewer regulated disinfection byproducts than chlorine, the primary disinfectant used by many public water systems. TNRCC may submit a proposal under the "Joint EPA/State Agreement to Pursue Regulatory Innovations" to pursue regulatory innovation to protect public health from disinfection by-products. Although these amendments do not propose any alternative compliance criteria other than those already contained in TNRCC regulations, the TNRCC is requesting public comment on developing rules in a future rulemaking which protect public health by adopting compliance criteria for alternative treatment techniques to reduce disinfection by-product levels.

SECTION BY SECTION DISCUSSION

Certain rewording is proposed throughout the two affected subchapters. The term "public drinking water program," which was used in the previous adoption to make clear to the regulated community the group within the commission that accepted their forms, letters, and other correspondence related to public water systems, has been replaced with the term "executive director," to conform to usage in other agency rules and the definitions in 30 TAC Chapter 3, Definitions, of the commission's rules. The term "Water Permits and Resource Management Division" has been replace with the term "Water Supply Division" to reflect the most recent reorganization of the agency.

Subchapter D

Section 290.38, Definitions, is proposed to be renumbered to incorporate new definitions of "certified laboratory," "customer service line or pipe," "distribution system," "groundwater," "potable water customer service line," "potable water service line," "potable water main," "service line," "wastewater lateral," and "wastewater main." The definition of "approved laboratory" is proposed to be amended to incorporate the jurisdictional change from the TDH to the commission. The proposed rule would clarify the definition of "connection" to explain that alternative water from a commission-approved water provider or the water users' private well shall not be considered a connection. The proposed rule also clarifies in the definition of "contamination" that the presence of any foreign substance in water which tends to degrade its quality constitutes a hazard to health. The definition of "maximum daily demand" is proposed to be modified to account for situations in which mandatory water use restrictions have been put in place related to drought conditions.

Section 290.39, General Provisions, is proposed to be amended. Subsection (d)(1) would specify that plans and specifications prepared under the seal of a professional engineer must have the seal, signature, and dates affixed in accordance with the rules of the Texas Board of Professional Engineers. Subsection (d)(3)(C) is proposed to be amended to include a mailing address

for the submission of planning materials. The proposal includes replacement of the term "public drinking water program" with the term "executive director" for consistency with the commission's style guidelines because the public drinking water program staff represents the executive director.

Section 290.39(f) is proposed to be amended to delete the word "proposed" to clarify that the prospective owner of the system or the person responsible for managing and operating the system must submit a business plan before construction is completed 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.

Section 290.39(h)(2) is proposed to be amended to require the design engineer or the owner to notify the executive director before construction is started rather than when construction is started. Subsection (h)(3) is proposed to be amended to change "will" to "shall" to more clearly specify that the engineer or owner is required to notify the executive director in writing. This would provide a record of the notification.

Section 290.39(j) is proposed to be amended to reorganize and reword the notification requirements for changes to a public water system's physical facilities. Subsection (j) is proposed to be amended to include the introductory material for the notification requirements for any change in disinfection facilities at a treatment plant treating surface water or groundwater under the direct influence of surface water. Subsection (j)(1) is proposed to be amended to list the significant material changes for which public water systems shall notify the executive director prior to making any of these material changes, improvements, additions, or alterations to an existing public water system. Subsection (j)(1) is proposed to be amended by adding "pressure maintenance facilities" to the list of changes to a system's facilities requiring notification to the executive director. Changes requiring written notice to the executive director are specified as those changes which result in either an increase or decrease in production, treatment, storage, or pressure maintenance capacity. Paragraph (1) is also proposed to be reorganized to contain specific descriptions of conditions requiring notification in subordinate subparagraphs. Paragraph (1)(A) is proposed to be added to specify the requirement of notification for changes which result in an increase in the amount of water a system can provide, store, or pressurize. Paragraph (1)(B) is proposed to be added to state the requirement for notification for changes in disinfection facilities at surface water treatment plants or plants treating groundwater under the direct influence of surface water. These requirements were previously contained in paragraph (2) of this subsection. Paragraph (1)(C) is proposed to be added to specify the requirement for notification for changes to the type of disinfectant used in the distribution system. This requirement was previously contained in paragraph (3) of this subsection. Existing paragraph (4) of this subsection is proposed to be reworded and renumbered as proposed paragraph (1)(D), and contains the requirement for notification if changes are planned to the distribution system, if those changes constitute 10% of the distribution system capacity, or 250 connections, whichever is smaller, or if the changes will affect the system's ability to comply with other capacity regulations. Paragraph (1)(E) is proposed to be added to contain the requirement that the executive director may identify other conditions under which notification is required, which was previously contained in paragraph (5) of this subsection. The material previously contained in paragraphs (2) - (4) is proposed to be deleted and incorporated into paragraph (1), as described previously. Existing paragraph (5) has been renumbered to new paragraph (2).

Section 290.39(j)(2)(B), formerly paragraph (5)(B), is proposed to be reorganized to clarify the requirements for submittal of plans. The language giving political subdivisions with internal review staff the ability to review certain of their own plans was inadvertently subordinated in the previous adoption; the proposed language corrects that error. Paragraph (2)(B)(i) is proposed to be added to set out the requirements for a political entity's internal review staff, previously contained in paragraph (5)(B). Paragraph (2)(B)(ii) is proposed to be added to contain the requirement that the political entity's professional engineer certify the legality of planned changes; this requirement was previously contained in paragraph (5)(B). Paragraph (2)(B)(iii) is proposed to be added to contain the requirement, previously in paragraph (5)(B), that certification of the internal review staff be provided with the written notice given to the executive director. Paragraph (2)(C) is added to clarify the existing requirement that if plans are submitted to the internal review staff as part of a legal agreement between two political entities, those plans may be approved in that manner, but notification is still required. Paragraph (3) is proposed to be added to specify that if the planned changes to the distribution system will cause the Certificate of Convenience and Necessity (CCN) to be changed, a CCN amended application must be submitted at the same time notice is sent to the executive director.

Section 290.39(l)(1) is proposed to be changed to replace the word "should" with the word "shall," thus making more enforceable the requirement that any request for an exception to the rules precede submission of engineering plans. This section is also proposed to be expanded to clarify that an exception request is only required if the public water system is actually seeking an exception to one or more of the regulatory provisions.

Section 290.41, Water Sources, is proposed to be amended to ensure consistency of word usage, to correct typographical errors, and to provide clarification of rule requirements. In subsection (a), the citation to Subchapter F is proposed to be made explicit. The requirement contained in §290.41(c)(1)(F), relating to sanitary control easements, is intended to ensure that the area around a well used for public drinking water be protected from potential contamination. The term "sanitary control easement" is to establish an area of protection which is recorded in county records. However, the term "sanitary control easement" describes the protected area around a drinking water well. Subparagraph (F) is proposed to be expanded to provide that political subdivisions which adopt and enforce ordinances or land restrictions that will achieve the goal of protecting a public water source may, with executive director approval, substitute those documents for sanitary control easements. Subsection (c)(3) is proposed to be amended to clarify that the subsequent subparagraphs contain the conditions for placing a new well into service for potable water. Subsection (c)(3) is also made more enforceable by deleting the phrase "special attention must be given to." The first sentence in paragraph (3)(A) is proposed to be changed to active voice, clearly stating that it is the public water system's responsibility to submit well information. Additionally, the term "to the executive director" is proposed to be added to clarify that the public water system must submit well information to the executive director. Paragraph (3)(C) is proposed to be amended to replace the word "will" with the word "shall" to make the conditions more legally enforceable. In addition, subparagraph (C) has been amended to reflect that the use of alternate methods of cementing a well may be approved only on a case-by-case basis

and that the approval must be in writing. Paragraph (3)(G) is proposed to be amended to replace the term "the Texas Department of Health approved" with the term "a certified" in response to the change of authority over lab certification from TDH to TNRCC as required by HB 2912, §18.02, 77th Legislature, 2001. Additionally, paragraph (3)(G) is proposed to be amended to replace the term "public drinking water program" with the term "executive director" to clarify that chemical and microbiological tests may be required by the executive director, or his designated staff, as defined by 30 TAC §3.2(16).

Section 290.41(d)(2) is proposed to be amended to replace the term "public drinking water program" with the term "executive director."

Section 290.41(e)(1) is proposed to be amended to clarify that the area surrounding a new surface water intake must be kept free of potential drinking water contaminants. Subsection (e)(2)(D) is proposed to be amended to replace the term "public drinking water program" with the term "executive director."

Section 290.42(b)(5), Water Treatment, is proposed to be added to this subsection to specify that all plant piping shall be designed and constructed to be thoroughly tight against leakage. Proposed new paragraph (6) clarifies water systems must have sampling taps that will allow them to obtain water samples at the points specified in Subchapters D and F. Subsection (c)(4) is proposed to be amended to specify the same language as in subsection (b)(5). Subsection (c)(4) is also proposed to be amended to clarify that no cross-connection or interconnection shall be permitted between a conduit carrying potable water and a conduit carrying raw water or water in a prior stage of treatment. New paragraph (5) is proposed to include the same language as subsection (b)(6).

Section 290.42(d)(3) is amended to clarify that any discharge of wastewater shall be according to the appropriate statutes and regulations including those contained in 30 TAC Chapters 305, 309, and 319. Subsection (d)(6)(C) is proposed to be amended to specify that all chemical bulk storage facilities and day tanks shall be clearly labeled to indicate each tank's contents and a method to determine the amount of chemical remaining in the tank must be provided. Subsection (d)(6)(E), which describes chemical containment requirements to minimize the possibility of leaks and spills, is proposed to be reworded for clarification and to consider current chemical containment technology. Subparagraph (E)(i) states that the material used to construct the bulk tanks must be compatible with the chemicals being stored and must be resistant to corrosion. Subparagraph (E)(ii) is proposed to be amended to state that except as provided in this clause, adequate containment facilities shall be provided for all liquid storage tanks. This takes into account the situation in which multiple tanks utilize a common containment area. Subparagraph (E)(ii)(I) is proposed to be amended to state that the tank must be large enough to hold the maximum amount of chemical that can be stored. Subclause (II) is proposed to be amended to state that the common containment for multiple containers must be large enough to hold the volume of the largest container. Subclauses (III) and (IV) of subparagraph (E)(ii) are proposed to be renumbered from subclauses (II) and (III) respectively. Subparagraph (E)(ii)(V) is proposed to be added to include the allowance that small containers, 35 gallons or less, containing hypochlorite solution for disinfection do not need to be surrounded by a containment facility. Subparagraph (E)(ii)(VI) is proposed to be added to allow double-walled tank containment when approved by the executive director.

Section 290.42(d)(11) is proposed to be amended to specify that gravity or pressure-type filters shall be provided. Subsection (d)(11)(B) is proposed to be amended to clarify that filtration facilities shall be designed to operate at filtration rates which assure effective filtration at all times. Subsection (d)(11)(B)(i) is proposed to be amended to delete the term design and specify that the design capacity of gravity rapid sand filters shall not exceed a maximum filtration rate of 2.0 gallons per square foot per minute. Subparagraph (B)(ii) is proposed to be amended to delete the term design and specify that high-rate gravity filters shall not exceed a maximum filtration rate of 5.0 gallons per square foot per minute. Subparagraph (B)(iii) is proposed to be amended to clarify the existing requirement that the design capacity of pressure filters shall not exceed a maximum filtration rate of 2.0 gallons per square foot per minute. Subparagraph (B)(iv) is proposed to be amended to specify that any surface water treatment plant that provides less than 7.5 million gallons per day (gpd) 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. Subparagraph (B)(iv) is also proposed to be amended to delete a sentence specifying the design capacity of filtration facilities. Subparagraph (B)(v) is proposed to be amended to specify that any surface water treatment plant that provides, or is being designed to provide, 7.5 million gpd 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. Subparagraph (B)(v) is also proposed to be amended to delete a sentence specifying the design capacity of filtration facilities. Subparagraph (B)(vi) is proposed to be added to incorporate the need for systems using pressure filters to meet capacity while one filter is being backwashed.

Section 290.42(e)(4) is proposed to be reworded to the language that existed in the 1997 adoption of the rules, prior to the previous adoption, based on extensive comments from stakeholders that the language adopted in 2000 inadvertently conflicted with other regulations regarding risk management and fire protection. With a future rulemaking, specific comments will be invited from stakeholders on all of the language related to chlorine gas safety. The existing language in paragraph (4) is proposed to be deleted and replaced with new language specifying that systems that use chlorine must ensure that the risks associated with its use are limited. Specifically, paragraph (4)(A) is proposed to require that 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 chlorination room and immediately available to the operator in the event of an emergency. Paragraph (4)(B) is proposed to specify that 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. Proposed amendments also specify that housing shall be located above ground level as a measure of safety, and that equipment and cylinders may be installed on the outside of the buildings when protected from adverse weather conditions and vandals. Paragraph (4)(C) specifies that 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. Paragraph (4)(C) is also proposed to be amended to clarify that 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. Amendments are also proposed to specify that as an alternative, systems may install negative pressure ventilation as long as the facilities also have gas containment and treatment as prescribed by the current Uniform Fire Code (UFC). Paragraphs (5) and (6) are proposed to be deleted, and paragraphs (7) and (8) are renumbered.

Section 290.44, Water Distribution, is proposed to be amended to incorporate requirements in 30 TAC Chapter 317, Design Criteria for Sewerage Systems, regarding separation distances between sewer lines and water lines. Portions of §317.2 (relating to Sewage Collection System) will be incorporated into this section. This section is also proposed to be amended to correct typographical errors and to clarify rule requirements. Section 290.44(c) is proposed to be amended for grammatical corrections and also to clarify the mandatory requirements of minimum water line sizes for domestic flows, and that larger pipe sizes shall be used when the engineer deems necessary to ensure the safe delivery of water.

Subsection (d)(4) is proposed to be amended to specify that service connections include residential, commercial or industrial connections. Paragraph (4) is also proposed to be amended to clarify that a water system that furnishes service only to itself or its employees is exempt from this requirement. Subsection (d)(6) is proposed to be amended with grammatical corrections that specify that dead ends shall be located and arranged in such a way that the ends can be connected to provide circulation.

Subsection (e) is proposed to be amended to incorporate provisions previously contained in Chapter 317. Paragraphs (1) - (5) of subsection (e) are proposed to be renumbered. Existing language in paragraph (1) is incorporated into subsection (e) and a sentence is added to clarify the location of waterlines by specifying that new mains, service lines, or laterals are those that are installed where no main, service line, or lateral previously existed; or where existing mains, service lines, or laterals are replaced with pipes of different size or material. Existing paragraphs (2) - (9) are renumbered as paragraphs (1) - (8) of subsection (e). Renumbered paragraph (2) is proposed to be amended to change the phrase "collection line or force main" to "mains or laterals" to update current terminology. Renumbered paragraph (4)(A)(i) is proposed to be amended to add the term "lateral" and delete the terms "line" and "force" to clarify which wastewater lines are affected. The qualifying phrase "licensed in the State of Texas" is added to clarify the requirements for a licensed professional engineer. Paragraph (4)(A)(ii) is also proposed to be amended to replace the term "line" with "wastewater main or lateral" to clarify which wastewater lines are affected. Paragraph (4)(A)(iii) is also proposed to be amended to replace the term "line" with "wastewater main or lateral" to clarify which wastewater lines are affected. In paragraph (4)(B), clauses (i) - (vi) are proposed to be amended to replace the term "line" with "wastewater main or lateral" to clarify which wastewater lines are affected. Clauses (iii) and (v) are also proposed to be amended to update cross-references to §290.44(e)(4)(B)(vi). In clause (iii), subclauses (II) and (III) are also proposed to be amended to replace the term "line" with "wastewater main or lateral" to clarify which wastewater lines are affected. Clause (vi) is also proposed to be amended to recommend brown sand be used to identify pressure rated wastewater lines during construction. Renumbered paragraph (5) is proposed to be amended to clarify that pressure class pipe for waterlines shall be "at least" 150 pounds per square inch (psi). Renumbered paragraph (6) is proposed to be amended for grammatical corrections and to replace the phrase "sanitary sewer line" with "wastewater main or lateral." Renumbered paragraph (7) is proposed to be amended with grammatical corrections and to clarify that the affected lines are potable or raw water lines.

Section 290.45, Minimum Water System Capacity Requirements, is proposed to be amended to incorporate wording changes and to clarify rule requirements. Subsection (d)(2)(B)(iii) and (iv) is proposed to be amended to replace the phrase "2.0 gallons per minute per connection" with the phrase "three times the maximum demand" because the noncommunity water systems regulated under this subsection are defined as only one connection, regardless of size, making it necessary to clarify that the system must be able to provide water to all of their consumers based on the flow rate of the system rather than the number of connections. Subsection (g) is proposed to be amended to replace the word "exceptions" with the phrase "alternative capacity requirement" throughout. Stakeholders have provided comment that the wording change is needed to make it more clear to funding agencies that meeting special capacity provisions approved by the executive director constitutes compliance with the regulations. Subsection (g)(1)(F) is proposed to be amended to clarify and make explicit the previously implicit requirement that the public water system submit documentation with any alternate capacity requirement request showing that its level of service will remain equivalent to the level of service provided under the minimum capacity requirements of this section. Subsection (g)(2) is proposed to be amended to incorporate the phrase "alternative capacity requirement" to replace the word "exceptions" and to make it clear that the conditions set out in the subordinate subparagraphs and clauses applies to any minimum pressure maintenance facilities, rather than merely elevated storage. In paragraph (2)(A)(iii), the word "should" is proposed to be replaced with the word "shall" to make the regulation more enforceable. Subsection (g)(3) is proposed to be reworded to clarify that the compliance investigator may revoke any alternative capacity requirement, and if the alternative capacity requirement is revoked, the system must meet the minimum capacity requirement.

Section 290.46, Minimum Acceptable Operating Practices for Public Drinking Water Systems, is proposed to be revised to correct grammatical or typographical errors, to provide consistency with other regulations, and to clarify requirements. Subsection (b) is proposed to be amended to change "approved" lab to "certified" lab. Subsection (c) is proposed to be amended to specify that samples for chemical analysis are submitted to the executive director. Likewise, proposed amendments clarify that the executive director will provide a list of certified labs. Subsection (d) is proposed to be amended to delete the word "acceptable" because the term "acceptable" is subject to interpretation and is not defined in the rule. Subsection (d)(1) is proposed to be amended to change "facilities" to "equipment" for more specificity in the application of the rules. Subsection (d)(2) is proposed to be amended to change "in the far reaches of" to "throughout" to more clearly specify where the disinfectant residuals must be maintained.

Section 290.46(e) is proposed to be amended to refer to public water system operators as being "trained and licensed" rather than "certified" throughout, to correspond to new wording in the operator certification requirements of 30 TAC Chapter 30, Occupational Licenses and Registrations. The exemption from these

requirements for nontransient, noncommunity systems is proposed to be moved from subsection (e) to paragraph (7) of subsection (e). Subsection (e)(1) is proposed to be reworded to state the requirement that systems with 1,000 connections or less must have a single operator meeting the requirements. The requirements previously contained in subsection (e)(1)(A) - (E) are proposed to be moved to the rewritten subordinate paragraphs and subparagraphs. Subsection (e)(2) is proposed to state the requirement that systems with more than 1,000 connections must employ two operators at the license level given in the paragraphs which follow. Subsection (e)(3) is proposed to be reorganized to more clearly describe the conditions under which a public water system must employ an operator with a given class of license. Paragraph (3)(A) is proposed to contain the requirement, previously contained in paragraph (1), that a public water system using only purchased water or groundwater must employ a single Class "D" or higher operator. Proposed paragraph (3)(B) clarifies that a system with 250 or more connections must employ a Class "C" operator, if the system uses only groundwater or purchased water. Proposed paragraph (3)(C) clarifies that a system with 250 or more connections must employ a Class "C" Groundwater or higher operator if the system uses only groundwater. Subparagraph (C) is proposed to be slightly expanded to address the current technology used for treatment of groundwater that is under direct potential of contamination from surface water. Proposed paragraph (3)(D) expands the requirements for operator levels at systems treating groundwater under the direct influence of surface water (GUI). Proposed subparagraph (D)(i) contains the requirement that GUI systems using cartridge filters employ an operator with either a Class "C" or higher surface water license or a Class "C" or higher groundwater license with the addition of a four-hour Monitoring and Reporting Course. Proposed subparagraph (D)(ii) contains the requirement that GUI systems using coagulant addition and direct filtration must employ an operator with either a Class "C" or higher surface water license or a Class "C" or higher groundwater license with the addition of a 40-hour Surface Water Production Course. Proposed subparagraph (D)(iii) contains the requirement that GUI systems using complete surface water treatments comply with the following subparagraph. Proposed subparagraph (D)(iv) contains the requirement that a GUI system either have an operator with a Class "C" or higher license at the plant when it is running or have automatic shutdowns and alarms. Proposed paragraph (3)(E) sets out the required license levels for operators if a system uses surface water. Proposed paragraph (4) states the requirements that beginning January 1, 2004, treatment facilities at all systems using chlorine dioxide must be under the direct supervision of a licensed operator that has completed additional training. Proposed language specifies that public water systems using chlorine dioxide must place those facilities under the direct supervision of a licensed operator who has a Class "C" or higher license and has completed an approved water laboratory course. Paragraph (5) is proposed to contain the requirement that systems employ a certified operator to inspect any water treatment facilities prior to those facilities being placed into production. Paragraph (6) is proposed to contain the requirement, previously given under paragraph (5), that a system ensure that operators have training in the use of water treatment chemicals to ensure the safety of these workers. Paragraph (7) is proposed to be added to contain the exemption for transient noncommunity public water systems that do not use surface water systems, previously contained in paragraph (1).

In §290.46(f)(3)(A), the requirements for record retention for chemical use and water produced are proposed to be expanded to provide clarification, and to give appropriate requirements to very small systems serving fewer than 750 people, or 250 connections. In subparagraph (A)(i), the words "each day" are proposed to be deleted. Subclause (I) of clause (i) is proposed to be added to contain the requirements previously implicit in clause (i), that systems that treat surface water or GUI shall record chemical use daily. Subclause (II) of clause (i) is proposed to be added to require systems that serve 750 people or more, or 250 connections or more, shall record chemical use daily. Subclause (III) of clause (i) is proposed to be added to require systems that serve fewer than 250 connections and use only groundwater or purchased water shall record the amount of chemicals used in a week. Under subparagraph (A)(ii), the phrase "each day" is deleted and the volume of water used is clarified in the subclauses. Subclause (I) of clause (ii) is proposed to be added to contain the requirements, previously implicit in clause (i), that systems that treat surface water or GUI must record the volume of water treated daily. Subclause (II) of clause (ii) is proposed to be added to require systems that serve 750 people or more, or 250 connections or more, shall record the volume of water treated daily. Subclause (III) of clause (ii) is proposed to be added to require systems that serve fewer than 250 connections, fewer than 750 people, and use only groundwater or purchased water record the amount of water treated each week.

Section 290.46(f)(3)(B) is proposed to be expanded to include the requirement for retention of disinfectant residual monitoring results for three years in proposed new clause (iii). Existing clauses (iii) - (v) are proposed to be renumbered as (iv) - (vi). Paragraph (3)(D) is proposed to be reworded to introduce the records which must be maintained as specified in the subsequent clauses. Clause (i) of subparagraph (D) is proposed to be added to state that the results of microbial analysis must be maintained. Clause (ii) of subparagraph (D) is proposed to be added to require retention of the results of tank inspections for five years. Subsection (f)(4) is proposed to be amended to replace the term "Water Permitting and Resource Management Division" with the term "Water Supply Division" to reflect recent changes within the agency.

Section 290.46(j)(4) is proposed to be amended to delete the reference to cities, towns, and villages less than 5,000 persons because HB 217, Article 2, no longer exempts municipalities of less than 5,000 population from having licensed plumbing inspectors perform plumbing inspections of all new plumbing and alterations or additions to existing plumbing within the municipal limits. Section 290.46(m) is proposed to be expanded to make specific reference to the safety and public health bases of the requirement for maintenance of public water system facilities. In subsection (m)(4), the phrase "pressure maintenance facilities" is added to the list of physical facilities that must be maintained in good working condition. Section 290.46(n) is proposed to be expanded to clarify that a system is required to maintain its engineering records and make them available to the executive director upon request. A sentence has been added to subsection (n) to clarify that the specific records identified in the next paragraphs must be maintained by the public water system and be available for review by the executive director. Subsection (n)(3) has been revised to clarify that the items listed are examples of the well completion materials and are not an inclusive list. Section 290.46(p)(2) is proposed to be amended to specify that public water systems must provide a list annually to the executive director of the operators they employ and their license level. Section 290.46(q)(1) is proposed to be amended to replace the term

"public drinking water program" with the term "executive director." Section 290.46(s)(1) is proposed to be amended to explicitly cite §290.42. Section 290.46(u) is proposed to be amended to replace the term "public drinking water program" with the term "executive director."

The figure contained in §290.47(f), Appendix F, is proposed to be amended to correct a typographical error within the table formatting. The figure contained in §290.47(g), Appendix G, is proposed to be amended to correspond with §290.46(p)(2) requirements that the public water system submit the name and license level of all the operators it employs. The figure contained in §290.47(i), Appendix I, is proposed to be amended to add dental clinics to the list of facilities that must be isolated.

Subchapter F

The title of Subchapter F is proposed to be changed to delete the word "supply" in reference to public water systems. The new title is proposed to be "Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems."

Section 290.102, General Applicability, is proposed to be amended to include provisions of the SDWA contained in 42 USC, §300g-l(b)(10) that allow for two-year extensions to new MCLs or TT requirements for systems that must make capital investments to meet the new requirements. Subsection (b) is proposed to be amended by reformatting to simplify the requirements for variances and exemptions. Proposed subsection (c) references the authorizing federal legislation and sets out the starting date as January 1, 2002, and contains the specific requirements for approval of an extension. Subsection (c)(1) states the conditions under which the two-year extension may be granted, and the specific conditions are subsection (c)(1)(A): that no acute violations be associated with the MCL or TT requirement that the extension is granted for; subsection (c)(1)(B), that the extension not result in an unreasonable risk to public health; subsection (c)(1)(C), that only systems in existence prior to promulgation of a given MCL or TT may apply for an extension; subsection (c)(1)(D), that the executive director determine that the capital improvements described by the system are needed if the system is to comply with the given MCL or TT; subsection (c)(1)(E), that the executive director finds the system's schedule for bringing the system into compliance acceptable; and subsection (c)(1)(F), that the EPA has not already incorporated a two-year extension into the effective date for the new MCL or TT. Subsection (c)(2) proposes that a request for an extension be made in writing by the owner of the water system. Subsection (c)(3) contains the authority for the executive director to address similar types or classes of extension without requiring a written request from each of the systems contained in that type or class. Proposed new subsection (d) allows any person to file a motion to overturn the executive director's decision to grant or deny a variance, exemption, or extension under this section. Proposed new subsection (e) allows the executive director to approve the schedule and method used when collecting chemical and microbiological samples required by this chapter. Existing subsection (c) is proposed to be relettered as (f).

Section 290.103, Definitions, is proposed to be amended by adding the definition of the "N,N- diethyl-p-phenylenediamine," or "DPD," method of analysis under §290.103(6) and to add a definition of the "entry point sampling site." Definitions (7) - (9) and (11) - (21) are proposed to be renumbered to maintain correct alphabetical sequence.

Section 290.104, Summary of Maximum Contaminant Levels, Maximum Residual Disinfectant Levels, Treatment Techniques, and Action Levels, is proposed to be updated to correct three typographical errors. In subsection (b), the MCL for nitrate is proposed to be amended from the incorrect value of 10.0 mg/L to the correct value of 10 mg/L because the test accuracy is only required to 10 milligrams and not to tenths of a milligram. The MCL for nitrite is proposed to be amended from the incorrect value of 1.0 mg/L to the correct value of 1 mg/L because test results are only required to be accurate to milligrams and not tenths of a milligram. The MCL for combined nitrite and nitrate is proposed to be amended from the incorrect value of 10.0 mg/L to the correct value of 10 mg/L because test results are only required to be accurate to milligrams and not to tenths of a milligram.

Section 290.106, Inorganic Contaminants, is proposed to be amended to correct several typographic errors and to use consistent terminology. The acronym "IOC" is proposed to replace the words "inorganic contaminants" throughout the section after the first reference in subsection (a). Proposed changes to the figure in §290.106(b), change the MCL for nitrate from the incorrect value of 10.0 mg/L to the correct value of 10 mg/L because test results are only required to be accurate to milligrams and not to tenths of a milligram. The MCL for nitrite is proposed to be amended from the incorrect value of 1.0 mg/L to the correct value of 1 mg/L. The MCL for combined nitrite and nitrate is proposed to be amended from the incorrect value of 10.0 mg/L to the correct value of 10 mg/L because test results are only required to be accurate to milligrams and not to tenths of a milligram. The term "entry point" is proposed to replace the words "point of entry" throughout the section for consistency with other rules, other sections of this rule, and guidance documents. Section 290.106(f)(2) is proposed to be amended to correct a typographical error and to ensure consistency with the federal requirements. Subsection (f)(2) is proposed to be amended to include the clarification that compliance may be based on a single sample for nitrite, nitrate, or combined nitrite and nitrate, but that if a confirmation sample is collected, the results of both samples shall be averaged. Subparagraphs (A) - (C) of paragraph (2) are proposed to be deleted to remove the ability of systems to average quarterly nitrite, nitrate, or combined nitrate and nitrite results, which is inconsistent with federal requirements and which was included in the previous rule adoption as a result of a typographical error. Subsection (f)(3) is proposed to be amended to correct a typographical error and to ensure consistency with the federal requirements for inorganic contaminants other than nitrate or nitrite. Paragraph (3)(A) is proposed to be restated to clarify that the use of a single sample for compliance determination is limited to those cases in which a system is sampling annually or less frequently and a confirmation sample is not collected, consistent with the federal requirements. Paragraph (3)(B) is proposed to clarify the requirement that when a confirmation sample is collected, its results will be averaged with the results of the initial sample when determining compliance. Paragraph (3)(D) is proposed to include the federal requirement that compliance for these contaminants be based on the running annual average of quarterly samples at each entry point, which was erroneously omitted in the previous adoption. Paragraph (3)(E) is proposed to contain the federal requirement that when a single sample will cause an annual average to exceed a given MCL, the system be immediately out of compliance, which was erroneously omitted in the previous adoption.

Section 290.107, Organic Contaminants, is proposed to be amended to clarify rule requirements and to use consistent terminology. The term "entry point" is proposed to replace the words "point of entry" and the abbreviation "mg/L" is proposed to correct the grammatical error in the abbreviation "mg/l" throughout the section for consistency with other rules, other sections of this rule, and guidance documents. Subsection (b)(3) is proposed to be amended to change ppm to the equivalent value in mg/L which is the standard used for drinking water. Subsection (c) is proposed to be amended to replace "pursuant to" with "under" to simplify rule language. Subsection (d) is proposed to be amended to replace "TDH Bureau of Laboratories" with "executive director" to reflect the transfer of responsibility for certifying labs from TDH to TNRCC. Subsection (e) is proposed to be amended to clarify reporting requirements for organic contaminants. This subsection clarifies that under the contract between TNRCC and the lab that performs the analysis, sample results are submitted to TNRCC, the water system must send in sample results within ten days upon request of the executive director. Proposed amendments also include the address to which sample results should be submitted. In subsection (g) the term "public drinking water program" is proposed to be replaced with the term "executive director," and the phrase referring to the title of the section is deleted to comply with formatting requirements. Subsection (h) is proposed to be amended to change "best available technology" to the acronym "BAT" and to correct the address of where copies are to be mailed to reflect the new name of the Water Supply Division.

Section 290.108, Radiological Sampling and Analytical Requirements, is proposed to be amended to change the title to "Radionuclides Other Than Radon." Subsection (a) is proposed to be amended to delete the applicability to noncommunity, nontransient public water systems because the requirements of this section only apply to community water systems. Subsection (c)(3) is proposed to be added to make explicit the sampling location requirements for radionuclides other than radon. Subsection (d) is proposed to be amended for consistency with the requirements of HB 2912, §18.02, transferring responsibility for lab certification to the commission from the TDH. Subsection (e) is proposed to be amended to clarify reporting requirements for radiological contaminants. This section clarifies that according to the contract between TNRCC and the lab that performs the analysis, sample results are submitted to TNRCC, the water system must send in sample results within ten days upon request of the executive director. Proposed amendments also include the address to which sample results should be submitted. In subsection (g) the term "public drinking water program" is proposed to be replaced with the term "executive director."

Section 290.109, Microbial Contaminants, is proposed to be amended to clarify rule requirements and to use consistent terminology. The term "public drinking water program" is proposed to be replaced with the term "executive director" throughout the section. Subsection (e) is proposed to be amended to clarify reporting requirements for microbial contaminants. This subsection clarifies that under the contract between TNRCC and the lab that performs the analysis, sample results are submitted to TNRCC, however the water system must send in sample results within ten days upon request of the executive director. Proposed amendments also include the address to which sample results should be submitted.

Section 290.110, Disinfectant Residuals, is proposed to be amended to clarify rule requirements, correct typographical errors, and to use consistent terminology. Subsection (b) is proposed to be amended to correct a typographical error by replacing the word "concentration" with "level." Subsection (b)(5)(B) is proposed to be amended to make it clear that all community and nontransient noncommunity water systems must comply with the applicability requirements for the maximum residual disinfectant levels (MRDLs) starting January 1, 2004. Subsection (c)(5) is proposed to be amended and reworded for clarity. Paragraph (5)(A) is proposed to be reworded to make it clear that public water systems using only groundwater or purchased water sources and providing water to fewer than 250 connections, or 750 people, must measure the disinfectant residual once a week. Paragraph (5)(B) is proposed to be amended and reworded to clarify that public water systems using only groundwater or purchased water sources and providing water to 250 connections, or 750 people or more, must measure the disinfectant residual once a day. Paragraph (5)(C) is proposed to be added to make it clear that public water systems that use surface water sources or groundwater under the direct influence of surface water, must measure the disinfectant residual once daily, regardless of how many customers they serve. Paragraph (5)(D) is proposed to be amended and reworded to clarify that each time a public water system takes a bacteriological sample, it must also measure and record the disinfectant residual. Subsection (e) and paragraph (1) of subsection (e) are proposed to be amended to replace the term "public drinking water program" with the term "executive director." In subsection (e)(2), the term "TNRCC" is replaced with the term "commission." Additionally in paragraph (2), the Surface Water Monthly Operating Report submittal form number is corrected from 01020 to 0102C. Subsection (e)(3) is proposed to be amended to state the reference to the Chlorine Dioxide Monthly Operating Report and specify that the correct form number be included. Subsection (f)(4) is proposed to be amended to update the citation to subsection (c)(3)(C) to the cited material's new location in subsection (c)(2)(B)(iii) of this section. Subsection (f)(9) is proposed to be amended to meet the federal rule requirement that if a public water system's failure to monitor makes it impossible to determine compliance with the MRDL in the distribution system, then the system has committed a violation for the entire year covered by the annual average. Subsection (g) is proposed to be amended in several places to replace the term "public drinking water program" with the term "executive director."

Section 290.111, Turbidity, is proposed to be amended to correct typographical errors, use consistent language, and clarify rule requirements. Subsection (b)(1)(A)(ii) is proposed to be amended to correct a typographical error by replacing the word "or" with the word "of." Subsection (d)(1) is proposed to be amended to replace the reference to general nephelometric turbidity methods with the more specific reference to the standard method which sets out the acceptable analytical methods. Subsection (e)(1) is proposed to be amended to make the regulation comply with federal rules that require a public water system to notify the executive director if the turbidity level in the treated water exceeds 1.0 nephelometric turbidity units (NTU) and to replace the term "public drinking water program" with the term "executive director." In subsection (e)(2), the term "TNRCC" is replaced with the term "commission" and the Surface Water Monthly Operating Report submittal form number is corrected from 01020 to 0102C. The correct form number for the Filter Profile Report for Individual Filters (10276) is proposed to be added to subsection (e)(3). The correct form number for the Filter Assessment Report for Individual Filters (10277) is proposed to be added to subsection (e)(4). The correct form number for the Request for Compliance CPE

(10278) is proposed to be added to subsection (e)(5). The term "public drinking water program" is proposed to be replaced with the term "executive director" in subsection (g)(1) - (3). In subsection (g)(1) it is proposed that the citation to boil water notices be corrected from §290.46(s)(4) to §290.46(q)(3).

Section 290.112, Total Organic Carbon (TOC), is proposed to be amended to clarify rule requirements, correct typographical errors, and to use consistent terminology. Subsection (b)(3) and subparagraph (B) of subsection (b)(3) are proposed to be reworded to replace the term "public drinking water program" with the term "executive director." Subparagraph (B) is also proposed to be amended to correct a typographical error. In subsection (c)(1), the phrase "within one hour of" is proposed to be replaced with the phrase "between one and eight hours after" to be consistent with the intent that the water taken for use as the finished water sample most clearly represent the source water quality at the time the source water sample was taken after treatment. Subsection (e)(2) is proposed to be updated to reference the correct form name and number. Subsection (e)(3)(F) is proposed to be deleted, because it was erroneously included in the previous rule. Paragraph (3)(G) is proposed to be renumbered because of the deletion of paragraph (3)(F). Subsection (g)(1) is proposed to be amended to replace the term "public drinking water program" with the term "executive director."

Section 290.113, Disinfection By-products (TTHM and HAA5), is proposed to be amended to insert the term "executive director" and to clarify rule requirements. Subsection (a)(2) is proposed to be amended to clarify that all community and nontransient, noncommunity water systems must comply with the requirements of this section effective January 1, 2004. In subsection (d) the term "TDH Bureau of Laboratories" is proposed to be replaced with the term "executive director" in response to the change of authority over lab certification contained in HB 2912. Subsection (e) is proposed to be amended to clarify reporting requirements for trihalomethanes and haloacetic acids (group of five). Subsection (e) clarifies that under the contract between TNRCC and the lab that performs the analysis, sample results are submitted to TNRCC, however the water system must send in sample results within ten days upon request of the executive director. Proposed amendments also include the address to which sample results should be submitted. Subsection (f)(7) is proposed to be amended to meet the federal rule requirement that if a public water system's failure to monitor makes it impossible to determine compliance with the MCL in the distribution system, then the system has committed a violation for the entire year covered by the annual average. In subsection (g) and paragraph (1) of subsection (g) the term "public drinking water program" is proposed to be replaced with the term "executive director."

Section 290.114, Disinfection By-products Other than TTHM and HAA5, is proposed to be amended to change the title to "Other Disinfection By-products (Chlorite and Bromate)." Changes have been made in this section to insert the term "executive director" where appropriate and to clarify rule requirements. In subsection (a)(3)(C), the term "TDH Bureau of Laboratories" is proposed to be replaced with the term "executive director" in response to the change of authority over lab certification contained in HB 2912. Subsection (a)(4) is proposed to be reworded to clarify reporting requirements for chlorite. Paragraph (4)(A) is corrected to include the correct form number, specify that the form must be submitted by the tenth day of the month following the end of the reporting period, and delete the address for submission of data, which has been moved to paragraph (4)(C). Paragraph (4)(B) is proposed to be amended to provide the specific citation for analyses covered by the reporting requirements. Paragraph (4)(C) is proposed to be added to include the address for submission of data, previously contained in paragraph (4)(A). In subsection (a)(6) and subparagraph (A) of subsection (a)(6), the term "public drinking water program" is proposed to be replaced with the term "executive director." Subsection (b)(4) is proposed to be added to clarify that under the contract between TNRCC and the lab that performs the analysis, sample results are submitted to TNRCC, however the water system must send in sample results within ten days upon request of the executive director. Proposed amendments also include the address to which sample results should be submitted. The existing paragraphs (4) and (5) are proposed to be renumbered to paragraphs (5) and (6) respectively, to maintain correct numbering after the addition of new paragraph (4). Additionally, in proposed paragraph (6), the term "public drinking water program" is proposed to be replaced with the term "executive director."

Section 290.115, Transition Rule for Disinfection By-products, is proposed to be amended to change the title by adding "(TTHM)" to the title, so the proposed new title is "Transition Rule for Disinfection By-products (TTHM)." Throughout this section, proposed amendments insert the term "executive director" and clarify rule requirements. In subsection (c)(2) - (6), the term "public drinking water program" is proposed to be replaced with the term "executive director." Also, paragraph (4) is proposed to be amended to delete the requirement to send reports of analyses within 30 days of receipt of the results because this requirement is no longer necessary. In paragraph (7), the term "TDH Bureau of Laboratories" is proposed to be replaced with the term "executive director" in response to the change of authority over lab certification resulting from HB 2912. Paragraph (8) is proposed to be added to clarify that under the contract between TNRCC and the lab that performs the analysis, sample results are submitted to TNRCC, however the water system must send in sample results within ten days upon request of the executive director. Proposed amendments also include the address to which sample results should be submitted.

Section 290.117, Regulation of Lead and Copper, is proposed to be amended for consistency, to correct grammatical errors, and to incorporate provisions of the federal Lead/Copper Minor Revisions Rule, (65 FR 1949-2015, January 12, 2000). In subsection (a)(2)(B), the word "satisfactorily" is proposed to be removed in order to simplify enforcement procedures. Subsection (a)(3) is proposed to be amended to clarify the calculation of a ninetieth percentile when only five compliance samples are collected during a sampling period and to replace the incorrect abbreviation "mg/l" with grammatically correct "mg/L."

In §290.117(b) the word "sample" is proposed to be added to clarify the applicability of site selection and the word "materials" is amended to make a grammatical correction. Paragraph (1) is proposed to be amended to replace the term "entry point" for the term "point-of-entry" for consistency. An additional sentence is proposed to accurately reflect that public water systems must submit a sample site plan for agency approval prior to commencing to sample for lead and copper. Paragraph (2) is proposed to be amended to make a grammatical correction to the word "materials," and the word "sample" has been replaced with the word "sampling" to correct a grammatical inconsistency. The term "executive director" replaces the term "public drinking water program." A reference to deleted Table 2 is eliminated. The reference to procedures required by 40 CFR §141.86 is clarified, and the word "sample" is replaced with the word "sampling"

to correct a grammatical inconsistency in two places. The word "information" replaces the word "correspondence" and the term "sampling site selection document" replaces "materials survey document" to maintain a consistent title for the same document. Paragraph (3) is proposed to be added to clarify the requirement that a system must collect a specified number of samples even if none of the sites meet the preferred specifications of 40 CFR §141.86. Paragraph (3) is proposed to be expanded to clarify the term "representative site."

Section §290.117(c)(1) is proposed to be amended to add the term "one quart" to clarify the sampling requirement volume stated as "one liter." A sentence about kitchen tap is proposed to be added to provide directive to systems as to which part of the house is preferred for sampling compliance for consistency with 40 CFR §141.86. The word "sample" is added for clarification in the last sentence. A clause forbidding a water system to challenge the accuracy of sampling results based on errors in sample collection has been removed in paragraph (2) for consistency with 40 CFR §141.86. The word "sampling" has been added in two places in paragraph (3) to clarify the sampling site. Paragraph (5) is proposed to be amended to correct a grammatical error and the redundant term "systems" has been made singular. The requirement of two sets of initial samples instead of one set is proposed for consistency with the requirements of 40 CFR §141.86. The word "initial" is added to clarify what samples the section is referring to. The phrase "each of" is deleted for grammatical simplification and language is added to allow for grants of sampling waivers. Paragraph (8) is proposed to be amended to delete the obsolete date references for initial monitoring during the first eight years of the rule implementation along with the corresponding obsolete Table 2. This language is proposed to be replaced with a procedural statement for bringing new systems into the sampling schedule.

Section 290.117(d) is proposed to be amended to correct a reference to §290.117(a)(3). Section 290.117(e)(4) is proposed to be amended to add required federal language from 40 CFR §141.86(d)(4)(v), allowing for accelerated reduced monitoring. This allows a system to advance to triennial monitoring one year faster if the ninetieth percentile levels for lead and copper meet federal guidelines. The language regarding public education requirements and the requirement to complete a full round of sampling during a reduced round if an exceedance is calculated at the reduced sampling level is proposed to be deleted because it is redundant. Subsection (e)(5) is also proposed to be amended to replace outdated language with the federal language from 40 CFR §141.86(d)(4)(v) for an accelerated reduced monitoring. A new subsection (f) is proposed to incorporate new federal language from 40 CFR §141.86(q) regarding invalidation of certain lead and copper tap samples. The existing subsection (f) is proposed to be relettered as subsection (h).

Proposed new §290.117(g) directly incorporates language from 40 CFR §141.86(g) allowing for waivers to systems meeting lead-free and copper-free plumbing criteria that have completed one round of lead and copper tap sampling without exceeding 0.005 mg/L lead or 0.650 mg/L copper at the ninetieth percentile. Lead and copper sampling for such systems will only be required every nine years. The requirements previously contained in §290.117(g) are proposed to be renumbered to §290.117(i).

Section 290.117(h) is proposed to be amended to contain requirements previously contained in subsection (f). Subsection (h)(1)(B) is proposed to be amended to clarify compliance sampling time constraints for samples to be processed. Additionally, the term "monitoring and reporting" is added for grammatical clarification. Subparagraphs (D) and (F) of paragraph (1) are proposed to be amended to correct all references to Table 2 because the tables have been renumbered. Paragraph (1)(F) is proposed to be amended to replace the term "biweekly" with the term "every two weeks." The size ranges for rule applicability in subparagraphs (H) - (J) of paragraph (1) are proposed to be amended to provide clarity. Paragraph (1)(J) is proposed to be amended to add stipulations regarding a large system's lead and copper values and water quality parameter data before a large system may advance to triennial reporting for water quality parameter reports. Paragraph (1)(M) is added to reflect federal rule guidelines in 40 CFR §141.86 for entry points for water quality parameter reporting. Paragraph (1)(N) is proposed to incorporate federal rule requirements of 40 CFR §141.87(e)(4) for large water systems which stipulate that excursions from approved water quality parameters crucial to corrosion control will require that the system return to quarterly monitoring of water quality parameters for at least one year. Paragraph (1)(O) incorporates federal requirements of 40 CFR §141.87(d), which outlines the procedure for granting a reporting waiver for water quality parameters in small and medium water systems. Paragraph (1)(P) is proposed to be amended to incorporate the requirement that water quality parameter ranges must be set by the public water system or EPA, with state approval. Paragraph (1)(Q) is proposed to incorporate the federal rule requirements in 40 CFR §141.86 that water systems operate their corrosion control treatment within approved water quality parameters ranges at all times.

Proposed amendments to §290.117(h)(2)(A) would eliminate redundant requirements for source water testing under the federal lead/copper rule by using the lead and copper values obtained through the normally scheduled inorganic SDWA compliance sampling. Paragraph (2) also incorporates the federal definition of a large water system with optimized corrosion control from 40 CFR §141.81(b)(3). The proposed language in paragraph (2)(E) supports the elimination of redundant source water sampling requirements for lead and copper. Paragraph (2)(F) is proposed to incorporate federal language from 40 CFR §141.81(b)(3)(iii) requiring a water system to notify the state prior to making any changes to the corrosion control treatment.

Section 290.117(i) is proposed to be amended to contain the requirements previously contained in §290.117(g). The material formerly contained in §290.117(i) is proposed to be moved to §290.117(k) and to be changed to incorporate new federal provisions. In the title, the term "requirements" is proposed to replace the term "procedures" for accuracy. The phrase "at the ninetieth percentile tap sample" replaces "based on first draw tap water sampling" for consistency with federal requirements. The word "as" is removed for grammatical clarification. The phrase "and according to" replaces "in accordance with" to correct the grammar. The word "stated" is removed for grammatical clarification. The last sentence clarifies the requirements and reference to §290.117(i) and incorporates the reporting requirements of 40 CFR §141.85(c)(8). Section 290.117(i)(2) is proposed to be amended to clarify the size of the water system described in the requirements of paragraph (2). Paragraph (2)(A) is proposed to be amended to add the word "water" for clarification and to add language allowing delivery by separate mailing. In subparagraphs (A) - (D) of paragraph (2), the first word in each sentence is no longer capitalized for grammatical accuracy. The existing language in subparagraph (E) is moved

to new subparagraph (H) and incorporates federal language from 40 CFR §141.86(c)(8) allowing certain systems to eliminate the requirements of §290.117(i)(2)(D). Paragraph (2)(F) is proposed to be amended to incorporate federal language of 40 CFR §141.86(c)(8) that allows certain systems to forego the requirements of §290.117(i)(2)(B) - (D). Paragraph (2)(G) is proposed to be amended to incorporate federal language from 40 CFR §141.86(c)(8) allowing systems without lead service lines to eliminate language in the federal Public Education Materials pertaining to lead service lines. Subparagraph (G) is also proposed to be amended to uniformly incorporate the requirements of the federal language found in 40 CFR §141.85(a) and requires that Public Education documents be written in language that can be "easily understood." Paragraph (2)(H) contains the statement moved from §290.117(i)(2)(E). In §290.117(i)(3), a citation reference is replaced with the new CFR citation. In compliance with the federal language of 40 CFR §141.85(c)(4), a sentence is added to paragraph (3)(B) to allow for Internet postings where applicable. Paragraph (3)(C) is proposed to contain federal language from 40 CFR §141.85(a)(2) allowing nontransient, noncommunity systems to alter public education language as applicable. Some of the contents of subparagraph (C) are proposed to be moved to a new subparagraph (D) for continuity.

Section 290.117(j) is proposed to be amended to contain the existing requirements contained in subsection (h) relating to corrosion control. The existing material contained in §290.117(j) is proposed to be moved to subsection (l). Subsection (j)(1) is proposed to incorporate new federal language of 40 CFR §141.82(g) outlining water quality parameter monitoring compliance periods. Subparagraphs (A) - (C) of paragraph (1) are proposed to be amended to incorporate the designated methods for calculating daily water quality parameters values from 40 CFR §141.82(g). Subsection (j)(2) is proposed to be amended to provide guidelines for large water systems that exceed the lead or copper action level during a reduced monitoring period since all the deadlines covered in the first part of paragraph (2) have elapsed. Subsection (j)(3) includes new federal language from 40 CFR §141.81(b)(3)(v) for medium and small systems if they exceed the lead or copper action level during a reduced monitoring period. The term "executive director" replaces the term "Public Drinking Water program" and "state" in subsection (j)(4).

Section 290.117(k) is proposed to be amended to contain the existing requirements contained in §290.117(i) relating to lead service line replacement. The existing subsection (k) is proposed to be relettered as subsection (m). Subsection (k)(1) is proposed to be amended to replace the term "in first-draw" with the term "during follow up," and incorporate new federal language from 40 CFR §141.84(b) regarding when lead service line replacement must begin. Subsection (k)(2), is proposed to be deleted. Paragraph (3) is renumbered as paragraph (2) and incorporates new federal requirements of 40 CFR §141.84(d)(1), relating to notification for residents served by lead service lines scheduled for replacement.

Section 290.117(l) is proposed to be added to contain the requirements previously contained in §290.117(j), relating to analytical and sample preservation methods. The term "or the commission" is proposed to be added to the list of agencies who may certify labs for consistency with HB 2912 which transfers lab certification from TDH to the commission. Subsection (l)(2) is proposed to be amended to add the requirements for the laboratory's maximum detection limits, as contained in 40 CFR §141.89(a)(1)(iii). Subsection (l)(5) is proposed to be amended to maintain general consistency with federal requirements by deleting language requiring the commission to supply laboratory submission forms. Subsection (l)(6) is proposed to be deleted to remove the requirement for the commission to supply the water system with lead and copper sampling bottles.

Section 290.117(m) is proposed to be added to contain the requirements previously contained in §290.117(k), relating to reporting and recordkeeping requirements. Section 290.117(m)(1)(A) is proposed to be amended to add a deadline for submitting water quality parameters reports to the executive director for consistency with 40 CFR §141.90(a)(1). Paragraph (l)(B) is proposed to be amended to replace the term "TDH" with the word "approved" in compliance with HB 2912. New language is proposed to provide for cases of delinquent water system accounts at the laboratory. New language is also proposed to provide for the time lag between sample submission to the laboratory and when the data is released to the agency. The last sentence of paragraph (1)(B) is moved to paragraph (1)(G). In paragraph (1)(E), the reference to subsection (i) has been changed to (k). In paragraph (1)(F), the reference to subsection (g) has been changed to (i). In paragraph (1)(G), new federal language from 40 CFR §141.90(a)(1)(ii) related to sample sites used in subsequent sampling rounds is proposed to be added. A sentence from paragraph (l)(B) is transferred here. New federal language from 40 CFR §141.90(a)(1)(ii) regarding site invalidation is proposed to be added to paragraph (l)(G) and the last sentence is proposed to be deleted.

Section 290.118, Secondary Constituent Levels, is proposed to be amended for consistency and clarification. Subsection (c) is proposed to be reworded to clarify that all public water systems must measure secondary constituents and to replace the term "point of entry" with the term "entry point," throughout.

Section 290.119, Analytical Procedures, is proposed to be amended in subsection (a), to replace the term "TDH Bureau of Laboratories" with the term "executive director" in response to the change of authority over lab certification resulting from HB 2912. Subsection (b)(8) is proposed to be amended to add the method for total organic carbon analysis to the list of methods.

Section 290.121, Monitoring Plans, is proposed to be amended in subsection (c)(1) and (2) to replace the term "public drinking water program" with the term "executive director." Subsection (c)(3) is proposed to be amended to clarify that every public water system must have developed a monitoring plan by January 1, 2004, but that they only need to submit it to the commission when requested to do so. In subsection (c)(4), the term "public drinking water program" is proposed to be replaced with the term "executive director" and the word "the" is omitted.

Section 290.122, Public Notification, is proposed to be amended to incorporate the requirements of the federal Public Notice Rule (40 CFR Parts 9, 141, and 142), to be reorganized for clarity, and to correct various typographical errors. The section is proposed to be reorganized to provide a new subsection (d) that will contain general notification requirements that apply to all levels of notification. Subsection (a) is proposed to add a citation to new subsection (d) containing general requirements, and to delete language that is now contained in subsection (d). The citation to the nitrate and nitrite MCLs in subsection (a)(1)(C) is proposed to be corrected. Subsection (a)(l)(E) is proposed to be added to include requiring public notice in the event of a waterborne disease outbreak in accordance with federal requirements. The material previously contained in subparagraph (E)

is proposed to be relettered as subparagraph (F). The material currently contained in subsection (a)(2) is proposed to be moved to subsection (d). The material currently contained in paragraph (3) is proposed to be renumbered to paragraph (2). New subsection (a)(2) is proposed to be amended to include the word "initial" to differentiate between ongoing and initial notification requirements and reorganized into subparagraphs. These subparagraphs include the federal requirement that acute notice be given within 24 hours. New paragraph (2)(A) is proposed to be added to include the requirement for boil water notices and to add the citation to §290.46(s) relating to special precautions. The material previously contained in subparagraphs (A), (B), and (C) is proposed to be relettered as subparagraphs (B), (C), and (D), respectively. Paragraphs (4) and (5) of subsection (a) are proposed to be renumbered as paragraphs (3) and (4), respectively. Subsection (a)(5) is proposed to be added to require submission of copies of notification documents to the executive director within ten days of distribution.

Section 290.122(b) is proposed to be rewritten to clarify the conditions for which non-acute notification is required to include MRDLs and variance and exemption violations. The material related to general requirements for notice are proposed to be moved to subsection (d) and a reference to subsection (d) is proposed to be added. Subsection (b)(1) is proposed to be amended to initiate the list of violations that require non-acute notifications; the material previously contained in paragraph (l) is proposed to be moved to subsection (d). Subsection (b)(l)(A) is proposed to be amended to include the requirement for notification in the event of a violation of an MCL, MRDL, or TT with non-acute potential health effects, and the material previously contained in subparagraph (A) is proposed to be moved to subsection (d). Subsection (b)(1)(B) is proposed to be amended to include the requirement for notification if a system fails to comply with the requirements of a variance, exemption or extension, and the material currently contained in subparagraph (B) is proposed to be moved to subsection (d). Subsection (b)(1)(C) is proposed to set out the requirement for notification for other circumstances deemed to have a non-acute health effect, and the material currently in subparagraph (C) is proposed to be moved to subsection (d). Subsection (b)(2) is proposed to be reworded to clarify that non-acute notice is required for all conditions listed in the subsection, and proposed to be amended to conform with the federal requirement that non-acute notice be given within 30 days of the occurrence.

Section 290.122(c) is proposed to be amended to include a citation to subsection (d), containing general requirements for notices. Subsections (c)(1) is proposed to initiate the list of circumstances under which systems must give other notice and the material currently contained in paragraph (l) is proposed to be moved to subsection (d). Subsection (c)(1)(A) is proposed to be amended to include the need for notice in case of an exceedance of the secondary constituent level for chloride and the material currently contained in subparagraph (A) is proposed to be moved to subsection (d). Subsection (c)(1)(B) is proposed to be amended to include the need for notice in case of failure to perform required monitoring or reporting and the material currently contained in subparagraph (B) is proposed to be moved to subsection (d). Subsection (c)(1)(C) is proposed to be amended to include the need for notice in case of noncompliance with analytical or procedural requirements and the material currently contained in subparagraph (C) is proposed to be moved to subsection (d). Subsection (c)(1)(D) is proposed to be added to set out the requirement for notification for systems operating under a variance or exemption. Subsection (c)(3)(A) is proposed to be amended to allow repeat notification to be given using the Consumer Confidence Report and to require repeat notice to be issued every 12 months, in accordance with federal requirements.

Section 290.122(d) is proposed to be added to contain the general requirements for all notices. Subsection (d)(1) is proposed to contain the requirement that the notice be given in clear and readily understandable language, that it not be in small type, and that it not be designed in a manner that will frustrate the intent of the notice. Subsection (d)(2) is proposed to contain the requirement that the notice state the time an event occurred, if notice is given for a specific event. Subsection (d)(3) is proposed to contain the requirement that notices describe potential adverse health effects. Subsection (d)(3)(A) is proposed to require and cite the mandatory notification language contained in 40 CFR §141.32. Subsection (d)(3)(B) is proposed to require that the notice describe the population at risk. Subsection (d)(4) is proposed to contain the requirement that the notice include a description of the system's actions to correct any violations. Subsection (d)(5) is proposed to contain the requirement that the notice describe what actions citizens should take, such as obtaining other potable water or seeking medical help. Subsection (d)(6) is proposed to contain the requirement that the notice contain a phone number for additional information. Subsection (d)(7) is proposed to contain the requirement that, where appropriate, the notice be multilingual. Subsection (e) is proposed to be relettered to contain the material currently contained in subsection (d). Subsection (f) is proposed to be relettered to contain the material currently contained in subsection (e) and to be reworded to clarify that a copy of any notification must be sent to the executive director within ten days of the notification.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments are in effect, there will be fiscal implications, which are not anticipated to be significant, for units of state and local government as a result of administration or enforcement of the proposed amendments.

The proposed amendments are intended to make technical and grammatical corrections to existing public drinking water rules, and incorporate revisions from EPA's updated Public Notification and Lead/Copper Minor Revisions rules. Additionally, language from the SDWA has been added allowing two-year compliance date extensions for affected entities when capital improvements are necessary to comply with federal public drinking water rules. These actions are being taken because the agency is required by EPA to adopt these public drinking water rule updates and changes in order to retain regulatory authority for public drinking water issues in Texas.

All existing and any new public water systems in Texas would be affected by the provisions in this rulemaking. There are approximately 6,700 public water systems in Texas, with approximately 60 new public water systems created per year. Public water systems can be broken down into one of three categories: community water systems, noncommunity nontransient water systems, and noncommunity transient water systems. A public water system is defined as a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if the system has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days a year.

A community water system is defined as having at least 15 service connections used by year- round residents or if it regularly serves at least 25 year-round residents. A system such as a municipality is a community system. A nontransient noncommunity water system is defined as 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. Systems such as large employers, schools, or summer camps are nontransient noncommunity systems. Facilities such as highway rest stops, gas stations, and recreational facilities, where fewer than 25 of the same persons are served over six months of the year are transient, noncommunity systems.

Out of the 6,700 public drinking water systems affected by the proposed amendments, approximately 3,045 are operated by units of state or local governments, including cities, water districts which are also local governments, and state agencies, such as Parks and Wildlife and the Department of Criminal Justice. Some of the public water systems are operated by quasi-governmental entities such as water supply corporations, river authorities, and some water districts (which are included in the 3,045 total).

The proposed rulemaking would allow all existing or any new public water systems in Texas that are required to perform capital improvements to facilities to comply with public drinking water rules to request a two-year extension to complete the capital improvements. Exceptions would be granted if no unacceptable public health impact would result from the extension. Extensions may be granted for any situations that require capital improvement and that do not impact public health on a case-by-case basis. This provision adopts a federal extension allowance previously not incorporated in the Texas rules. This provision is intended to provide more time for affected facilities to comply with current or future public drinking water requirements. The commission anticipates no adverse fiscal impacts to affected facilities due to the time extension provision proposed in this rulemaking. The commission anticipates this provision would benefit affected facilities by potentially delaying capital expenditures required to comply with public drinking water rules. This rulemaking does not propose measures that would require additional capital expenditures beyond what is already required to comply with existing public drinking water regulations.

The EPA's updated federal Public Notification rule revises the minimum requirements that public water systems must meet regarding the form, manner, frequency, and content of public notification. Currently, public water systems in Texas are required to give notice to persons served for all violations of the National Primary Drinking Water Regulations, including violations of MCL, MRDL, TT, monitoring, testing procedure requirements, and waterborne emergencies. The updated federal rules proposed to be incorporated into agency rules change the current violation notification requirements. The following table lists the current and proposed notification provisions.

Figure: 30 TAC Chapter 290--Preamble

The revised regulations require quicker public notification in case of public drinking water emergencies. Water suppliers would have up to 24 hours to notify their customers and the commission after a violation with the potential to impact human health occurs. For less dangerous violations, the water supplier would have from 30 days to one year to notify its customers, depending on the severity of the violation. The proposed amendments are also intended to provide water suppliers increased notice flexibility during emergency situations by not mandating any one type of media to be used to notify the public.

This rulemaking would also expand the number of violations that would require 24-hour notice. Examples of these violations include: fecal coliform MCL violation or failure to test for fecal contamination after total coliform test is positive; nitrate/nitrite/combined nitrate and nitrite MCL violation or failure to take confirmation sample; chlorine dioxide MRDL violation in distribution system or failure to take repeat samples in distribution system; and exceedance of maximum allowable turbidity levels resulting in an MCL or TT violation. Although the criteria for 24-hour response have been expanded, the commission anticipates that the number of emergency situations requiring 24-hour notice will not change significantly and will remain near 150 per year.

The EPA provided cost estimates to comply with the updated public notice rules in the report titled, "*National Primary Drinking Water Regulations: Public Notification Rule; Final Rule*," May 4, 2000. In this report, the EPA estimated the following public notice costs for facilities with at least one drinking water violation, based on current public notice rules: for public water systems serving 25 - 500 persons, approximately $170 per year; for public water systems serving 501 - 3,300 persons, approximately $400 per year; for public water systems serving 3,301 - 10,000 persons, approximately $1,200 per year; for public water systems serving 10,001 - 100,000 persons, approximately $3,300 per year; and for public water systems serving over 100,000 persons, approximately $40,000 per year. The average cost for all public water systems to comply with current rules was estimated to be approximately $330 per year. The EPA then factored in the costs for the provisions proposed in this rulemaking and determined implementation of the proposed public notice provisions would result in an approximate 40% cost savings for affected facilities due to the extended time periods and notice delivery methods allowed for notifying the public regarding nonemergency public drinking water violations.

The updated federal Lead/Copper rule is intended to clarify existing rules and make minor regulatory changes, and would only affect community and noncommunity nontransient public water systems in Texas. There are approximately 2,600 community and 165 noncommunity nontransient water systems in Texas operated by units of state and local government. The changes do not affect the current Lead/Copper action levels, or the MCL goals established in 1991. Water quality parameter range exceedances will also now be considered violations under the new federal requirements. This provision will affect approximately 188 current public water systems annually, some of which will probably be units of state and local government; however, the commission does not anticipate any significant fiscal impacts because these water systems would only have to revise their standards to meet federal standards without having to add staff or capital expenditures to comply with the provisions.

PUBLIC BENEFITS AND COSTS

Mr. Davis has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be enhanced notification requirements in the case of waterborne emergencies.

The proposed amendments are intended to make technical and grammatical corrections to existing commission public drinking

water rules, and incorporate revisions from EPA's updated Public Notification and Lead/Copper Minor Revisions Rules. Additionally, language from the SDWA allowing two-year compliance date extensions for affected entities when capital improvements are necessary to comply with federal public drinking water rules would be incorporated into existing agency rules. The commission does not anticipate that there will be significant fiscal impacts to individuals and businesses to incorporate these minor procedural, technical, and grammatical changes to the agency's public drinking water rules.

All existing and any new public water systems in Texas would be affected by the provisions in this rulemaking. There are approximately 3,500 nongovernment investor-owned utilities, commercial entities, and industrial facilities that operate public water systems in Texas that would be affected by the proposed amendments. Of this total, approximately 1,910 are community water systems and 602 are noncommunity nontransient water systems that would be affected by the revised Lead/Copper rules.

The proposed rulemaking would allow all existing or any new public water systems in Texas that are required to perform capital improvements to facilities to comply with public drinking water rules to request a two-year extension to complete the capital improvements. The commission anticipates this provision would benefit affected facilities by potentially delaying capital expenditures required to comply public drinking water rules. Exceptions would be granted if no unacceptable public health impact would result from the extension. Additionally, this rulemaking proposes to incorporate EPA's updated federal Public Notification rules, which revised the minimum requirements that public water systems must meet regarding the form, manner, frequency, and content of public notification regarding public water system violations.

The EPA provided cost estimates to comply with the updated Public Notification rules in the report titled, "*National Primary Drinking Water Regulations: Public Notification Rule; Final Rule*," May 4, 2000. In this report, the EPA estimated that current Public Notification rules costs affected entities an average of $330 per year to comply (the actual costs ranged from as little as $170 to $40,000 per year depending on the number of persons served by the water system). The EPA concluded that implementation of the updated Public Notification rules would result in an approximate 40% cost savings for public notification due to the extended time periods and notice delivery methods allowed for notifying the public regarding nonemergency public drinking water violations.

This rulemaking also intends to incorporate updated EPA Lead/Copper rule, which is intended to clarify existing rules and make minor regulatory changes. The changes do not affect the current Lead/Copper action levels, or the MCL goals established in 1991. The rule updates do not affect the Lead/Copper rule's basic requirements to optimize corrosion control and, if appropriate, treat source water, deliver public education, and replace lead service lines. Affected entities in Texas are already required to keep water quality parameter records required by the updated EPA Lead/Copper rule revision, so the commission anticipates no additional costs to comply with revised recordkeeping requirements.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be fiscal implications that have no adverse effect on small and micro-businesses as a result of implementation and enforcement of the proposed amendments. This rulemaking is intended to make technical and grammatical corrections to existing commission public drinking water rules; incorporate revisions from to EPA's updated Public Notification and Lead/Copper Minor Revisions rules; and incorporate language into commission rules from the SDWA allowing two-year compliance date extensions for affected entities when capital improvements are necessary to comply with federal public drinking water rules.

All existing and any new public water systems in Texas would be affected by the provisions in this rulemaking. There are approximately 3,500 nongovernment investor-owned utilities, commercial entities, and industrial facilities that operate public water systems in Texas, some of which are probably small or micro-businesses, that would be affected by the proposed amendments. Of this total, approximately 1,910 are community water systems and 602 are noncommunity nontransient water systems that would be affected by the revised Lead/Copper rules.

The proposed rulemaking would allow all existing or any new public water systems in Texas that are required to perform capital improvements to facilities to comply with public drinking water rules to request a two-year extension to complete the capital improvements. The commission anticipates this provision would benefit affected facilities by potentially delaying capital expenditures required to comply public drinking water rules. Exceptions would be granted if no unacceptable public health impact would result from the extension.

The EPA provided cost estimates to comply with the updated Public Notification rules in the report titled, "*National Primary Drinking Water Regulations: Public Notification Rule; Final Rule*," May 4, 2000. In this report, the EPA estimated that current Public Notification rules costs affected entities an average of $330 per year to comply (the actual costs ranged from as little as $170 to $400 per year depending on the number of persons served by water systems that probably qualify as small businesses). The EPA concluded that implementation of the updated Public Notification rules would result in an approximate 40% cost savings for public notification due to the extended time periods and notice delivery methods allowed for notifying the public regarding nonemergency public drinking water violations.

This rulemaking also intends to incorporate the updated EPA Lead/Copper rule, which is intended to clarify existing rules and make minor regulatory changes. The changes do not affect the current Lead/Copper action levels, or the MCL goals established in 1991. The rule updates do not affect the Lead/Copper rule's basic requirements to optimize corrosion control and, if appropriate, treat source water, deliver public education, and replace lead service lines. Affected entities in Texas are already required to keep water quality parameter records required by the updated EPA Lead/Copper rule revision, so the commission anticipates no additional costs to comply with revised recordkeeping requirements.

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 because it does not meet the definition of a "major environmental rule" as defined in the act. 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 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 intent of the rules is primarily to make technical and grammatical corrections to Chapter 290, Subchapters D and F; therefore, these rule amendments do not meet the definition of a "major environmental rule." In addition to these corrections, the commission proposes amendments to incorporate the federal Public Notification Rule (65 FR 25981, May 4, 2000), incorporate the federal Lead/Copper Minor Revisions Rule (65 FR 1949, January 12, 2000), and propose language from SDWA, 42 USC, §300g- 1(b)(10), allowing two-year extensions to the effective dates for new regulations for MCLs and TT requirements when capital improvements are necessary to comply with the rule revisions. Furthermore, the rulemaking does not meet any of the four applicability requirements listed in §2001.0225(a). Specifically, the proposed amendments do not exceed a federal standard, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement. The proposed amendments were not developed solely under the general powers of the agency, but were specifically developed under Texas Health and Safety Code (THSC), §341.031(a), which allows the commission to adopt and enforce rules to implement the SDWA. The purpose of the proposed amendments is to make state rules conform to federal IESWTR and the Stage 1 DBPR as required by federal law, and the regulations under 40 CFR Parts 9, 141, and 142. In addition to these corrections, the commission proposes amendments to incorporate the federal Public Notification Rule (65 FR 25981, May 4, 2000), incorporate the federal Lead/Copper Minor Revisions Rule (65 FR 1949, January 12, 2000), and propose language from SDWA, 42 USC, §300g-1(b)(10), allowing two- year extensions to the effective dates for new regulations for MCLs and TT requirements when capital improvements are necessary to comply with the rule revisions. These amendments also implement HB 217 and HB 2912, §18.02, 77th Legislature, 2001. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed amendments and performed a preliminary assessment of whether they constitute a takings under Texas Government Code, Chapter 2007. The following is a summary of that evaluation and preliminary assessment. The purpose of this rulemaking is to make state rules conform to federal IESWTR and the Stage 1 DBPR as required by federal law (SDWA) and the regulations under 40 CFR Parts 9, 141, and 142 by correcting technical and grammatical errors. In addition to these corrections, the commission proposes amendments to incorporate the federal Public Notification Rule (65 Federal Register (FR) 25981-26049, May 4, 2000), incorporate the federal Lead/Copper Minor Revisions Rule (65 FR 1949-2015, January 12, 2000), and propose language from SDWA, 42 USC, §300g-1(b)(10), allowing two-year extensions to the effective dates for new regulations for MCLs and TT requirements when capital improvements are necessary to comply with the rule revisions. These amendments also implement HB 217 and HB 2912, §18.02, 77th Legislature, 2001. Promulgation and enforcement of these amendments will constitute neither a statutory nor a constitutional taking of private real property. There are no burdens imposed on private real property under this rulemaking because the proposed amendments neither relate to, nor have any impact on the use or enjoyment of private real property, and there is no reduction in value of the property as a result of this rulemaking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM (CMP)

The executive director reviewed the proposed rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program, nor will they affect any action or authorization identified in 31 TAC §505.11. Therefore, the proposed rules are not subject to the CMP.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held February 19, 2002, at 10:00 a.m. in Room 2210, Building F, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-008-290-WT. Comments must be received by 5:00 pm, March 4, 2002. For further information, contact Melissa Estes, Policy and Regulations Division, at (512) 239-3937.

SUBCHAPTER D. RULES AND REGULATIONS FOR PUBLIC WATER SYSTEMS

30 TAC §§290.38, 290.39, 290.41, 290.42, 290.44 - 290.47

STATUTORY AUTHORITY

The amendments are proposed under the Texas Water Code, §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; and under THSC, §341.031, which allows the commission to adopt rules to implement the SDWA, 42 USC, §§300f *et seq*.

The amendments implement THSC, §§341.031, 341.0315, and 341.035: which require the commission to adopt rules to protect public water systems; require public water systems to meet the requirements of commission rules; and require the executive director of the commission to approve plans and specifications for public water systems. The amendments also implement HB 2912, §18.02, and HB 217, §2(a)(2)(B), 77th Legislature, 2001.

§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. [~~"Glossary, Water and Wastewater Control Engineering," prepared by a joint editorial board representing the American Public Health Association, American Society of Civil Engineers, American Water Works Association, and the Water Pollution Control Federation.~~]

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

(3) Approved laboratory--A laboratory certified and approved by the commission [~~Texas Department of Health~~] to analyze water samples to determine their compliance with maximum allowable constituent levels.

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

(8) Certified laboratory--A laboratory certified by the commission to analyze water samples to determine their compliance with maximum allowable constituent levels.

(9) [~~(8)~~] 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.

(10) [~~(9)~~] 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 definition);

(B) the executive director determines that alternative water from a commission-approved water system or the water users' private well provides 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 commission-approved water system [~~provider, a pass through entity, or the user to achieve the equivalent level of protection provided by the drinking water standards~~].

(11) [~~(10)~~] 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.

(12) [~~(11)~~] 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.

(13) [~~(12)~~] 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) [~~(13)~~] Disinfection--A process which inactivates pathogenic organisms in the water by chemical oxidants or equivalent agents.

(15) 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.

(16) [~~(14)~~] 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.

(17) [~~(15)~~] 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 Supply Systems).

(18) [~~(16)~~] 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.

(19) [~~(17)~~] 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.

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

(21) [~~(18)~~] Groundwater [~~Ground water~~] 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.

(22) [~~(19)~~] 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.

(23) [~~(20)~~] 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.

(24) [~~(21)~~] Interconnection--A physical connection between two public water supply systems.

(25) [~~(22)~~] 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.

(26) [~~(23)~~] 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.

(27) [~~(24)~~] 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.

(28) [~~(25)~~] 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.

(29) [~~(26)~~] [~~MCL--~~]Maximum Contaminant Level (MCL)--[~~,~~] The MCL for a specific contaminant is defined in the section relating to that contaminant.

(30) [~~(27)~~] [~~mg/l--~~] Milligrams per liter (mg/L)--[~~,~~] a measure of concentration, equivalent to and replacing parts per million (ppm) in the case of dilute solutions.

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

(32) [~~(29)~~] National Fire Protection Association (NFPA) [~~NFPA~~] standards--The standards of the NFPA [~~National Fire Protection Association,~~] 1 Batterymarch Park, Quincy, Massachusetts, 02269-9101.

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

(34) [~~(31)~~] Noncommunity water system--Any public water system which is not a community system.

(35) [~~(32)~~] 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.

(36) [~~(33)~~] 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.

(37) [~~(34)~~] Psi [~~psi~~]--Pounds per square inch.

(38) [~~(35)~~] 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.

(39) [~~(36)~~] 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.

(40) [~~(37)~~] Plumbing ordinance--A set of rules governing plumbing practices which are at least as stringent and comprehensive as one of the following nationally recognized codes:

(A) Southern Standard Plumbing Code;[~~,~~]

(B) Uniform Plumbing Code; and[~~,~~]

(C) National Standard Plumbing Code.

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

(42) 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.

(43) 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.

(44) [~~(38)~~] 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.

(45) [~~(39)~~] 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 [~~The public drinking water program may be contacted at:~~] Texas Natural Resource Conservation Commission, Water Supply Division [~~Permitting and Resource Management Division~~], MC 155, P.O. Box 13087, Austin, Texas 78711-3087.

(46) [~~(40)~~] Public health engineering practices--Requirements in these sections or guidelines promulgated by the executive director.

(47) [~~(41)~~] 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.

(48) [~~(42)~~] 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.

(49) [~~(43)~~] 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.

(50) 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.

(51) [~~(44)~~] Service pump--Any pump that takes treated water from storage and discharges to the distribution system.

(52) [~~(45)~~] 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.

(53) [~~(46)~~] 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.

(54) [~~(47)~~] Uniform Fire Code--The standards of the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, California, 90601-2298.

(55) 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.

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

§290.39. General Provisions.

(a) - (c) (No change.)

(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 [~~State~~] Board of [~~Registration for~~] Professional Engineers.

(2) (No change.)

(3) The limits of approval are as follows.

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

(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 [~~commission's public drinking water program~~] in writing upon completion of all work. Planning materials should be submitted to the Texas Natural Resource Conservation Commission, Water Supply Division, MC 153, P.O. Box 13087, Austin, Texas 78711-3087.

(e) (No change.)

(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 [~~proposed~~] 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) - (13) (No change.)

(g) (No change.)

(h) Beginning and completion of work.

(1) (No change.)

(2) The executive director [~~commission's public drinking water program~~] shall be notified in writing by the design engineer or the owner before [~~when~~] construction is started.

(3) Upon completion of the water works project, the engineer or owner shall [~~will~~] notify the executive director [~~commission's public drinking water program~~] 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) (No change.)

(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.

(1) The following changes are considered to be significant: [~~Changes or additions to existing systems which result in an increase in production, treatment, or storage capacity shall require written notice to the executive director.~~]

(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 (relating to Minimum Water System Capacity Requirements); and

(E) any other material changes specified by the executive director.

[(2) Systems that use surface water sources or groundwater sources that are under the direct influence of surface water shall notify the executive director of any proposed change to the disinfection process used at the treatment plant including changes involving the disinfectants used, the disinfectant application points, or the disinfectant monitoring points. Changes to an existing disinfection process shall not be instituted without the prior approval of the executive director.]

[(3) Changes to the type of disinfectant used to maintain a disinfectant residual in the distribution system shall require written notice to the executive director.]

[(4) Changes or additions in existing distribution systems shall require written notification to the executive director when the change or addition 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 (relating to Minimum Water System Capacity Requirements).]

(2) [(5)] 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 [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 [when the entity has its own internal engineering staff or is required, by local ordinance, to submit the material to another political entity for review and approval. The review staff must be separate and apart from the engineering staff or firm charged with the design of the distribution extension under review. The planning material must be reviewed and certified to be in compliance with §290.44 of this title (relating to Water Distribution) by a registered professional engineer in the employ of the review entity. The effect of the distribution system improvements on compliance with §290.45 of this title (relating to Minimum Water System Capacity Requirements) must be evaluated. Should the proposed improvements result in an exceedance of the capacity requirements, written notice of the extent of the proposed improvements must be submitted to the executive director]:

(i) The internal review staff must include 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 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) (No change.)

(l) Exceptions. Requests for exceptions to one or more of these sections 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 [should] precede the submission of engineering plans and specifications for a proposed project for which an exception is being requested.

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

(m) - (n) (No change.)

§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 the Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems).

(b) (No change.)

(c) Groundwater sources and development.

(1) Groundwater [Ground water] sources shall be located so that there will be no danger of pollution from flooding or from insanitary 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) - (E) (No change.)

(F) A sanitary control easement covering that portion of the land within 150-feet [150 feet] of the well location shall be secured from all [such] property owners and recorded in the deed records at the county courthouse. The easement 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. For the purpose of this 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 the easement must be constructed to public water well standards. Copies of the recorded easements shall be included with plans and specifications submitted for review. With the approval of the executive director, political subdivisions which have adopted and enforce equivalent ordinances or land use restrictions may substitute these documents for sanitary control easements.

(2) (No change.)

(3) The [Special attention must be given to 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 [the commission's public drinking water program shall be furnished] 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 copy of the Sanitary Control Easement; and 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. 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) (No change.)

(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 [will] utilize a pressure cementation method in accordance with the AWWA Standard for Water Wells (A100-97), Appendix C: Section C.3 (Positive Displacement Exterior Method); Section C.4 (Interior Method Without Plug); Section C.5 (Positive Placement, Interior Method, Drillable Plug); Section C.6 (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 [must be approved by the executive director prior to the construction of the well]. 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) - (F) (No change.)

(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 a certified [the Texas Department of Health approved] 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 certified [Texas Department of Health] 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 [commission's public drinking water program] conducts a vulnerability assessment of the well.

(H) - (Q) (No change.)

(4) (No change.)

(d) Springs and other water sources.

(1) (No change.)

(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 [commission's public drinking water program] for review and approval to the Texas Natural Resource Conservation Commission, Water Supply Division, MC 153, P.O. Box 13087, Austin, Texas 78711-3987.

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

(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 [proposed] surface water source [impoundment or flowing supply] 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) - (F) (No change.)

(2) Intakes shall be located and constructed in a manner which will secure raw water of the best quality available from the source.

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

(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 [commission's public drinking water program] 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) - (F) (No change.)

(3) (No change.)

§290.42. Water Treatment.

(a) (No change.)

(b) Groundwater [Groundwaters].

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

(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.

(c) Springs and other water sources.

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

(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.

(d) Surface water.

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

(3) [All plant piping shall be constructed so as to be thoroughly tight against leakage.] Return of the decanted water or sludge to the raw water shall be adequately controlled so that there will be a minimum of interference with the treatment process. Any discharge of wastewater shall be in accordance with all applicable state and federal [the appropriate] statutes and regulations including Chapter 305 of this

title (relating to Consolidated Permits), Chapter 309 of this title (relating to Domestic Wastewater Effluent Limitation and Plant Siting), and Chapter 319 of this title (relating to General Regulations Incorporated into Permits).

(4) - (5) (No change.)

(6) 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) - (B) (No change.)

(C) All chemical bulk storage facilities and day tanks shall be clearly labeled to indicate each tank's contents and to determine the amount of chemical remaining in the tank.

(D) (No change.)

(E) Bulk storage facilities and day tanks must be designed to minimize the possibility of leaks and spills.

(i) (No change.)

(ii) Except as provided in this clause, adequate [~~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. [~~Containment facilities must be large enough to hold the maximum amount of chemicals that can be stored in the tanks with a minimum freeboard of six inches.~~]

(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) [~~(II)~~] The materials used to construct containment structures must be compatible with the chemicals stored in the tanks.

(IV) [~~(III)~~] 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) - (G) (No change.)

(7) - (10) (No change.)

(11) Gravity or pressure type filters shall be provided.

(A) (No change.)

(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 [~~be based on~~] a maximum [~~design~~] 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 [~~design~~] filtration rate of 5.0 gallons per square foot per minute [~~must be used~~]. 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 [~~be based on~~] 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. [~~The design capacity of filtration facilities shall be based on the cumulative filter capacity with the largest filter out of service.~~]

(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) - (G) (No change.)

(12) - (15) (No change.)

(e) Disinfection.

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

(4) Systems that use chlorine gas must ensure that the risks associated with its use are limited as follows: [~~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.~~]

(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 Uniform Fire Code (UFC).

[(5) Gas chlorination equipment and cylinders of chlorine shall be housed in separate buildings or separate rooms with impervious walls or partitions that separate the chlorine facilities from all other mechanical and electrical equipment. Housing shall be located above ground level as a measure of safety. Beginning January 1, 2001, chlorine cylinders and associated equipment may not be installed outside of buildings.]

[(6) 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 open 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 Uniform Fire Code (UFC).]

(5) [(7)] 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) [(8)] 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 Uniform Fire Code (UFC).

(f) - (k) (No change.)

§290.44. Water Distribution.

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

(c) Minimum water line sizes. The minimum water line sizes are [These are minimum requirements] for domestic flows only and do not consider fire flows. Larger pipe sizes shall be used [These requirements should be exceeded] when the licensed professional engineer deems it necessary. It should be noted that the required sizes are based strictly on the number of customers to be served and not on the distances between connections or differences in elevation or the type of pipe. No new water line under two inches in diameter will be allowed to be installed in a public water system distribution system. These minimum line sizes do not apply to individual customer service lines.
Figure: 30 TAC §290.44(c) (No change.)

(d) Minimum pressure requirement. The system must be designed to maintain a minimum pressure of 35 psi at all points within the distribution network at flow rates of at least 1.5 gallons per minute per connection. When the system is intended to provide fire fighting capability, it must also be designed to maintain a minimum pressure of 20 psi under combined fire and drinking water flow conditions.

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

(4) Each community public water system shall provide accurate metering devices at each residential, commercial, or industrial service connection for the accumulation of water usage data. A water system that furnishes the services or commodity only to itself or its employees when that service or commodity is not resold to or used by others is exempt from this requirement. [Systems where no direct charge is made for the water shall be exempted from this requirement.]

(5) (No change.)

(6) The system shall be designed to afford effective circulation of water with a minimum of dead ends. All dead-end mains shall be provided with acceptable flush valves and discharge piping. All dead-end lines less than two inches in diameter will not require flush valves if they end at a customer service. Where dead ends are necessary as a stage in the growth of the system, they shall be located and arranged [with a view] to ultimately connect the ends [connecting them] to provide circulation.

(e) Location of waterlines. The following rules apply to installations of waterlines, wastewater mains or laterals, and other conveyances/appurtenances identified as potential sources of contamination. Furthermore, all ratings specified shall be defined by ASTM or AWWA standards unless stated otherwise. New mains, service lines, or laterals are those that are installed where no main, service line, or lateral previously existed, or where existing mains, service lines, or laterals are replaced with pipes of different size or material.

[(1) The following rules apply to installations of potable water distribution lines and wastewater collection lines, wastewater force mains and other conveyances/appurtenances identified as potential sources of contamination. Furthermore, all ratings specified shall be defined by ASTM or AWWA standards unless stated otherwise.]

(1) [(2)] When new potable water distribution lines are constructed, they shall be installed no closer than nine feet in all directions to wastewater collection facilities. All separation distances shall be measured from the outside surface of each of the respective pieces.

(2) [(3)] Potable water distribution lines and wastewater mains or laterals [collection lines or force mains] that form parallel utility lines shall be installed in separate trenches.

(3) [(4)] No physical connection shall be made between a drinking water supply and a sewer line. Any appurtenance shall be designed and constructed so as to prevent any possibility of sewage entering the drinking water system.

(4) [(5)] Where the nine foot separation distance cannot be achieved, the following criteria shall apply:

(A) New Waterline Installation--Parallel Lines.

(i) Where a new potable waterline parallels an existing, non-pressure or pressure rated wastewater [line/force] main or lateral and the licensed professional engineer licensed in the State of Texas is able to determine that the existing wastewater main or lateral [line] is not leaking, the new potable waterline shall be located at least two feet above the existing wastewater main or lateral [line], measured vertically, and at least four feet away, measured horizontally, from the existing wastewater main or lateral [line]. Every effort shall be exerted not to disturb the bedding and backfill of the existing wastewater main or lateral [line].

(ii) Where a new potable waterline parallels an existing pressure rated wastewater main or lateral [line] and it cannot be determined by the licensed professional engineer if the existing line is leaking, the existing wastewater main or lateral [line] shall be replaced with at least [a] 150 psi pressure rated pipe. The new potable waterline shall be located at least two feet above the new wastewater line,

measured vertically, and at least four feet away, measured horizontally, from the replaced wastewater main or lateral [~~line~~].

(iii) Where a new potable waterline parallels a new wastewater [~~line/force~~] main, the wastewater main or lateral [~~line~~] shall be constructed of at least 150 psi pressure rated pipe. The new potable waterline shall be located at least two feet above the wastewater main or lateral [~~line~~], measured vertically, and at least four feet away, measured horizontally, from the wastewater main or lateral [~~line~~].

(B) New Waterline Installation - Crossing Lines.

(i) Where a new potable waterline crosses an existing, non-pressure rated wastewater main or lateral [~~line~~], one segment of the waterline pipe shall be centered over the wastewater main or lateral [~~line~~] such that the joints of the waterline pipe are equidistant and at least nine feet horizontally from the centerline of the wastewater main or lateral [~~line~~]. The potable waterline shall be at least two feet above the wastewater main or lateral [~~line~~]. Whenever possible, the crossing shall be centered between the joints of the wastewater main or lateral [~~line~~]. If the existing wastewater main or lateral [~~line~~] is disturbed or shows signs of leaking, it shall be replaced for at least nine feet in both directions (18 feet total) with at least 150 psi pressure rated pipe.

(ii) Where a new potable waterline crosses an existing, pressure rated wastewater main or lateral [~~line~~], one segment of the waterline pipe shall be centered over the wastewater main or lateral [~~line~~] such that the joints of the waterline pipe are equidistant and at least nine feet horizontally from the centerline of the wastewater main or lateral [~~line~~]. The potable waterline shall be at least six inches above the wastewater main or lateral [~~line~~]. Whenever possible, the crossing shall be centered between the joints of the wastewater main or lateral [~~line~~]. If the existing wastewater main or lateral [~~line~~] shows signs of leaking, it shall be replaced for at least nine feet in both directions (18 feet total) with at least 150 psi pressure rated pipe.

(iii) Where a new potable waterline crosses a new, non-pressure rated wastewater main or lateral [~~line~~] and the standard pipe segment length of the wastewater main or lateral [~~line~~] is at least 18 feet, one segment of the waterline pipe shall be centered over the wastewater main or lateral [~~line~~] such that the joints of the waterline pipe are equidistant and at least nine feet horizontally from the centerline of the wastewater main or lateral [~~line~~]. The potable waterline shall be at least two feet above the wastewater main or lateral [~~line~~]. Whenever possible, the crossing shall be centered between the joints of the wastewater main or lateral [~~line~~]. The wastewater pipe shall have a minimum pipe stiffness of 115 psi at 5.0% deflection. The wastewater main or lateral [~~line~~] shall be embedded in cement stabilized sand (see clause (vi) [~~§290.44(e)(5)(B)(vi)~~] of this subparagraph [~~title~~]) for the total length of one pipe segment plus 12 inches beyond the joint on each end.

(iv) Where a new potable waterline crosses a new, non-pressure rated wastewater main or lateral [~~line~~] and a standard length of the wastewater pipe is less than 18 feet in length, the potable water pipe segment shall be centered over the wastewater line. The materials and method of installation shall conform with one of the following options:

(I) Within nine feet horizontally of either side of the waterline, the wastewater pipe and joints shall be constructed with pipe material having a minimum pressure rating of at least 150 psi. An absolute minimum vertical separation distance of two feet shall be provided. The wastewater main or lateral [~~line~~] shall be located below the waterline.

(II) All sections of wastewater main or lateral [~~line~~] within nine feet horizontally of the waterline shall be encased in an 18 foot (or longer) section of pipe. Flexible encasing pipe shall have a minimum pipe stiffness of 115 psi at 5.0% deflection. The encasing pipe shall be centered on the waterline and shall be at least two nominal pipe diameters larger than the wastewater main or lateral [~~line~~]. The space around the carrier pipe shall be supported at five-foot [~~5 foot~~] (or less) intervals with spacers or be filled to the springline with washed sand. Each end of the casing shall be sealed with water tight non-shrink cement grout or a manufactured water tight seal. An absolute minimum separation distance of six inches between the encasement pipe and the waterline shall be provided. The wastewater line shall be located below the waterline.

(III) When a new waterline crosses under a wastewater main or lateral [~~line~~], the waterline shall [~~will~~] be encased as described for wastewater mains or laterals [~~lines~~] in subclause [~~section~~] (II) of this clause [~~above~~] or constructed of ductile iron or steel pipe with mechanical or welded joints as appropriate. An absolute minimum separation distance of one foot between the water line and the wastewater main or lateral [~~line~~] shall be provided. Both the waterline and wastewater main or lateral [~~line,~~] must pass a pressure and leakage test as specified in AWWA C600 standards.

(v) Where a new potable waterline crosses a new, pressure rated wastewater main or lateral [~~line~~], one segment of the waterline pipe shall be centered over the wastewater line such that the joints of the waterline pipe are equidistant and at least nine feet horizontally from the centerline of the wastewater main or lateral [~~line~~]. The potable waterline shall be at least six inches above the wastewater main or lateral [~~line~~]. Whenever possible, the crossing shall [~~should~~] be centered between the joints of the wastewater main or lateral [~~line~~]. The wastewater pipe shall have a minimum pressure rating of at least 150 psi. The wastewater main or lateral [~~line~~] shall be embedded in cement stabilized sand (see clause (vi) of this subparagraph) for the total length of one pipe segment plus 12 inches beyond the joint on each end.

(vi) Where cement stabilized sand bedding is required, the cement stabilized sand shall have a minimum of 10% cement per cubic yard of cement stabilized sand mixture, based on loose dry weight volume (at least 2.5 bags of cement per cubic yard of mixture). The cement stabilized sand bedding shall be a minimum of six inches above and four inches below the wastewater main or lateral [~~sewer pipe~~]. The use of brown coloring in cement stabilized sand for wastewater main or lateral [~~line~~] bedding is recommended for the identification of pressure rated wastewater [~~force~~] mains during future construction.

(5) [~~(6)~~] Waterline and Wastewater Main or Lateral Manhole or Cleanout Separation. The separation distance from a potable waterline to a wastewater main or lateral manhole or cleanout shall be a minimum of nine feet. Where the nine-foot [~~nine foot~~] separation distance cannot be achieved, the potable waterline shall be encased in a joint of at least 150 psi pressure class pipe at least 18 feet long and two nominal sizes larger than the new conveyance. The space around the carrier pipe shall be supported at five feet intervals with spacers or be filled to the spring line with washed sand. The encasement pipe shall be centered on the crossing and both ends sealed with cement grout or manufactured sealant [~~seal~~].

(6) [~~(7)~~] Location of Fire Hydrants [~~hydrants~~]. Fire hydrants shall not be installed within nine feet vertically or horizontally of any wastewater main or lateral [~~sanitary sewer line~~] regardless of construction.

(7) [~~(8)~~] Location of Potable or Raw Water Supply or Suction [~~Supply/Suction~~] Lines. Suction mains to pumping equipment shall not cross wastewater mains or laterals [~~lines carrying domestic or~~

~~industrial wastes~~]. Raw water supply lines shall not be installed within five feet of any tile or concrete wastewater main or lateral [~~line~~].

(8) [~~(9)~~] Proximity of Septic Tank Drainfields. Waterlines shall not be installed closer than ten feet to septic tank drainfields.

(f) Sanitary precautions and disinfection. Sanitary precautions, flushing, disinfection procedures and microbiological sampling as prescribed in AWWA standards for disinfecting water mains shall be followed in laying waterlines [~~water lines~~].

(1) (No change.)

(2) Special precautions must be taken when water lines are laid under any flowing or intermittent stream or semipermanent body of water such as marsh, bay or estuary. In these cases, the water main shall be installed in a separate watertight pipe encasement and valves must be provided on each side of the crossing with facilities to allow the underwater portion of the system to be isolated and tested to determine that there are no leaks in the underwater line. Alternately, and with the [~~Executive Director's~~] permission of the executive director, the watertight pipe encasement may be omitted.

(3) New mains shall be thoroughly disinfected in accordance with AWWA Standard C651 and then flushed and sampled before being placed in service. Samples shall be collected for microbiological analysis to check the effectiveness of the disinfection procedure. Sampling [~~which~~] shall be repeated if contamination persists. A minimum of one sample for each 1,000 feet of completed water line will be required or at the next available sampling point beyond 1,000 feet as designated by the design engineer.

(g) - (i) (No change.)

§290.45. Minimum Water System Capacity Requirements.

(a) - (c) (No change.)

(d) Noncommunity water systems serving other than transient accommodation units.

(1) (No change.)

(2) Groundwater supply requirements are as follows.

(A) (No change.)

(B) If 300 or more persons per day are served, the system must have the following:

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

(iii) if the maximum daily demand is less than 15 gpm, at least one service pump with a capacity of three times the maximum daily demand [~~2.0 gallons per minute per connection~~] must be provided;

(iv) if the maximum daily demand is 15 gpm or more, at least two service pumps with a total capacity of three times the maximum daily demand [~~2.0 gallons per minute per connection~~]; and

(v) (No change.)

(3) Each surface water supply or groundwater supply that is under the direct influence of surface water, regardless of size, shall meet the following requirements:

(A) - (F) (No change.)

(e) - (f) (No change.)

(g) Alternative capacity requirements [~~Exceptions~~]. Public water systems may request approval to meet alternative capacity requirements in lieu of the minimum capacity requirements specified in this section. [~~Requests for exceptions to one or more of these Minimum Water System Capacity Requirements shall be considered on an individual basis.~~] Any water system requesting to use an alternative capacity requirement [~~which requests an exception~~] must demonstrate to the satisfaction of the executive director that approving the request [~~the exception~~] will not compromise the public health or result in a degradation of service or water quality as specified in §290.39(l) of this title (relating to General Provisions).

(1) Alternative capacity requirement [~~Exceptions to the minimum capacity requirements~~] for public water systems may be granted upon request [~~application~~] to and approval by the executive director. The request to use an alternative capacity requirement [~~application for an exception to the minimum capacity requirements~~] must include:

(A) - (E) (No change.)

(F) Any other relevant data needed to determine that the proposed alternative capacity requirement will provide a level of service that is equivalent to the level of service provided by the minimum capacity requirements contained in this section [~~required to evaluate the exception request~~].

(2) Although elevated storage is the preferred method of pressure maintenance for systems of over 2500 connections, it is recognized that local conditions may dictate the use of alternate methods utilizing hydropneumatic tanks and on-site emergency power equipment. Alternative capacity requirements [~~Exceptions~~] to the elevated storage requirements may be obtained based on request [~~application~~] to and approval by [~~of~~] the executive director. Special conditions apply to systems using an alternative capacity requirement to meet minimum pressure maintenance requirements [~~qualifying for an elevated storage exception~~].

(A) The system must submit documentation sufficient to assure that the alternate method of pressure maintenance is capable of providing a safe and uninterrupted supply of water under pressure to the distribution system during all demand conditions.

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

(iii) For existing systems, the system's licensed professional engineer must provide continuous [~~24 hour~~] pressure chart recordings of distribution pressures maintained during past power failures, if available. The period reviewed shall [~~should~~] not be less than three years.

(B) - (D) (No change.)

(3) Any alternative capacity requirement granted under this subsection [~~exception granted pursuant to these requirements~~] shall be subject to review at the time of each routine sanitary survey of the system. Failure to demonstrate satisfactory survey findings may result in revocation of the alternative capacity requirement [~~exception~~]. If permission to use an alternative capacity requirement is revoked, the public water system must meet the applicable minimum capacity requirements of this section.

§290.46. Minimum Acceptable Operating Practices for Public Drinking Water Systems.

(a) (No change.)

(b) Microbiological. Submission of samples for microbiological analysis shall be as required by Subchapter F of this chapter [~~title~~] (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply 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 a certified laboratory [the Texas Department of Health Bureau of Laboratories or one of its approved laboratories]. (A list of the certified [approved] laboratories can be obtained by contacting the executive director [Texas Department of Health Bureau of Laboratories]).

(c) Chemical. Samples for chemical analysis shall be submitted as directed by the executive director [public drinking water program].

(d) Disinfectant residuals and monitoring. A [An acceptable] disinfectant residual must be continuously maintained during the treatment process and throughout the distribution system.

(1) Disinfection equipment [facilities] 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 [in the far reaches of] the distribution system at all times:

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

(e) Operation by trained and licensed [certified] personnel. Except as provided in paragraph (7) of this subsection, all public water systems must be operated continuously under the direct supervision of an adequately trained and appropriately licensed water works operator. [All systems, except transient noncommunity that which utilize ground or purchased water, must be under the direct supervision of a certified water works operator. The operator shall ensure that the water system complies with the requirements of this section.]

(1) Systems serving no more than 1,000 connections must employ at least one operator meeting the applicable requirements of paragraph (3) of this subsection. [No district, municipality, firm, corporation, or individual, except transient noncommunity systems which utilize groundwater or purchased water, shall furnish to the public any drinking water unless the production, processing, treatment, and distribution are at all times under the direct daily supervision of a competent water works operator holding a valid certificate of competency issued under the direction of the executive director.]

[(A) A Class "D" certificate is valid for systems with 250 or fewer connections.]

[(B) Systems serving in excess of 250 connections must employ an operator with a Class "C" or higher certificate.]

[(C) Systems serving in excess of 1,000 connections must employ at least two Class "C" certified operators.]

[(D) Beginning January 1, 2004, systems that treat surface water must employ at least one operator who holds a Class "B" or higher surface water certificate.]

[(E) Until January 1, 2004, systems that treat surface water must employ at least one operator who holds a Class "B" or higher surface water certificate or who holds a Class "C" surface water certificate and has completed an executive director recognized 20-hour water laboratory course.]

(2) Systems that serve more than 1,000 connections must employ at least two operators who meet the applicable requirements of paragraph (3) of this subsection. [Each surface water treatment plant must have at least a Class "C" 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 in which the plant is unattended.]

(3) The production, treatment, and distribution facilities of all public water systems 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. [Systems that have sources which are classified as groundwater under the direct influence of surface water must be under the supervision of either an operator who has at least a Class "C" groundwater certificate and has completed additional training as designated in the following subparagraphs or an operator who has at least a Class "C" surface water certificate.]

(A) Systems serving fewer than 250 connections must employ an operator with a Class "D" or higher license if they only use groundwater or purchased treated water. [Those systems which utilize cartridge filters must be under the supervision of at least a Class "C" groundwater operator who has completed an agency recognized 8-hour training course on monitoring and reporting requirements.]

(B) Systems that serve 250 or more connections must employ an operator with a Class "C" or higher license if they only use purchased treated water. [Those systems which utilize coagulant addition and direct filtration must be under the supervision of at least a Class "C" groundwater operator who has completed an agency recognized 20-hour Surface Water Production course and an agency recognized 8-hour training course on monitoring and reporting requirements.]

(C) Systems that serve 250 or more connections must employ an operator with a Class "C" or higher Groundwater license if they use groundwater and do not treat groundwater that is under the direct influence of surface water or surface water. [Those systems which utilize complete surface water treatment must comply with the requirements of paragraph (2) of this subsection.]

(D) Systems that treat groundwater that is under the direct influence of surface water and do not treat surface water must meet the following requirements related to the direct supervision of their facilities:

(i) Systems which utilize cartridge filters must employ an operator who has a Class "C" or higher Surface water license or has a Class "C" or higher Groundwater license and has completed a four-hour training course on monitoring and reporting requirements.

(ii) Systems which utilize coagulant addition and direct filtration must employ an operator who has a Class "C" or higher Surface Water license or has a Class "C" or higher Groundwater license and has completed a 40-hour Surface Water Production course.

(iii) Systems which utilize complete surface water treatment must comply with the requirements of subparagraph (E) of this paragraph.

(iv) 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.

(E) Systems that treat surface water must meet the following requirements related to the supervision of their facilities.

(i) Beginning January 1, 2003, systems that treat surface water must employ at least one operator who holds a Class "B" or higher surface water license. Until January 1, 2003, these systems must employ at least one operator who holds a Class "B" or higher surface water license or who holds a Class "C" or higher

Surface water license and has completed an approved 20-hour water laboratory course.

(ii) 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.

(iii) 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.

(4) Beginning January 1, 2004, the treatment facilities at all systems using chlorine dioxide must be under the direct supervision of a licensed operator who has completed additional training. Unless a higher level of certification is required by paragraph (3) of this subsection, public water systems using chlorine dioxide must place those facilities under the direct supervision of a licensed operator who has a Class "C" or higher license and has completed an approved water laboratory course. [~~Certified operators must provide the public drinking water program with written, dated and signed notice of the public water systems which they operate or where they are employed when applying for, renewing, or upgrading their certification. This notice must be amended in writing within ten days of any change in responsibility.~~]

(5) 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. [~~Training programs for all chemicals used in water treatment shall meet applicable standards established by the Occupational Safety and Health Administration (OSHA) or the Texas Hazard Communications Act, Health and Safety Code, Title 5, Chapter 502.~~]

(6) 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.

(7) 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.

(f) Operating records and reports. Water systems must maintain a [~~daily~~] record of water works operation and maintenance activities and submit periodic operating reports.

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

(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: [~~each day;~~]

(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: [~~each day;~~]

(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) - *(vi)* (No change.)

(B) The following records shall be retained for at least three years:

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

(iii) the disinfectant residual monitoring results from the distribution system;

(iv) [~~(iii)~~] the turbidity monitoring results and exception reports for individual filters as required by §290.111 of this title (relating to Turbidity);

(v) [~~(iv)~~] the calibration records for laboratory equipment, flow meters, rate-of-flow controllers, on-line turbidimeters, and on-line disinfectant residual analyzers; and

(vi) [~~(v)~~] the records of backflow prevention device programs.

(C) (No change.)

(D) The following records [~~results of microbiological analyses~~] 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; and

(iii) the results of inspections as required by subsection (m)(2) of this section for all pressure filters.

(E) - (F) (No change.)

(4) Water systems shall submit any monthly or quarterly reports required by the executive director.

(A) The reports must be submitted to the Texas Natural Resource Conservation Commission, Water Supply Division [~~Permitting and Resource Management 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) - (C) (No change.)

(g) - (i) (No change.)

(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 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 (relating to Customer Service Inspection Certificate) must be approved by the executive director prior to being placed in use.

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

(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, and no obligation, beyond the scope of the commission's regulations. A customer service inspection is not a plumbing inspection as defined and regulated by the Texas State Board of Plumbing Examiners (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 [~~with 5000 or more inhabitants or within smaller, like entities which have adopted the Plumbing License Law by ordinance~~]. 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) - (l) (No change.)

(m) Maintenance and housekeeping. The maintenance and housekeeping practices used by a public water system shall ensure the good working condition [~~reliability~~] 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) - (3) (No change.)

(4) All water 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) (No change.)

(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) - (2) (No change.)

(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) (No change.)

(p) Data on water system ownership and management. The agency shall be provided with information regarding water system ownership and management.

(1) (No change.)

(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 [~~each certified operator who supervises more than one water system shall provide the public drinking water program written notices containing their certificate number, address and telephone number, and the name and identification number of each public water system which they supervise. Each operating company shall provide this information for itself and for each of its operators~~]. See §290.47(g) of this title (relating to Appendices).

(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 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 (relating to Appendices). A copy of this notice shall be provided to the executive director [~~public drinking water program~~]. 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) - (4) (No change.)

(r) (No change.)

(s) Testing equipment. Accurate testing equipment or some other means of monitoring the effectiveness of any chemical treatment processes used by the system must be provided.

(1) Flow measuring devices and rate-of-flow controllers that are required by §290.42(d) of this title shall be calibrated at least once every 12 months.

(2) (No change.)

(t) (No change.)

(u) Abandoned wells. Abandoned public water supply wells owned by the system must be plugged with cement according to 16 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 [~~commission's public drinking water program~~] for review and approval. Deteriorated wells must be either plugged with cement or repaired to a non-deteriorated condition.

(v) (No change.)

§290.47. Appendices.

(a) - (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)
[~~Figure: 30 TAC §290.47(g)~~]

(h) (No change.)

(i) Appendix I. Assessment of Hazard and Selection of Assemblies.
Figure: 30TAC §290.47(i)
[~~Figure: 30TAC §290.47(i)~~]

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 January 18, 2002.

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Stephanie Bergeron
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Texas Natural Resource Conservation Commission
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SUBCHAPTER F. DRINKING WATER STANDARDS GOVERNING DRINKING WATER QUALITY AND REPORTING REQUIREMENTS FOR PUBLIC WATER SYSTEMS

30 TAC §§290.102 - 290.104, 290.106 - 290.115, 290.117 - 290.119, 290.121, 290.122

STATUTORY AUTHORITY

The amendments are proposed under the Texas Water Code (TWC), §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; TWC, §5.122, which allows the commission to delegate uncontested matters to the executive director; and under THSC, §341.031, which allows the commission to adopt rules to implement the SDWA, 42 USC, §§300f *et seq*.

The amendments implement THSC, §§341.031, 341.0315, and 341.035: which require the commission to adopt rules to protect public water systems; require public water systems to meet the requirements of commission rules; and require the executive director of the commission to approve plans and specifications for public water systems. The amendments also implement HB 2912, §18.02, and HB 217, §2(a)(2)(B), 77th Legislature, 2001.

§290.102. General Applicability.

(a) (No change.)

(b) Variances and exemptions. Variances and exemptions may be granted at the discretion of the executive director according to the Safety Drinking Water Act (SDWA), 42 United States Code (USC), §300g-4 and §300g-5, and according to National Primary Drinking Water Regulations, Subpart K, 40 CFR §§142.301 - 142.313. The executive director may not approve variances or exemptions from:

(1) the maximum contaminant level (MCL) for total coliforms, nitrate, nitrite, or total nitrate and nitrite;

(2) the maximum residual disinfection level (MRDL) for chlorine dioxide; or

(3) the treatment technique requirements for filtration and disinfection.

[~~(1) A variance may be granted to one or more of the MCLs or treatment technique requirements if all of the following conditions apply:~~]

[~~(A) the system's raw water is such that the maximum allowable level cannot be met despite the application of the best available treatment techniques (taking costs into consideration) subject to the following conditions;~~]

[~~(B) the public water system requesting the variance was in operation on the date the MCL or treatment technique requirement became effective;~~]

[~~(C) the granting of the variance will not result in an unreasonable risk to public health; and~~]

[~~(D) a schedule, including increments of progress, is established to bring the system into compliance with the standard in question.~~]

[~~(2) An exemption may be granted to one or more of the MCLs or treatment technique requirements when a system is unable to comply with a specified allowable level because of compelling factors (which may include economic). An exemption may be granted only under the following circumstances:~~]

[~~(A) the public water system requesting the exemption was in operation on the date the MCL or treatment technique requirement became effective or for a system that was not in operation by that date, if no reasonable alternative source of drinking water is available to such new system;~~]

[~~(B) the granting of the exemption will not result in an unreasonable risk to public health; and~~]

[~~(C) a schedule is established to bring the system into compliance with the standard in question.~~]

[~~(3) Applications for such variances or exemptions must be submitted to the executive director in writing by the owner of the water system. The request must include the following:~~]

[~~(A) a statement of the standard which is not met;~~]

[~~(B) an estimate of the risk involved to public health with supporting evidence from physicians or dentists in the area;~~]

[~~(C) a general long range plan for the correction of the problem. In addition, a detailed plan or compliance schedule must be submitted within one year following written notification that a variance or exemption has been granted; and~~]

[~~(D) a detailed economic evaluation of the current and future situation.~~]

[~~(4) A variance or exemption covering a group or class of systems with a common standard which is not met may be issued by the executive director without individual application. However, individual compliance schedules will be required for each such system within one year following written notification by the executive director that such a variance or exemption has been granted. After receiving notification from the executive director that a group or class variance or exemption has been issued to their system, each system must submit the above items in accordance with paragraph (3) of this subsection.~~]

[~~(5) The executive director is required to act upon all requests for variances or exemptions within 90 days.~~]

[~~(6) Procedures for public comment and public hearings on variances, exemptions, and compliance schedules as a condition of a variance or exemption will be as stated in the EPA National Primary Drinking Water Regulations, 40 CFR §141.4 and §142.20.~~]

(c) Extensions. An extension to the compliance deadline for an MCL or treatment technique that becomes effective on or after January 1, 2002 may be granted at the discretion of the executive director in accordance with the SDWA, 42 USC, §300g-1(b)(10).

(1) The executive director may extend the effective date of an MCL or treatment technique for up to two years if all of the following conditions apply:

(A) there are no acute violations associated with the new MCL or treatment technique for which the extension is being granted;

(B) the executive director determines that granting the extension will not result in an unreasonable risk to public health;

(C) the extension is granted only to public water systems that were in operation on the date that the MCL or treatment technique was promulgated by the EPA;

(D) the executive director determines that capital improvements are needed to comply with the new MCL or treatment technique;

(E) the executive director approves a schedule identifying the capital improvements necessary to bring the system into compliance with the new MCL or treatment technique; and

(F) the EPA has not already incorporated a two-year extension into the effective date for the new MCL or treatment technique requirement.

(2) An application for an extension must be submitted to the executive director in writing by the owner or responsible party of the water system. The request must include a statement identifying the new MCL or treatment technique which is not being met and a general long range plan for meeting the new requirement.

(3) The executive director may issue an extension covering a group or class of systems with a common MCL or treatment technique which is not met without individual applications.

(d) Any person may file a motion to overturn the executive director's decision to grant or deny a variance, exemption, or extension under this section according to §50.139 of this title (relating to Motion to Overturn Executive Director's Decision).

(e) Monitoring Schedule. All monitoring required by this chapter shall be conducted in a manner and on a schedule approved by the executive director in concurrence with the requirements of the administrator of the EPA.

(f) [~~(c)~~] Modified Monitoring. When a public water system supplies water to one or more other public water systems, the executive director may modify the monitoring requirements imposed by this chapter to the extent that the interconnection of the systems justifies treating them as a single system for monitoring purposes. Any modified monitoring shall be conducted pursuant to a schedule specified by the executive director in concurrence with the requirements of the administrator of the EPA.

§290.103. Definitions.

The following definitions shall apply in the interpretation and enforcement of this subchapter. If a word or term used in this subchapter is not contained in the following list, its definition shall be as shown in §290.38 of this title (relating to Definitions) or 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 "Glossary, Water and Wastewater Control Engineering," prepared by a joint editorial board representing the American Public Health Association, American Society of Civil Engineers, American Water Works Association, and the Water Pollution Control Federation.

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

(6) DPD Abbreviation for N,N-diethyl-p-phenylenediamine, a reagent used in the determination of several residuals. DPD methods are available for both volumetric (titration) and colorimetric determinations, and are commonly used in the field as part of a colorimetric test kit.

(7) [~~(6)~~] Enhanced coagulation--The removal of disinfection by-product precursors to a specified level by conventional coagulation and sedimentation.

(8) [~~(7)~~] Enhanced softening The removal of disinfection by-product precursors to a specified level by softening.

(9) [~~(8)~~] Entry point to the distribution system--Any point where a source of [~~freshly~~] treated water first enters the distribution system. Entry points to the distribution system may include points where chlorinated well water, treated surface water, rechlorinated water from storage, or water purchased from another supplier enters the distribution system.

(10) Entry point sampling site--A sampling site representing the quality of the water entering the distribution system at each designated entry point.

(11) [~~(9)~~] Filter assessment--An in-depth evaluation of an individual filter, including the analysis of historical filtered water turbidity from the filter, development of a filter profile, evaluation of media condition, identification and prioritization of factors limiting filter performance, appraisal of the applicability of corrections, and preparation of a filter self-assessment report.

(12) [~~(10)~~] Filter profile--A graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run. The filter profile must include all the data collected from the time that the filter placed into service until the time that the backwash cycle is complete and the filter is restarted. The filter profile must also include data collected as another filter is being backwashed.

(13) [~~(11)~~] Haloacetic acids (five) (HAA5)--The sum of the monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid concentrations in milligrams per liter, rounded to two significant figures after adding the sum [~~summing~~].

(14) [~~(12)~~] Halogen--One of the chemical elements chlorine, bromine, or iodine.

(15) [~~(13)~~] Maximum contaminant level (MCL) The maximum concentration of a regulated contaminant that is allowed in drinking water before the public water system is cited for a violation. Maximum contaminant levels for regulated contaminants are defined in the applicable sections of this subchapter.

(16) [~~(14)~~] Maximum residual disinfectant level (MRDL) The disinfectant concentration that may not be exceeded in the distribution system. There is convincing evidence that addition of a disinfectant is necessary for control of waterborne microbial contaminants.

(17) [~~(15)~~] Minimum acceptable disinfectant residual--The lowest disinfectant concentration allowed in the distribution system for microbial control.

(18) [~~(16)~~] Specific ultraviolet absorption at 254 nanometers (nm) (SUVA) An indirect indicator of whether the organic carbon in water is humic or non-humic. It is calculated by dividing a sample's

ultraviolet absorption at a wavelength of 254 nm (UV254) (in m^{-1}) by its concentration of dissolved organic carbon (DOC) (in mg/L).

(19) [~~(17)~~] Total organic carbon (TOC) The concentration of total organic carbon, in milligrams per liter, measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures. TOC is a surrogate measure for precursors to formation of disinfection by- products.

(20) [~~(18)~~] Total trihalomethanes (TTHM) The sum of the chloroform, dibromochloromethane, bromodichloromethane, and bromoform concentrations in milligrams per liter, rounded to two significant figures after summing.

(21) [~~(19)~~] Trihalomethane (THM)--One of the family of organic compounds named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

§290.104. Summary of Maximum Contaminant Levels, Maximum Residual Disinfectant Levels, Treatment Techniques, and Action Levels.

(a) Summary table purpose. The maximum contaminant levels (MCLs), maximum residual disinfectant levels (MRDLs) [~~MRDLs~~], treatment techniques, and action levels are presented in this section as a reference source. Only the regulatory concentrations are shown in these tables. Compliance requirements are given in the specific section for each chemical.

(b) Maximum contaminant levels [~~(MCLs)~~] for inorganic compounds. The MCLs [~~maximum contaminant levels~~] for inorganic contaminants listed in this subsection [~~below~~] apply to public water systems as provided in §290.106 of this title (relating to Inorganic Contaminants).
Figure: 30 TAC §290.104(b)
[~~Figure: 30 TAC §290.104(b)~~]

(c) - (k) (No change.)

§290.106. Inorganic Contaminants.

(a) Applicability. All public water systems are subject to the requirements of this section.

(1) Community and nontransient non-community systems shall comply with the requirements of this section regarding monitoring, reporting, and maximum contaminant levels (MCLs) [~~MCLs~~] for all inorganic contaminants (IOCs) listed in this section.

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

(b) Maximum contaminant levels for IOCS [~~inorganic contaminants (IOCs)~~]. The MCLs [~~maximum contaminant levels~~] for IOCs [~~inorganic contaminants~~] listed in the following table apply to community and nontransient, non-community water systems. The MCLs [~~maximum contaminant levels~~] for nitrate, nitrite, and total nitrate and nitrite also apply to transient non-community water systems.
Figure: 30 TAC §290.106(b)
[~~Figure: 30 TAC §290.106(b)~~]

(c) Monitoring requirements for IOCs [~~inorganic contaminants~~]. Public water systems shall monitor for IOCs [~~inorganic contaminants~~] at the locations [~~and~~] specified by the executive director. All monitoring conducted pursuant to the requirements of this section must be conducted at sites designated in the public water system's monitoring plan. Each public water system shall monitor at the time designated during each compliance period.

(1) Monitoring locations for IOCs except asbestos, antimony, [~~Antimony,~~] arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nitrate, nitrite, selenium, and thallium shall be monitored at each entry point [~~of entry~~] to the distribution system.

(A) 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 [~~a point of entry~~] that is representative of all sources and during periods of normal operating conditions when water is representative of all sources being used.

(B) Systems shall take all subsequent samples at the same entry point [~~of entry~~] to the distribution system unless the executive director determines that conditions make another entry point [~~of entry~~] more representative of the source or treatment plant being monitored.

(C) The executive director may approve the use of composite samples.

(i) (No change.)

(ii) Compositing shall be allowed only at groundwater entry points [~~of entry~~] to the distribution system.

(iii) - (v) (No change.)

(vi) If the concentration in the composite sample is greater than or equal to the proportional contribution of the MCL (e.g., 20% of MCL when five points are composited) for any inorganic chemical, then a follow-up sample must be collected from each sampling point included in the composite sample.

(I) (No change.)

(II) If duplicates of the original sample taken from each entry point [~~of entry~~] to the distribution system used in the composite are available, the system may use these instead of resampling. The duplicates must be analyzed within 14 days of the composite.

(III) (No change.)

(2) Monitoring locations for asbestos. Asbestos shall be monitored at locations where asbestos contamination is most likely to occur.

(A) A system vulnerable to asbestos contamination due solely to source water shall sample at the entry point [~~of entry~~] to the distribution system.

(B) - (D) (No change.)

(3) Monitoring frequency for IOCs except asbestos, nitrate, and nitrite. Community and nontransient non-community public water systems shall monitor for antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, selenium, and thallium at the following frequency.

(A) A public water system shall routinely monitor for antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, selenium, and thallium.

(i) Each groundwater source shall be sampled once every three years at the entry point [~~of entry~~] to the distribution system.

(ii) Each surface water source shall be sampled annually at the entry point [~~of entry~~] to the distribution system.

(iii) (No change.)

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

(4) (No change.)

(5) Nitrate monitoring frequency. All public water systems shall monitor for nitrate at the following frequency.

(A) All [~~A~~] public water systems [~~system~~] shall routinely monitor for nitrate.

(i) All public water systems shall annually sample each ground water source at the entry point [~~of entry~~] to the distribution system.

(ii) A community or non-transient non-community water system shall sample each surface water source quarterly at the entry point [~~of entry~~] to the distribution system.

(iii) A transient non-community water system shall [~~annually~~] sample each surface water source annually at the entry point [~~of entry~~] to the distribution system.

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

(6) (No change.)

(7) Confirmation sampling. The executive director may require a public water system to confirm the results of any individual sample.

(A) If a sample result exceeds the MCL, a public water system shall collect one additional sample to confirm the results of the initial test.

(i) Confirmation samples must be collected at the same entry point [~~of entry~~] to the distribution system as the sample that exceeded the MCL.

(ii) - *(iii)* (No change.)

(B) (No change.)

(8) (No change.)

(d) Analytical requirements for IOCs [~~inorganic contaminants~~]. Analytical procedures shall be performed in accordance with §290.119 of this title (relating to Analytical Procedures). Testing for inorganic contaminants shall be performed at a laboratory certified by the executive director [~~Texas Department of Health (TDH) Bureau of Laboratories~~].

(e) Reporting requirements for IOCs [~~inorganic contaminants~~]. 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 Texas Natural Resource Conservation Commission, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087. [~~Any owner or operator of a public water system subject to the provisions of this section is required to report to the executive director the results of any inorganic constituent analyses, measurement, or analysis required to be made by these standards within ten days following the receipt of results for such test, measurement, or analysis.~~]

(f) Compliance determination for IOCs [~~inorganic contaminants~~]. Compliance with this section shall be determined using the following criteria.

(1) Compliance with the MCL for each IOC [~~inorganic contaminant~~] shall be based on the analytical results obtained at each individual sampling point.

(2) A public water system that exceeds the levels for nitrate, nitrite, or the sum of nitrate and nitrite specified in subsection (b) of this section commits an acute MCL violation. Compliance shall be based on the results of the single sample. If a confirmation sample is collected, compliance shall be based on the average result of the original and confirmation samples.

[~~(A) For systems that are sampling annually or less frequently, compliance shall be based on the results of the single sample. If a confirmation sample is collected, the compliance will be based on the average result of the original and confirmation samples.~~]

[~~(B) For systems that are sampling more frequently than annually, compliance is based on the running annual average for each sampling point.~~]

[~~(C) If any one sample would cause the running annual average to be exceeded, then the system is out of compliance immediately.~~]

(3) A public water system that exceeds the levels of antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, selenium, or thallium (i.e., any IOC [~~inorganic contaminant~~] except nitrate and nitrite) specified in subsection (b) of this section commits an MCL violation.

(A) For systems that are sampling annually or less frequently, compliance may be based on the results of a single sample, if a confirmation sample is not collected. [~~If a confirmation sample is not collected, compliance shall be based on the results of each original sample.~~]

(B) For systems that are sampling annually or less frequently, if [~~If~~] a confirmation sample is collected, [~~the~~] compliance will be based on the average result of the original and confirmation samples.

(C) For systems that are sampling more frequently than annually, compliance is based on the running annual average for each sampling point.

(D) If a single quarterly sample would cause the running annual average to be exceeded, then the system is immediately out of compliance.

(4) - (5) (No change.)

(g) Public notice for IOCs [~~inorganic contaminants~~]. A public water system that violates the requirements of this section must notify the executive director and the system's customers.

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

(3) A public water system that fails to meet the MCL for any of the regulated IOCs [~~inorganic contaminants~~] except nitrate and nitrite (i.e., antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, selenium, and thallium) shall 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) - (5) (No change.)

(h) Best Available Technology (BAT) for IOCs [~~inorganic contaminants~~]. BAT [~~Best available technology~~] for treatment of violations of MCLs in subsection (b) of this section are listed in 40 CFR §141.62.

§290.107. Organic Contaminants.

(a) (No change.)

(b) Maximum contaminant levels (MCLs) for organic contaminants. The concentration of synthetic and volatile organic chemicals shall not exceed the MCLs [~~maximum contaminant levels~~] specified in this section.

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

(3) Each public water system must certify annually to the executive director (using third party or manufacturer's certification) that when acrylamide or epichlorohydrin are used in drinking water systems, the combination (or product) of dose and monomer level does not exceed 0.05% dosed at 1.0 mg/L [~~1 ppm~~] (or equivalent) for acrylamide and 0.01% dosed at 20 mg/L [~~20 ppm~~] (or equivalent) for epichlorohydrin.

(c) Monitoring requirements for organic contaminants. Public water systems shall monitor for organic contaminants at the locations and frequency in paragraphs (1) and (2) of this subsection. All monitoring conducted under [~~pursuant to~~] the requirements of this section must be conducted at sites designated in the public water system's monitoring plan. All samples must be taken during periods of normal operation when water representative of all sources used by the system is being used.

(1) SOC monitoring requirements. Monitoring of the SOC contaminants shall be conducted at the frequency and locations given in this paragraph.

(A) SOC monitoring locations. Monitoring of the SOC contaminants shall be conducted at the following locations.

(i) Systems treating only groundwater shall sample for SOCs at every entry point [~~of entry~~] to the distribution system which is representative of each well after treatment. Subsequent samples must be taken at the same entry point [~~of entry~~] to the distribution system unless a change in conditions makes another entry point [~~of entry~~] to the distribution system more representative of each source or treatment plant. The executive director must approve any change in sampling location.

(ii) Systems using surface water and systems treating groundwater under the direct influence of surface water shall sample for SOCs at points in the distribution system that are representative of each source or at each entry point to the distribution system. Subsequent samples must be taken at the same entry points [~~point of entry~~] to the distribution system unless a change in conditions makes another entry point [~~of entry~~] to the distribution system more representative of each source or treatment plant. The executive director must approve any change in sampling location.

(B) (No change.)

(C) Increased SOC monitoring. The executive director may change the monitoring frequency for SOCs.

(i) (No change.)

(ii) The executive director may change the monitoring frequency if an organic SOC contaminant is detected in any sample.

(I) If an organic SOC contaminant is detected in any sample, the system must monitor quarterly at each entry point [~~of entry~~] to the distribution system at which a detection occurs.

(II) - (VI) (No change.)

(iii) - (iv) (No change.)

(D) (No change.)

(E) Compositing for SOC monitoring. The executive director may reduce the total number of samples required from a system for analysis by allowing the use of compositing. Composite samples from a maximum of five entry points [~~of entry~~] to the distribution system are allowed. Compositing of samples must be done in the laboratory and analyzed within 14 days of sample collection.

(i) If, in the composite sample, a detection of one or more SOC contaminants listed in subsection (b)(1) of this section occurs, then a follow-up sample must be taken from each entry point [~~of entry~~] to the distribution system included in the composite and analyzed within 14 days of collection.

(ii) If duplicates of the original SOC sample taken from each entry point [~~of entry~~] to the distribution system used in the composite are available, the executive director may use these duplicates instead of resampling. The duplicate must be analyzed within 14 days of collection and the results reported to the executive director.

(iii) (No change.)

(F) (No change.)

(2) VOC monitoring requirements. Monitoring of the VOC contaminants shall be conducted at the frequency and locations given in this paragraph.

(A) VOC monitoring locations. Monitoring of the VOC contaminants shall be conducted at the following locations.

(i) Systems that use only groundwater shall sample for VOCs at every entry point to the distribution system which is representative of each well after treatment. Subsequent samples must be taken at the same entry point [~~of entry~~] to the distribution system unless a change in conditions makes another entry point [~~of entry~~] to the distribution system more representative of each source or treatment plant. The executive director must approve any change in sampling location.

(ii) Surface water systems, systems using groundwater under the direct influence of surface water, and systems blending groundwater and surface water shall sample for VOCs at points in the distribution system that are representative of each source or at each entry point [~~of entry~~] to the distribution system. Subsequent samples must be taken at the same entry points [~~of entry~~] to the distribution system unless a change in conditions makes another entry point [~~of entry~~] to the distribution system more representative of each source or treatment plant. The executive director must approve any change in sampling location.

(B) VOC monitoring frequency. Monitoring of the VOC contaminants shall be conducted at the following frequency.

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

(iv) Each community and nontransient groundwater system which does not detect a VOC contaminant listed in subsection (b)(2) of this section may be granted a waiver from the annual or triannual requirements of subsection (c)(2)(B)(ii) and iii [~~(c)(2)(B)(iii)~~] of this section after completing the initial monitoring. For the purposes of this section, detection is defined as an analytical result of 0.0005 mg/L or greater [~~>0.0005 mg/l~~]. A waiver shall be effective for no more than six years (two compliance periods).

(v) (No change.)

(C) Increased VOC monitoring. The executive director may change the monitoring frequency for VOCs.

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

(iii) If a VOC contaminant listed in subsection (b)(2) of this section is detected at a level exceeding 0.0005 mg/L [~~mg/l~~] in any sample, then:

(I) the system must monitor quarterly at each entry point [~~of entry~~] to the distribution system which resulted in a detection;

(II) - (IV) (No change.)

(V) Groundwater systems which have detected one or more of the following two-carbon organic compounds:

trichloroethylene, tetrachloroethylene, 1,2-dichloroethane, 1,1,1-trichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene, or 1,1-dichloroethylene shall monitor quarterly for vinyl chloride. A vinyl chloride sample shall be taken at each entry point [~~of entry~~] to the distribution system at which one or more of the two-carbon organic compounds was detected. If the result of the first analysis does not detect vinyl chloride, the executive director may reduce the quarterly monitoring frequency for vinyl chloride to one sample during each compliance period. Surface water systems are required to monitor for vinyl chloride as specified by the executive director.

(iv) (No change.)

(D) Waivers for VOC monitoring. The executive director may grant a waiver after evaluating the previous use (including transport, storage, or disposal) of the contaminant within the watershed or zone of influence of the water sources. If a determination by the executive director reveals no previous use of the contaminant within the watershed or zone of influence, a waiver may be granted. If previous use of the contaminant is unknown or it has been used previously, then the following factors shall be used to determine whether a waiver is granted:

(i) - (v) (No change.)

(vi) As a condition of the waiver a groundwater system must take one sample at each entry point [~~of entry~~] to the distribution system during the time the waiver is effective (i.e., one sample during two compliance periods or six years) and update its vulnerability assessment considering the factors listed in this paragraph. Based on this updated vulnerability assessment the executive director must reconfirm that the system is not vulnerable. If the executive director does not make this reconfirmation within three years of the initial determination, then the waiver is invalid and the system is required to sample annually; and

(vii) (No change.)

(E) Compositing for VOC monitoring. The executive director may reduce the total number of samples a system must analyze by allowing the use of compositing. Composite samples from a maximum of entry points [~~of entry~~] to the distribution system are allowed. Compositing of samples must be done in the laboratory and analyzed within 14 days of sample collection.

(i) If the VOC concentration in the composite sample is 0.0005 mg/L or greater [~~>0.0005 mg/l~~] for any contaminant listed in subsection (b)(2) of this section, then a follow-up sample must be taken and analyzed within 14 days from each entry point [~~of entry~~] to the distribution system included in the composite.

(ii) If duplicates of the original sample taken from each entry point [~~of entry~~] to the distribution system used in the composite are available, the system may use these instead of resampling. The duplicate must be analyzed [~~and the results reported to the public drinking water program~~] within 14 days of collection.

(iii) Compositing may only be permitted by the executive director at entry points [~~of entry~~] to the distribution system within a single system.

(iv) (No change.)

(d) Analytical requirements for organic contaminants. Analytical procedures shall be performed in accordance with §290.119 of this title (relating to Analytical Procedures). Testing for organic contaminants shall be performed at a laboratory certified by the executive director [~~TDH Bureau of Laboratories~~].

(e) Reporting requirements for organic contaminants. 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 Texas Natural Resource Conservation Commission, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087. [~~Any owner or operator of a public water system subject to the provisions of this section is required to report to the public drinking water program the results of any test, measurement, or analysis required to be made by this section within ten days following receipt of the results of such test, measurement, or analysis.~~]

(f) Compliance determination for organic contaminants. Compliance with the MCLs of subsection (b)(1) and (2) of this section shall be determined based on the analytical results obtained at each entry point [~~of entry~~] to the distribution system.

(1) For systems which are sampling more than once a year, compliance is determined by a running annual average of all samples taken at each entry point [~~of entry~~] to the distribution system. If the annual average at any entry point [~~of entry~~] to the distribution system is greater than the MCL, the system commits an MCL violation. If the initial sample or a subsequent sample would cause the annual average to be exceeded, then the system is out of compliance immediately. Any samples below the detection limit shall be considered to be zero for purposes of calculating the annual average.

(2) For systems which are sampling once a year or less, compliance is based on a single sample. If the level of a contaminant at any entry point [~~of entry~~] to the distribution system is greater than the MCL, the system commits an MCL violation. If a confirmation sample is required the executive director, the determination of compliance will be based on the average of the two samples.

(3) (No change.)

(g) Public notification requirements for organic contaminants. A public water system that violates the requirements of this section must notify the executive director [~~public drinking water program~~] and the system's customers. If a public water system has a distribution system separate from other parts of the distribution system with no interconnections, the executive director may allow the system to give public notice to only that portion of the system which is out of compliance.

(1) A system that violates an MCL given in subsection (b) of this section, shall report to the executive director [~~public drinking water program~~] and notify the public as provided under §290.122(b) of this title [~~(relating to Public Notification)~~].

(2) (No change.)

(h) Best available technology (BAT) for organic contaminants. BAT [~~Best available technology (BAT)~~] for treatment of violations of MCLs in subsection (b) of this section are listed in 40 CFR §141.61. Copies are available for review in the Water Supply Division [~~Water Permitting and Resource Management Division~~], Texas Natural Resource Conservation Commission, P. O. Box 13087, Austin, Texas 78711-3087.

§290.108. Radionuclides Other than Radon [~~Radiological Sampling and Analytical Requirements~~].

(a) Applicability. All community [~~and nontransient, noncommunity~~] water systems shall comply with the requirements of this section regarding radiological contaminants. Public water systems treating groundwater under the direct influence of surface water must comply with the radiological requirements for surface water systems.

(b) (No change.)

(c) Monitoring requirements. Public water systems shall measure the concentration of radiochemicals at locations and frequencies specified in the system's monitoring plan. All samples must be collected during normal operating conditions.

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

(3) The radiochemicals identified in this section shall be sampled at a sampling site representing the entry point to the distribution system.

(d) Analytical requirements for radiological contaminants. Analytical procedures shall be performed in accordance with §290.119 of this title (relating to Analytical Procedures). Testing for radiological contaminants shall be performed at a laboratory certified by the executive director [~~TDH Bureau of Laboratories~~].

(e) Reporting requirements. 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 Texas Natural Resource Conservation Commission, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087. [~~Any owner or operator of a public water system subject to the provisions of this section is required to report to the executive director the results of any test, measurement, or analysis required to be made by this section within ten days following receipt of the results of such test, measurement, or analysis.~~]

(f) (No change.)

(g) Public notification. A public water system that violates the requirements of this subsection must notify the executive director [~~public drinking water program~~] and the system's customers.

(1) A public water system that violates the MCL for gross alpha particle activity or total radium shall give notice to the executive director [~~public drinking water program~~] and notify the public as required by §290.122(b) of this title [~~(relating to Public Notification)~~].

(2) The operator of a community water system that violates the MCL for man-made radioactivity shall give notice to the executive director [~~public drinking water program~~] and to the public as required by §290.122(b) of this title [~~(relating to Public Notification)~~].

(3) (No change.)

§290.109. Microbial Contaminants.

(a) (No change.)

(b) Maximum contaminant levels (MCL) for microbial contaminants. The MCL for microbial contaminants if based on the presence or absence of total coliform bacteria in a sample.

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

(c) Monitoring requirements for microbial contaminants. Public water systems shall collect samples for total coliform and for fecal coliform or *Escherichia coli*. All compliance samples must be collected during normal operating conditions.

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

(5) Culture analysis. If any routine or repeat sample is total coliform-positive, that total coliform-positive culture medium will be analyzed to determine if fecal coliforms or *E. coli* bacteria are present. If fecal coliforms or *E. coli* are present, the system must notify the executive director [~~public drinking water program~~] by the end of the day in accordance with subsection (g) of this section.

(d) Analytical requirements for microbial contaminants. Analytical procedures shall be performed in accordance with §290.119 of this title (relating to Analytical Procedures). Testing for microbial contaminants shall be performed at a laboratory certified by the executive director [~~TDH Bureau of Laboratories~~].

(e) Reporting requirements for microbial contaminants. 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 Texas Natural Resource Conservation Commission, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087. [~~Any owner or operator of a public water system subject to the provisions of this section is required to report to the public drinking water program the results of any test, measurement, or analysis required to be made by this section within ten days following receipt of the results of such test, measurement, or analysis.~~]

(f) (No change.)

(g) Public notification for microbial contaminants. A system that is out of compliance with the requirements described in this section must notify the public using the procedures described in §290.122 of this title [~~(relating to Public Notification)~~] for microbial contamination.

(1) (No change.)

(2) A public water system that has fecal coliforms or *E. coli* present must notify the executive director [~~public drinking water program~~] by the end of the day when the system is notified of the test result, unless the system is notified of the result after the commission's [~~public drinking water program's~~] office is closed, in which case the system must notify the executive director [~~public drinking water program~~] before the end of the next business day.

(3) A public water system which commits an MCL violation must report the violation to the executive director [~~public drinking water program~~] immediately after it learns of the violation, but no later than the end of the next business day, and notify the public in accordance with §290.122(b) of this title.

(4) A public water system which has failed to comply with a coliform monitoring requirement must report the monitoring violation to the executive director [~~public drinking water program~~] within ten days after the system discovers the violation and notify the public in accordance with §290.122(c) of this title.

§290.110. Disinfectant Residuals.

(a) (No change.)

(b) Minimum and maximum acceptable disinfectant concentrations. Public water systems shall provide the minimum levels of disinfectants in accordance with the provisions of this section. Public water systems shall not exceed the maximum residual disinfectant levels [~~concentrations~~] (MRDLs) provided in this section. The disinfection process at a system treating surface water or groundwater under the direct influence of surface water shall meet the treatment technique requirements provided in this section.

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

(5) The running annual average of the free chlorine or chloramine residual of the water within the distribution system shall not exceed an MRDL of 4.0 mg/L.

(A) (No change.)

(B) Effective January 1, 2004, all community water systems and nontransient, noncommunity water systems [~~that serve fewer than 10,000 people and those that serve at least 10,000 people and use groundwater sources~~] must comply with the MRDL for chlorine and chloramine.

(c) Monitoring requirements. Public water systems shall monitor the performance of the disinfection facilities to ensure that appropriate disinfectant levels are maintained. All monitoring conducted pursuant to the requirements of this section must be conducted at sites designated in the public water system's monitoring plan.

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

(5) Public water systems shall monitor the disinfectant residual at various locations throughout the distribution system.

(A) Public water systems which must [~~conduct daily disinfectant residual tests at representative locations in the distribution system unless they~~] use groundwater or purchased water sources only and serve fewer than 250 connections or 750 people daily, monitor the disinfectant residual at representative locations in the distribution system at least one every seven days.

(B) Public water systems that [~~which~~] use groundwater or purchased water sources only and serve fewer than 250 connections or 750 people daily, must monitor [~~test~~] the disinfectant residual at least once per day at representative locations in the distribution system [~~at least once every seven days~~].

(C) Public water systems using surface water sources or groundwater under the influence of surface water must monitor the disinfectant residual tests at least once per day at representative locations in the distribution system.

(D) [~~(C)~~] All public water systems must monitor the [~~The~~] residual disinfectant concentration each time that a [~~must be measured at least at the same points in the distribution system and at the same time as~~] bacteriological sample is [~~samples are~~] collected, as specified in §290.109 of this title (relating to Microbial Contaminants).

(d) (No change.)

(e) Reporting requirements. Any owner or operator of a public water system subject to the provisions of this section is required to report to the executive director [~~public drinking water program~~] the results of any test, measurement, or analysis required by this section.

(1) Systems exceeding the MRDL for chlorine dioxide in subsection (b)(3) of this section must report the exceedance to the executive director [~~public drinking water program~~] at least by the end of the next business day.

(2) Public water systems that use surface water sources or groundwater sources under the direct influence of surface water must submit a Monthly Operating Report for Surface Water Treatment Plants each month. Until January 1, 2001, systems must submit commission [~~TNRCC~~] Form 0102A. After January 1, 2001, systems must submit commission [~~TNRCC~~] Form 0102C [~~00102~~].

(3) Public water systems that use chlorine dioxide must submit a Chlorine Dioxide Monthly Operating Report (commission Form 0690) [~~Monthly Report for Chlorine Dioxide Installations~~] each month.

(4) (No change.)

(5) Monthly and quarterly reports required by this section must be submitted to the Texas Natural Resource Conservation Commission, Water Supply Division [~~Water Permitting and Resource Management Division~~], P.O. Box 13087, MC 155, Austin, Texas 78711-3087 by the tenth day of the month following the end of the reporting period.

(f) Compliance determinations. Compliance with the requirements of this section shall be determined using the following criteria.

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

(4) A public water system that uses surface water sources or groundwater sources under the direct influence of surface water and fails to meet the requirements of subsection (b)(1) or (2) of this section for a period longer than four consecutive hours commits a nonacute treatment technique violation. A public water system that fails to conduct the additional testing required by subsection (c)(1)(C) and (c)(2)(B)(iii) [~~(c)(3)(C)~~] of this section also commits a nonacute treatment technique violation.

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

(9) If a public water system's failure to monitor makes it impossible to determine compliance with the MRDL for chlorine or chloramines, the system commits an MRDL violation for the entire period covered by the annual average.

(g) Public notification requirements. The owner or operator of a public water system that violates the requirements of this section must notify the executive director [~~public drinking water program~~] and the people served by the system.

(1) A public water system that fails to meet the requirements of subsection (b)(3) of this section, shall notify the executive director [~~public drinking water program~~] by the end of the next business day and the customers in accordance with the requirements of §290.122 of this title (relating to Public Notification).

(A) (No change.)

(B) A public water system that has a non-acute violation of the MRDL for chlorine dioxide must notify the customers in accordance with the requirements of §290.122(b) of this title [~~(relating to Public Notification)~~].

(2) A public water system that uses surface water sources or groundwater sources under the direct influence of surface water and fails to meet the minimum disinfection requirements of subsection (b)(1) or (2) [~~(b)(2)~~] of this section shall notify the executive director [~~public drinking water program~~] by the end of the next business day and the customers in accordance with the requirements of §290.122(b) of this title.

(3) (No change.)

(4) A public water system that fails to meet the requirements of subsection (b)(5) of this section shall notify the executive director [~~public drinking water program~~] by the end of the next business day and the customers in accordance with the requirements of §290.122(b) of this title.

(5) 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.

§290.111. Turbidity.

(a) (No change.)

(b) Treatment technique requirements for turbidity. The filtration techniques used by public water systems treating surface water or groundwater under the direct influence of surface water must ensure the system meets the following treatment technique requirements and criteria.

(1) Through December 31, 2001, the treatment process used by public water systems treating surface water or groundwater under the direct influence of surface water must achieve at least a 3-log removal or inactivation of *Giardia lamblia* 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.

(A) Treatment plants using conventional media filtration must achieve the following turbidity levels.

(i) (No change.)

(ii) The turbidity level of the combined filter effluent must be 0.5 NTU or less in at least 95% of [~~or~~] the samples tested each month. The executive director may allow a turbidity level of up to 1.0 NTU in at least 95% of the samples if the system can achieve the required 3-log removal or inactivation of *Giardia lamblia* cysts and 4-log removal or inactivation of viruses at that higher turbidity level.

(B) (No change.)

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

(c) (No change.)

(d) Analytical requirements for turbidity. All monitoring required by this section 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).

(1) Turbidity must be measured with turbidimeters that use EPA Method 180.1 and Standard Method 2130B [~~nephelometric methods~~] or Great Lakes Instruments Method 2.

(2) - (4) (No change.)

(e) Reporting requirements for turbidity. Public water systems shall properly complete and submit periodic reports to demonstrate compliance with this section.

(1) A public water system that has a turbidity level exceeding 1.0 [~~5.0~~] NTU in the combined filter effluent shall notify the executive director [~~public drinking water program~~] by the next business day.

(2) Public water systems which use surface water sources or groundwater sources under the direct influence of surface water, must submit a Monthly Operating Report for Surface Water Treatment Plants each month. Until January 1, 2001, systems must submit commission [~~TNRCC~~] Form 0102A. After January 1, 2001, systems must submit commission [~~TNRCC~~] Form 0102C [~~01020~~].

(3) Public water systems that must complete the additional monitoring required by subsection (c)(5)(A) of this section must submit a Filter Profile Report for Individual Filters (commission Form 10276) with their Monthly Operating Report for Surface Water Treatment Plants.

(4) Public water systems that must complete the additional monitoring required by subsection (c)(5)(B) of this section must submit a Filter Assessment Report for Individual Filters (commission Form 10277) with their Monthly Operating Report for Surface Water Treatment Plants.

(5) Public water systems that must complete the additional monitoring required by subsection (c)(5)(C) of this section must submit a Request for Compliance CPE (commission Form 10278) with their Monthly Operating Report for Surface Water Treatment Plants.

(6) Periodic reports required by this section must be submitted to the Texas Natural Resource Conservation Commission, Water Supply Division [~~Water Permitting and Resource Management 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.

(f) (No change.)

(g) Public notification for turbidity. The owner or operator of a public water system that violates the requirements of this section must notify the executive director [~~public drinking water program~~] and the people served by the system.

(1) A public water system that has a turbidity level exceeding 5.0 NTU in the combined filter effluent shall notify the executive director [~~public drinking water program~~] by the next business day and the water system customers of the acute violation in accordance with the requirements of §290.46(q)(3) [~~§290.46(s)(4)~~] of this title [~~(relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems)~~] and §290.122(a) of this title (relating to Public Notification).

(2) A public water system that fails to meet the treatment technique requirements of subsection (b)(1) or (2) of this section shall notify the executive director [~~public drinking water program~~] 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.

(3) (No change.)

§290.112. Total Organic Carbon (TOC).

(a) (No change.)

(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) - (2) (No change.)

(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 [~~public drinking water program~~] for approval of Step 2 removal requirements.

(A) (No change.)

(B) The system must submit the results of the Step 2 jar testing to the executive director [~~public drinking water program~~] for approval of the alternative removal requirements at least 15 days before the end of the applicable quarter.

(C) (No change.)

(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 [~~Within one hour of~~] 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) - (5) (No change.)

(d) (No change.)

(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 Texas Natural Resource Conservation Commission, Water Supply Division, [~~Water Permitting and Resource Management 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.

(2) (No change.)

(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) - (E) (No change.)

[~~(F) If the system meets alternative compliance criterion Number 9, subsection (b)(2)(I) 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 Disinfection By-products (TTHM and HAA5)).~~]

(F) [~~(G)~~] 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) (No change.)

(g) Public Notification. A public water system that violates the treatment technique requirements of this section must notify the executive director [~~public drinking water program~~] and the system's customers.

(1) A public water system that commits a TOC treatment technique violation shall notify the executive director [~~public drinking water program~~] and the water system customers in accordance with the requirements of §290.122(b) of this title (relating to Public Notification).

(2) (No change.)

§290.113. Disinfection By-products (TTHM and HAA5).

(a) Applicability for TTHM and HAA5. All community and nontransient, noncommunity water systems shall comply with the requirements of this section.

(1) (No change.)

(2) Effective January 1, 2004, all community and nontransient, noncommunity public water systems [~~that serve fewer than 10,000 persons and those that serve at least 10,000 persons and use groundwater sources~~] must comply with the MCL for TTHM and HAA5.

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

(b) - (c) (No change.)

(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 certified by the executive director [~~TDH Bureau of Laboratories~~].

(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 Texas Natural Resource Conservation Commission, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087. [~~Any owner or operator of a public water system subject to the provisions of this section is required to report to the public drinking water program the results of any test, measurement, or analysis required to be made by this section within ten days following receipt of results of such test, measurement, or analysis.~~]

(f) Compliance determination for TTHM and HAA5. Compliance with the provisions of this section shall be determined as follows.

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

(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 [~~public drinking water program~~] 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 [~~public drinking water program within 30 days after receiving analytical results and notify the public as provided under~~] §290.122(b) of this title (relating to Public Notification).

(2) (No change.)

§290.114. Other Disinfection By-products (Chlorite and Bromate) [~~Other than TTHM and HAA5~~].

(a) Chlorite. All community and nontransient noncommunity public water systems that use chlorine dioxide must comply with the requirements of this subsection.

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

(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) - (B) (No change.)

(C) Beginning January 1, 2002, the chlorite concentration of the water within the distribution system must be analyzed using ion chromatography at a facility certified by the executive director [~~TDH Bureau of Laboratories~~].

(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 [~~using chlorine dioxide shall properly complete and submit periodic report to demonstrate compliance with this subsection~~].

(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. [~~within ten days after the end of each month. The report must be submitted to the Texas Natural Resource Conservation Commission, Water Permitting and Resource Management Division, P.O. Box 13087, MC 155, Austin, Texas 78711-3087.~~]

(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 §290.114(a)(2)(B) of this title within ten days following receipt of the results of such test,

measurement, or analysis. [~~The results of all samples collected at points designated in the monitoring plan must be reported.~~]

(C) Reports and analytical results must be mailed to the Texas Natural Resource Conservation Commission, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087.

(5) (No change.)

(6) Public notification requirements for chlorite. A public water system that violates the requirements of this subsection must notify the executive director [~~public drinking water program~~] and the system's customers.

(A) A public water system that violates the MCL for chlorite shall notify the executive director [~~public drinking water program~~] 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) (No change.)

(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) - (3) (No change.)

(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 Texas Natural Resource Conservation Commission, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087.

(5) [~~(4)~~] 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.

(6) [~~(5)~~] 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 [~~public drinking water program~~].

(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 (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.

§290.115. Transition Rule for Disinfection By-products (TTHM).

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

(c) Sampling and analytical requirements for TTHM [~~total trihalomethanes~~]:

(1) (No change.)

(2) For all community water systems utilizing surface water sources in whole or in part, and for all water systems utilizing only groundwater sources that have not been determined to qualify for the reduced monitoring requirements of paragraph (4) of this subsection, analyses for total trihalomethanes shall be performed on at least four samples of water per quarter from each treatment plant used by the system. At least 25% of the samples shall be taken at locations within the distribution system reflecting the maximum residence time of the water in the system. The remaining 75% shall be taken at representative locations in the distribution system, taking into account number of persons served, different sources of water, and different treatment methods employed. The results of all analyses per quarter shall be arithmetically averaged and reported to the executive director [~~public drinking water program~~] within 30 days of the system's receipt of such results. All samples collected shall be used in computing the average, unless the analytical results are invalidated for technical reasons.

(3) Upon the written request of a community water system, the monitoring frequency required by paragraph (2) of this subsection may be reduced by the executive director [~~public drinking water program~~] to a minimum of one sample analyzed for TTHMs per quarter taken at a point in the distribution system reflecting the maximum residence time of the water in the system, upon a written determination by the executive director [~~public drinking water program~~] that the data from at least one year of monitoring in accordance with paragraph (2) of this subsection and local conditions demonstrate that total trihalomethane concentrations will be consistently below the maximum contaminant level.

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

(4) Upon the written request to the executive director [~~public drinking water program~~], a community water system utilizing only groundwater sources may seek to have the monitoring frequency reduced to a minimum of one sample for maximum TTHM potential per year taken at a point in the distribution system reflecting maximum residence time of the water in the system. The system shall submit to the executive director [~~public drinking water program~~] the results of at least one sample analyzed for maximum TTHM potential taken at a point in the distribution system reflecting the maximum residence time of the water in the system. The system's monitoring frequency may only be reduced upon a written determination by the executive director [~~public drinking water program~~] that, based upon the data submitted by the system, the system has a maximum TTHM potential of less than 0.10 milligrams/liter and that, based upon an assessment of the local conditions of the system, the system is not likely to approach or exceed the maximum contaminant level for TTHM's. [~~The results of all analyses shall be reported to the public drinking water program within 30 days of the system's receipt of such results.~~] All samples collected shall be used for determining whether the system must comply with the monitoring requirements of paragraph (2) of this subsection, unless the analytical results are invalidated for technical reasons.

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

(5) Compliance with the MCL of 0.10 mg/L [~~milligrams/liter~~] for TTHMs [~~total trihalomethanes~~] shall be determined based on a running annual average of quarterly samples collected by the system as prescribed in paragraph (2) of this subsection. If the average of samples covering any 12-month period exceeds the maximum contaminant level, the public water system shall report to the executive director [~~public drinking water program~~] within 30 days and notify the public as required under §290.122(b) of this title (relating

to Public Notification). Monitoring after public notification shall be at a frequency designated by the executive director [~~public drinking water program~~] and shall continue until a monitoring schedule as a condition of a variance, exemption, or enforcement action shall become effective.

(6) Before a community water system makes any significant modification to its existing treatment process for the purpose of achieving compliance with this subsection, the system must submit and obtain approval from the executive director [~~public drinking water program~~] of a detailed plan setting forth its proposed modifications and those safeguards that it will implement to ensure that the bacteriological quality of the drinking water served by such system will not be adversely affected by such modifications.

(7) All analyses for determining compliance with the provisions of this section shall be performed in accordance with §290.119 of this title (relating to Analytical Procedures) at a laboratory certified by the executive director [~~TDH Bureau of Laboratories~~].

(8) 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 Texas Natural Resource Conservation Commission, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087.

§290.117. Regulation of Lead and Copper.

(a) General requirements.

(1) (No change.)

(2) Compliance - The water system is not in compliance if it fails to meet any reporting, monitoring, public education, or other requirement in this section relating to the regulation of lead and/or copper.

(A) All applicable water systems shall determine compliance based on monitoring and reporting requirements for lead and copper established in this section or contained in 40 Code of Federal Regulations (CFR) [~~CFR~~] §§141.85, 141.86, 141.87, 141.88, or 141.90.

(B) Failure to [~~satisfactorily~~] conduct or [~~satisfactorily~~] report any requirements of this section shall constitute a monitoring, reporting or treatment technique violation and shall be a violation of these standards.

(3) Action levels for lead and copper are 0.015 mg/L [~~mg/l~~] and 1.3 mg/L [~~mg/l~~] respectively. The action levels are exceeded if the concentration of lead and/or copper in more than 10% of the first draw tap water samples collected during any monitoring period is greater that 0.015 mg/L [~~mg/l~~] for lead or 1.3 mg/L [~~mg/l~~] for copper. If collecting only five samples, the average of the two highest samples shall be used to determine compliance with the action level.

(b) Sample Site Selection and Materials [~~Material~~] Survey.

(1) By the applicable date for commencement of tap sample monitoring, each system shall complete a materials survey of its distribution system to identify a pool of tap sampling sites that meet the requirements of this section. All first draw tap samples are to be collected from this pool of sites. Sampling sites may not include faucets that have point-of-use or entry point [~~point-of- entry~~] treatment devices. After completing sample site selection, the system will submit the Lead and Copper Sample Site Selection form to the executive director for approval.

(2) Information for conducting a materials survey and selecting sampling sites are provided to each system by the executive director [~~public drinking water program~~] before initial tap sampling is initiated [~~in accordance with the time schedule shown on Table Number 2, subsection (c)(8) of this section~~]. Procedural requirements set forth in 40 CFR §141.86 will be followed for sampling site selection activities except that reporting of tap sampling sites to the executive director [~~public drinking water program~~] shall be conducted using the materials survey and sampling site selection forms supplied by the executive director. Supplemental explanatory information [~~correspondence~~] from the system will be considered as part of the sampling site selection document [~~materials survey document~~]. Systems must make a good faith effort to conduct a thorough and complete materials survey and submit a valid sample site selection form before initial tap sampling may be conducted.

(3) A system that does not have enough Tier 1, 2, or 3 sites, as set forth in 40 CFR §141.86, must use other representative sites to complete its sampling pool. A representative site is one that uses plumbing materials commonly found at other sites to which the system provides water.

(c) Tap sampling.

(1) 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 and is collected 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.

(2) A sample [~~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 [~~and the system may not challenge, based on alleged errors in the sample collection process, the accuracy of the sampling results.~~]

(3) A water system shall collect each tap sample from the same sampling site from which it collected a previous sample. If this is not possible, the water system shall provide a written explanation to the executive director [~~public drinking water program shall be provided~~]. The water system must select an [~~An~~] alternate sampling site from the system's sampling pool [~~must be selected~~] which meets similar criteria and is within reasonable proximity to the original sampling site.

(4) (No change.)

(5) [~~Number of Tap Samples - Initial Monitoring -~~] The system [~~Systems~~] shall collect at least two sets [~~one set~~] of initial tap samples during [~~each of~~] two consecutive six-month monitoring periods, unless granted a monitoring waiver.

(6) - (7) (No change.)

(8) A new community or nontransient noncommunity water system begins the [~~The~~] first six-month [~~six month~~] initial monitoring period in the year following a new water system's assignment of a Public Water System identification number [~~begins on the dates listed in Table Number 2~~].

Figure: 30 TAC §290.117(c)(8) (No change.)

(d) Computing 90th Percentile Lead and Copper Levels - 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 equal sample Number 1; highest concentration equal sample Numbers 10, 20, 30, 40, 50, etc), up to the total number of samples collected. The number of samples

collected during the monitoring period shall be multiplied by 0.9 and the concentration of lead and copper in the numbered sample yielded by this calculation is the 90th percentile sample contaminant level. The system is in compliance with the lead and/or copper action levels if the 90th percentile sample contaminant level is equal to or less than the action levels specified in subsection (a)(3) [~~subsection (a)(2)~~] of this section. For water systems serving fewer than 101 people, the 90th percentile level is computed by taking the average of the highest two sample results.

(e) Reduced tap monitoring.

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

(4) Any system that the 90th percentile lead level is greater than 0.005 mg/L and/or the 90th percentile copper level is greater than 0.65 mg/L during either of the two initial six-month monitoring periods must conduct two annual rounds of reduced monitoring the two calendar years following the completion of initial tap sampling. [~~If the system exceeds an action level for lead or copper during any reduced monitoring period, it must follow public education requirements applicable to action level exceedances during initial monitoring found in subsection (g) of this section. It must also collect the remaining number of samples as required for initial monitoring within 60 days. The results of all samples related to reduced monitoring will be used to determine action level exceedance. Should an exceedance of lead or copper action levels be verified, then procedures of this section applicable to action level exceedances during initial monitoring will be followed.~~]

(5) Any system that demonstrates during the two initial six-month 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 and at the reduced number of sampling sites shown in subsection (c)(6) of this title, Table Number 1. [~~If after three annual periods of reduced monitoring the system continues to be in compliance with the lead and copper action levels, then the system will be notified to conduct reduced monitoring once every three years~~].

(f) Invalidation of lead or copper tap samples.

(1) A sample invalidated under this subsection does not count toward determining lead or copper 90th percentile levels or toward meeting the minimum number of tap sample requirements.

(2) The executive director may invalidate a lead or copper tap sample if one of the following conditions is met.

(A) The laboratory establishes that an analytical error has occurred or that an analytical method requirement has been violated.

(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.

(3) The water system must provide written documentation to the executive director for samples the water system believes should be invalidated.

(4) The water system must collect replacement samples for any samples invalidated under this section. Any such replacement samples must be collected as soon as possible, but no later than ten days after receiving notification of sample invalidation from the executive director.

(g) Monitoring waivers for small water systems.

(1) Small water system monitoring waivers approved by the executive director prior to January 1, 2002, shall remain in effect subject to the provisions of paragraph (2)(E) of this subsection.

(2) Any water system serving a population of less than 501 people that meets the criteria of subparagraphs (A) and (B) of this paragraph may apply to the executive director to reduce the frequency of monitoring for lead and copper to once every nine years.

(A) The water system must demonstrate on the lead/copper sampling site selection form that its distribution system and the 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.

(B) The water system must have completed at least one six-month series of initial tap water monitoring for lead and copper and have demonstrated that its 90th percentile lead level does not exceed 0.005 mg/L and the 90th percentile copper level does not exceed 0.65 mg/L.

(C) The executive director shall provide the water system with a waiver application setting forth the basis and conditions of the waiver after meeting the requirements of subparagraphs (A) and (B) of this paragraph.

(D) The executive director shall not issue any "partial waivers" for lead and copper monitoring.

(E) If a water system with a waiver adds a new source of water, changes any water treatment or no longer meets the requirements of subparagraph (A) of this paragraph, the water system must notify the executive director in writing within 60 days of the change. The executive director has the authority to add or modify the monitoring waiver conditions, if modifications are necessary to address changes that have occurred since approving the original waiver application.

(h) [~~(f)~~] Monitoring requirements for water quality parameters (WQP's) and source water.

(1) Water quality parameters.

(A) All large water systems (serving populations greater than 50,000) are required to conduct water quality parameters (WQP) monitoring beginning with the initial period of first draw tap samples and continuing until corrosion control is optimized.

(B) All medium and small water systems (serving populations of 3,301 to 50,000 and less than 3,301, respectively) that exceed the lead or copper action level shall conduct WQP monitoring beginning in the first calendar quarter following the calendar quarter in which the commission officially notified the water system of its exceedance status and shall [~~end of the period in which the exceedance of the lead and/or copper action level took place and~~] continue monitoring and reporting as long as the water system exceeds the lead or copper action level.

(C) WQP monitoring shall be conducted quarterly for the following parameters: pH; alkalinity; calcium; conductivity; water temperature; orthophosphate (when an inhibitor containing a phosphate compound is used); and silica (when an inhibitor containing a silicate compound is used). Temperature and pH must be measured at the sampling site at the same time of sample collection.

(D) Large water systems must conduct WQP monitoring at all entry points and at the number of distribution sites specified in subsection (c)(8) of this title, Table Number 2 [~~3~~]. Small and medium

water systems that are required to conduct WQP monitoring must monitor at all entry points [~~of entry~~] and at the required number of distribution sites as shown in subsection (c)(8) of this section, [~~the~~] Table Number 2 [~~3~~].
Figure: 30 TAC §290.117(h)(1)(D)
[~~Figure: 30 TAC §290.117(f)(1)(D)~~]

(E) WQP distribution sites (exclusive of entry points) may be sites normally used for bacteriological monitoring and samples need not be collected inside the home. These sites shall be representative of water quality throughout the distribution system.

(F) After corrosion control treatment is installed, water quality parameters shall be measured at the initial number of distribution sites as indicated in subsection (c)(8) of this section, Table Number 2 [~~3~~] quarterly and also at entry points biweekly (every two weeks).

(G) WQP monitoring after corrosion control treatment is installed shall be conducted for the following parameters: pH; alkalinity; orthophosphate (when an inhibitor containing a phosphate compound is used); silica (when an inhibitor containing a silicate compound is used); and calcium (when calcium carbonate stabilization is used as part of the treatment). These parameters must be measured at all entry points [~~of entry~~] and initial distribution sites.

(H) Any large water system that maintains the range of values for WQP's reflecting optimum corrosion control as approved by the executive director for one-year may collect quarterly distribution samples at the reduced number of distribution sites indicated in subsection (c)(8) of this section, Table Number 2 [~~3~~]. WQP samples shall continue to be measured at entry points [~~of entry~~] on a biweekly basis and results submitted to the executive director [~~public drinking water program~~].

(I) Any large water system that reflects optimal corrosion control treatment during three consecutive years may reduce the frequency at which it collects distribution samples for applicable WQP's to annually.

(J) Any large water system that reflects optimal corrosion control treatment during three consecutive years of annual WQP distribution monitoring may reduce the frequency at which it collects the number of WQP distribution samples for applicable WQP's to once every three years. Additionally, the last two consecutive tap sample monitoring periods must have a 90th percentile lead value of less than or equal to 0.005 mg/L and a 90th percentile copper value of less than or equal to 0.65 mg/L. The water system must also have maintained the range of values for WQP's reflecting optimal corrosion control as specified in that system's state approved corrosion control study.

(K) 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. If a water system fails to meet the WQP values or ranges specified by the executive director, it is out of compliance with this section. WQP values may be confirmed by the system in accordance with 40 CFR §141.82(g). The state requires that the values be reported, but is not responsible for supplying sample bottles and testing services to the water system.

(L) Any water system subject to the reduced monitoring frequency that fails to operate within the approved range of WQP values shall resume distribution sampling in accordance with the number and frequency requirements in subparagraph (F) of this paragraph.

(M) A water system conducting WQP monitoring may limit entry point sampling to each official entry point as designated in the database for SDWA compliance sampling. The water system must monitor WQP's at all entry points regardless of whether corrosion control treatment is required at all entry points or not. 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 WQP's represent water quality and treatment conditions throughout the system.

(N) Any large water system subject to reduced monitoring frequency (which has completed installation of approved corrosion control treatment as proposed in the system's corrosion control study) that fails to operate at or above the minimum range of values the system proposed for more than nine days in a six-month period shall resume distribution WQP sampling in accordance with the number and frequency requirements in subsection (h) of this section. The system may resume distribution WQP sampling at the reduced number of sites as specified in subsection (h) of this section after completing two consecutive six-month periods of distribution WQP sampling at the original frequency and then may follow the subparagraphs (H) and (J) of this paragraph.

(O) Large water systems shall monitor applicable WQP's every calendar quarter beginning after installation of corrosion control treatment approved by the executive director. Small and medium water systems shall monitor WQP's every calendar quarter while the system is in exceedance status. The executive director will issue a reporting waiver to small and medium systems for WQP's after the system completes two follow up rounds of tap sampling without exceeding either the lead or copper action level. The water system will continue to collect and record certain crucial parameters that will be available for inspection. If a small or medium water system exceeds the lead or copper action level during a reduced tap monitoring round (summer monitoring), the system shall conduct WQP monitoring until the exceedance status is resolved.

(P) The commission will not designate WQP ranges for any large water system that did not exceed 0.005 mg/L at the 90th percentile for lead during either initial tap sampling round. The commission will not designate WQP ranges for any small or medium water system that never exceeded the lead or copper action level at the 90th percentile during either initial tap sampling round or any reduced monitoring tap sampling round. Systems that must conduct WQP monitoring shall submit proposed WQP ranges for the executive director's approval.

(Q) Using WQP's proposed by the water system or its representatives, the commission will issue an approval letter if the corrosion control study and treatment proposed meet the requirements of this rule. Water systems will operate within the approved WQP ranges at all times and will conduct lead and copper tap sampling under the requirements in subsection (c) of this section and WQP reporting in this paragraph.

(2) Entry point water sampling.

(A) Entry point water sampling for lead and copper shall be conducted by systems that exceed the lead or copper action levels [~~in order~~] to determine the lead or copper content of source water. This requirement can be satisfied by normally scheduled inorganic chemical sampling in compliance with the monitoring under the SDWA. Entry point water samples shall be collected using [~~in accordance with the requirements of this section regarding~~] sample location, number of samples, and collection methods as specified in §290.106 of this title (relating to Inorganic Contaminants) [~~except that one sample shall be collected from each entry point to the distribution system (no compositing) within six months after notification of the exceedance of the lead and/or copper action level~~]. A large water system is deemed to have optimized corrosion control if it submits results of tap water monitoring conducted according to the requirements in

subsection (c) of this section and results of source water monitoring conducted according to requirements in §290.108 of this title (relating to Inorganic Chemical Monitoring and Analytical Requirements). The results must demonstrate for two consecutive six-month monitoring periods that lead at the 90th percentile is less than or equal to 0.005 mg/L. If acceptable entry point water data is not available for large systems, the water lead level at the entry point [~~water lead level~~] shall be considered [~~as~~] zero mg/L for purposes of determining whether a corrosion control study is required.

(B) The executive director shall complete an evaluation of 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 deemed necessary by the executive director, the system must install it in accordance with the scheduling requirements specified in 40 CFR §141.83(a).

(C) Any system that installs entry point water treatment shall collect an additional round of source water samples as described in subparagraph (A) of this paragraph during two consecutive six-month periods within 36 months after source water treatment begins.

(D) The monitoring frequency for lead and copper in source water, after the executive director determines that source water treatment is not required, or after the executive director has specified the maximum permissible source water levels for lead and copper, shall be in accordance with inorganic chemical monitoring practices and procedures as stated in §290.106 of this title (relating to Inorganic Contaminants).

(E) Reduced source water monitoring procedures as specified in 40 CFR §141.88(e) for lead and copper will be followed by the executive director. [~~Source water samples will be submitted by the water system in addition to other inorganic chemical monitoring requirements of these standards.~~]

(F) 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 the executive director deems appropriate to ensure that such systems maintain minimal levels of corrosion in the distribution system.

(i) [~~(g)~~] Public education requirements [~~procedures~~].

(1) A water system that exceeds the lead action level at the 90th percentile tap sample [~~based on first draw tap water sampling~~] shall deliver to the public the public education materials [~~as~~] listed in 40 CFR §141.85(a), and according to [~~in accordance with~~] the requirements [~~stated~~] in paragraph (2) of this subsection shall provide copies of the public education materials to the executive director within ten days after the delivery of the materials to the public. [~~paragraphs (2) and (3) of this subsection.~~]

(2) A community water system serving 3,301 or more people shall [~~must~~], within 60 days of notification by the commission [~~executive director~~]:

(A) insert [~~Insert~~] notices in each customer's water utility bill or by separate mailing, if approved in writing by the executive director, that includes the information in 40 CFR §141.85(a), and print the following alert on the water bill itself, or on a bill insert, in large print: "SOME HOMES IN THIS COMMUNITY HAVE ELEVATED LEAD LEVELS IN THEIR DRINKING WATER. LEAD CAN POSE A SIGNIFICANT RISK TO YOUR HEALTH. PLEASE READ THE ENCLOSED NOTICE FOR FURTHER INFORMATION.";

(B) submit [~~Submit~~] the required information in 40 CFR §141.85(a) to the editorial departments of the major local daily or weekly newspaper circulated throughout the system;

(C) deliver [~~Deliver~~] pamphlets or brochures that contain the public education materials as specified in 40 CFR §141.85(a)(2) and (4) to city or county health departments, to public schools or local school boards, Women, Infants and Children (WIC) or Head Start Programs when available, public and private hospitals or clinics, pediatricians, family planning clinics, and local welfare agencies, within their service area; [~~and~~]

(D) submit [~~Submit~~] the public service announcement in 40 CFR §141.85(b) to at least five radio or television stations broadcasting to the area served by the water system; [~~.~~]

(E) a [~~A~~] community water system serving 501 to 3,300 people may omit the task contained in subparagraph (D) of this paragraph; [~~must repeat the tasks contained in subparagraphs (A), (B), and (C) of this paragraph every 12 months and the tasks listed in subparagraph (D) of this paragraph every six months for as long as the system exceeds the action level.~~]

(F) a community water system serving 500 or fewer people may omit the tasks contained in subparagraphs (B) - (D) of this paragraph; [~~Certain requirements of subparagraphs (C) and (D) of this paragraph may be modified by the executive director if justified by local circumstances.~~]

(G) all community water systems must repeat the public education requirements at least once during each calendar year for as long as the system exceeds the lead action level; and

(H) if no lead service lines exist anywhere in the water system service area, all community water systems may delete information pertaining to lead service lines, and any additional information presented by a water system in the public education material shall be consistent with the information in 40 CFR §141.85(a) and be written in easily understood language.

(3) A nontransient noncommunity water system must within 60 days of notification by the executive director deliver the public education materials in 40 CFR §141.85(a)(2) [~~§141.85(c)(4)~~] as follows:

(A) 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) distribute informational pamphlets and/or [~~or~~] brochures on lead in drinking water to each person served by the water system. The commission may allow the water system to utilize electronic transmission in lieu of or combined with printed materials as long as it achieves at least the same coverage; [~~and~~]

(C) a water system may delete or modify language relating only to community water systems that is not relevant to its particular facility; and [~~A nontransient noncommunity water system must repeat the tasks contained in paragraph (3)(A) and (B) of this subsection at least once during each calendar year in which the system exceeds the lead action level.~~]

(D) a water system must repeat the tasks in subparagraphs (A) and (B) of this paragraph at least once during each calendar year for as long as the water system exceeds the lead action level.

(4) A water 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. 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) A water system that fails to meet the lead action level as stated in subsection (a)(3) of this section shall make available to any customer who requests it, information as to how and where water samples may be submitted for lead and copper analysis.

(j) [~~(h)~~] Corrosion control.

(1) All applicable water systems shall install and operate optimal corrosion control treatment, which means the corrosion control treatment that minimizes lead and copper concentrations at users' taps while insuring that the treatment does not cause the system to violate any other drinking water standard. All large water systems that exceeded 0.005 mg/L lead at the 90th percentile during initial monitoring or any system that exceeded the lead or copper action level at the 90th percentile during any tap monitoring sampling round and that has installed corrosion control treatment with approved WQP ranges, must operate and maintain optimal corrosion control within those ranges. 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 WQP excursions for any approved range for more than nine consecutive days. An excursion occurs whenever the daily value for one or more WQPs's measured at a sampling location is below the minimum value or outside the 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:

(A) 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;

(B) 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; and

(C) 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.

(2) Large water systems (serving greater than 50,000 people) are required to conduct corrosion control studies unless they can demonstrate that corrosion control is already optimized to the satisfaction of the executive director. If required to conduct a corrosion control study, a large water system must complete it by July 1, 1994, and the executive director shall designate optimal corrosion control treatment and parameters by January 1, 1995. The water system shall install corrosion control treatment by January 1, 1997. Large water systems that exceed lead and/or copper action levels must conduct a demonstration study as described in paragraph (4)(B) of this subsection. If a large water system exceeds either the lead or copper action level during a reduced tap sampling monitoring round, it will adhere to the schedule specified in the paragraph for medium systems, with time periods for completing each step being triggered by the date the executive director notifies the water system that it has exceeded an action level.

(3) Small and medium water systems (serving fewer than 3,301 or serving between 3,301 and 50,000 people, respectively) are deemed to have optimized corrosion control if the water system meets the lead and copper action levels during each of two consecutive six-month monitoring periods. These systems will be required to conduct a desk-top corrosion control study to optimize corrosion control if at anytime the 90th percentile action level for lead and/or copper is exceeded. The study must be conducted and submitted within 18 months after exceedance notification by the executive director for medium-sized water systems and within 24 months after exceedance notification for small water systems. If a small or medium water system exceeds either the lead or copper action level during a reduced tap sampling monitoring round, it will adhere to the schedule specified in the paragraph for small and medium systems, with time periods for completing each step being triggered by the date the executive director notifies the system that it has exceeded an action level.

(4) Performance for corrosion control studies.

(A) 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 adjustments;

(ii) calcium hardness adjustment; and

(iii) addition of phosphate or silicate corrosion inhibitor.

(B) The water system shall conduct this evaluation using either pipe rig/loop tests, metal coupon tests, partial systems tests (demonstration study), or analyses based on treatments in documented analogous systems (desk-top study). Analogous system means a system of similar size, water chemistry, and distribution system configuration.

(C) The water system shall measure the parameters listed in subsection (h)(1)(C) [~~(f)(1)(C)~~] of this section.

(D) On the basis of the evaluation stated in paragraph (4)(A) and (B) of this subsection, the water system shall recommend to the executive director [~~public drinking water program~~], in writing, the treatment option that constitutes optimum corrosion control or treatment along with sufficient documentation as required by the executive director [~~state~~] to establish the validity of the evaluation procedure. Operational WQP ranges shall be proposed to the executive director [~~state~~] where applicable.

(E) The executive director will, within six months after submittal of the corrosion control study by the water system, review the study and designate optimal corrosion control treatment and parameters.

(F) The water system shall install optimal corrosion control treatment within 24 months after the executive director designates optimal corrosion control treatment and notifies the water system.

(G) Large water systems that install corrosion control treatment shall conduct first-draw lead and copper tap sample monitoring as an initial monitoring during each of two consecutive six-month periods by January 1, 1998. Small and medium water systems shall complete the above stated monitoring within 36 months after the executive director designates optimal corrosion control treatment. Small and medium water systems are deemed to have optimized corrosion control if action levels for lead and copper are not exceeded in two rounds of subsequent tap sample monitoring. Large water systems are deemed to have optimized corrosion control if they have demonstrated through first-draw tap monitoring conducted after treatment installation and water quality parameter sampling conducted in compliance with standards set by the executive director for optimum corrosion control that they are operating within executive director-designated parameters.

(H) Any system that has installed corrosion control treatment and demonstrates optimal corrosion control and operates

in compliance with the executive director-designated optimal water quality parameters, may conduct reduced tap sampling as described in subsection (e) of this section, when written permission is granted by the executive director after the executive director has evaluated all pertinent data. Systems that do not meet the action levels for lead and copper after installing corrosion control treatment must continue to operate in accordance with WQP requirements established by the executive director and follow procedures specified in subsection (e)(4) of this section.

(I) The executive director may modify, upon his own initiative or in response to a water system request or a request from interested parties, his designated corrosion control treatment or parameters. The request and executive director response pursuant to modification shall be in writing.

(5) Optimization of corrosion control.

(A) 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 steps listed in paragraph (4) of this subsection.

(B) Any large water system is deemed to have optimized corrosion control if it submits results of lead and copper tap water monitoring and entry point water monitoring in accordance with this section which demonstrates for two consecutive six-month monitoring periods that the 90th percentile tap sample lead level is less than 0.005 mg/L [~~mg/l~~].

(k) [~~(i)~~] Lead service line replacement. For the purposes of this subsection, the term "service line" refers to both the potable water service line and the potable water customer service line.

(1) Systems that fail to meet the lead action level during follow-up [~~in first-draw~~] tap sampling after installing corrosion control and/or source water treatment shall meet the requirements in 40 CFR §141.84 and begin to replace annually at least 7% of the lead service lines known to be present in its distribution systems. [~~(whichever occurs last) shall immediately begin to replace annually 7% of the lead service lines identified during its materials survey process unless otherwise instructed by the executive director.~~]

[~~(2) If the system is in violation for failure to install source water or corrosion control treatment, the executive director may require the system to commence lead service line replacement after the date by which the system was required to conduct follow-up monitoring as specified in subsection (h)(4)(G) of this section.~~]

(2) [~~(3)~~] The water system shall replace the entire service line (up to the building inlet) unless it demonstrates to the satisfaction of the executive director in writing that it controls less than the entire service line. The written statement must indicate that the water system has none of the following forms of control over the service line: municipal ordinances; public service contracts or applicable legal authority; authority to set standards for construction; repair or maintenance; or ownership. In such a case, the water system shall replace that portion of the lead service line that it controls and notify the owner that it will also replace the building owner's portion of the line. The system is not required to bear the cost of replacing the building owner's portion of the line.

(3) At least 45 days prior to commencing replacement of a lead service line, the water system shall notify all the residents of the building served by that service line that they may experience a temporary increase of lead levels in their drinking water. The water system will also provide information on measures the residents can take to minimize their exposure to lead.

(4) Lead service line means a service line which is made all or in part of lead and connects the water main to the building inlet including any lead pigtail, gooseneck, or other fitting which is connected to such line.

(5) The system may cease replacing lead service lines whenever subsequent 90th percentile first-draw-tap sampling in two consecutive monitoring periods is less than the lead action level. Lead service line replacement shall immediately resume if first-draw-tap samples exceed the 90th percentile lead action/level.

(l) [~~(j)~~] Analytical and sample preservation methods.

(1) Analysis for lead and copper shall be conducted using methods stated in 40 CFR §141.89, in laboratories certified by the executive director [~~Texas Department of Health Bureau of Laboratories~~]. Analysis for pH, conductivity, calcium, alkalinity, or the phosphate, silica, and temperature may be conducted in any laboratory utilizing EPA methods prescribed in 40 CFR §141.89.

(2) The Practical Quantitation Limits (PQL) and the Method Detection Limits (MDL) shall be as stated in 40 CFR §141.89. The laboratory certified for the analysis of lead and copper tap samples must achieve the MDL of 0.001 mg/L for lead if composted entry point water samples are analyzed for lead.

(3) The executive director has the authority to allow the use of previously collected monitoring data if the data were collected in accordance with 40 CFR §141.89.

(4) All lead levels measured between the PQL and the MDL must be reported as measured, and all lead levels measured below the MDL must be reported as zero.

(5) First-draw-tap samples must be received in the laboratory within 14 days after the collection date [~~along with correctly completed laboratory submission forms supplied by the executive director~~].

[~~(6) Bottles supplied by the executive director or the certified laboratory must be used for collecting the tap samples.~~]

(m) [~~(k)~~] Reporting and recordkeeping requirements.

(1) Reporting requirements.

(A) Report all results of WQP [~~Water Quality Parameter (WQP)~~] analyses including the location/address of each distribution system sampling point. This report must include each WQP specified in subsection (h) [~~(f)~~] of this section, as well as all sample results from entry points to the distribution system. Water Quality Parameter Reports should be submitted to the executive director no later than ten days after the end of each calendar quarter.

(B) Where applicable, the first-draw-tap [~~first draw tap~~] monitoring shall be reported within ten days following the end of each monitoring period as specified by the executive director. (Analysis results from the approved [~~TDH~~] laboratory are normally provided simultaneously to the water system and the executive director.) The results of first-draw-tap sampling shall be reported to the water system by the approved laboratory if the system's billing account is not delinquent. The executive director shall provide the water system with official notification of the results and the water system's calculated 90th percentile as the data is made available from the approved laboratory. [~~The water system's report shall include an explanation as to why a sampling site was changed from the previous round of sampling, if applicable.~~]

(C) As part of the site selection form, each water system shall justify the selection of sites other than Tier 1 sampling sites as defined on the site selection form and, if lead service lines are present, why the water system was not able to locate a sufficient number to

make up at least 50% of its required number of sampling sites, should this condition arise.

(D) Where applicable, the water system must certify that source water treatment has been installed as recommended by the executive director and that installation was done in accordance with the specified time requirements.

(E) Where applicable, the water system must certify that lead service lines have been replaced in accordance with directives of the executive director and in accordance with time schedules specified in subsection (k) [~~(i)~~] of this section.

(F) Where applicable, the water system must provide copies of public education materials and certification that distribution of said materials is being conducted in accordance with subsection (i) [~~(g)~~] of this section.

(G) A water system must collect tap samples from the same sampling sites selected during the initial monitoring period for all subsequent sampling periods. If a water system changes a sampling site for any reason allowed in this rule, 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, if applicable. 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 executive director may invalidate the sample and allow for recollection. If a water system has no sampling sites available that meet the first draw criteria specified in subsection (c) of this section they shall proceed in accordance with 40 CFR §141.90(a)(2). [~~When required by the executive director, the system must report any sampling data collected by the water system in addition to the items listed in subparagraphs (A) - (F) of this paragraph.~~]

(H) Corrosion control treatment data shall be reported as required by the executive director for water systems that:

(i) have demonstrated optimum corrosion control;

(ii) are required to specify optimum corrosion control treatment (as part of the corrosion control study);

(iii) install corrosion control treatment as designated by the executive director; and

(iv) are required to evaluate effectiveness of corrosion control treatments.

(2) Recordkeeping requirements. Records of all sampling site data, sample submission forms, analysis results, reports, surveys, letters, evaluations, schedules, executive director recommendations, requirements or determinations, and any other information deemed appropriate by the water system shall be retained by the water system for a minimum of 12 years. These records include, but are not limited to, the following items:

(A) tap water monitoring results including the location of each site and date of collection;

(B) certification of the volume and validity of first-draw-tap sample criteria via a copy of the laboratory analysis request form;

(C) where residents collected the sample, certification that the water system informed the resident of proper sampling procedures;

(D) the analytical results for lead and copper concentrations (provided to each water system by the executive director) at each tap sample site; and

(E) designation of any substitute site not used in previous monitoring periods.

§290.118. Secondary Constituent Levels.

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

(c) Monitoring frequency for secondary constituents. All [~~Community and nontransient noncommunity~~] public water systems shall monitor for secondary constituents at the following frequency.

(1) Each groundwater source shall be sampled once every three years at the entry point [~~of entry~~] to the distribution system.

(2) Each surface water source shall be sampled annually at the entry point [~~of entry~~] to the distribution system.

(3) (No change.)

(d) - (g) (No change.)

§290.119. Analytical Procedures.

(a) Acceptable laboratories. Samples collected to determine compliance with the requirements of this subchapter shall be analyzed at certified or approved laboratories.

(1) Samples used to determine compliance with the maximum contaminant levels [~~MCLs~~], and action level [~~levels~~] requirements of this subchapter must be analyzed by a laboratory certified by the executive director [~~Texas Department of Health Bureau of Laboratories~~]. These samples include:

(A) - (J) (No change.)

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

(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 [~~Water Permitting and Resource Management Division, MC-155~~], Texas Natural Resource Conservation Commission, 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) - (7) (No change.)

(8) section 141.131(d) for alkalinity analyses, total organic carbon analyses, specific ultraviolet absorbance analyses, and pH analyses; and

(9) (No change.)

§290.121. Monitoring Plans.

(a) (No change.)

(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) Monitoring locations. 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 Radiological Sampling and Analytical Requirements), §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 Turbidity), §290.112 of this title (relating to Total Organic Carbon (TOC)), §290.113 of this title (relating to Disinfection By-products (TTHM and HAA5), §290.114 of this title (relating to Disinfection By-products other than TTHM and HAA5), §290.115 of this title (relating to Transition Rule for Disinfection By-products), §290.117 of this title (relating to Regulation of Lead and Copper), and §290.118 of this title (relating to Secondary Constituent Levels).

(A) (No change.)

(B) Each entry point [~~of entry~~] 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 [~~of entry~~] to the distribution system shall be provided; or

(ii) the location of each entry point [~~of entry~~] shall be indicated clearly on a distribution system or treatment plant schematic.

(C) - (D) (No change.)

(2) - (5) (No change.)

(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 and serve at least 10,000 people must submit a copy of the monitoring plan to the executive director [~~public drinking water program~~] by January 1, 2001.

(2) Public water systems that treat surface water or groundwater under the direct influence of surface water and serve fewer than 10,000 must submit a copy of the monitoring plan to the executive director [~~public drinking water program~~] by January 1, 2003.

(3) 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 by January 1, 2004, and submit a copy of the monitoring plan to the [~~public drinking water program upon the request of the~~] executive director upon request.

(4) All water systems must provide the executive director [~~public drinking water program~~] with any revisions to the plan upon [~~the~~] request [~~of the executive director~~].

(d) - (e) (No change.)

§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 MCL or treatment technique violation that poses an acute threat to public health. Each notice required by this section must meet the requirements of subsection (d) of this section [~~provide a clear and readily understandable explanation of the violation, any potential adverse health effects, the population at risk, the steps that the public water system is taking to correct such violation, the necessity for seeking alternative water supplies, if any, and any preventive measures the consumer should take until the violation is corrected~~].

(1) Violations that pose an acute threat to public health include:

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

(C) A violation of the MCL for nitrate or nitrite as defined in §290.106(f)(2) [~~§290.106(b)~~] 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) [~~§290.110(f)(5)(B)~~] of this title (relating to Disinfectant Residuals); [~~and~~]

(E) Occurrence of a waterborne disease outbreak; and

(F) [~~(E)~~] Other violations deemed by the executive director to pose an acute risk to human health.

[~~(2) The public notice for an acute MCL and treatment technique violation shall include the contaminant-specific language contained in 40 CFR §141.32 and other pertinent information specified by the executive director.~~]

[~~(A) The owner or operator of a system with an acute microbiological or turbidity violation as described in paragraph (1)(A) and (B) of this subsection shall include a boil water notice issued in accordance with the requirements of §290.46(s) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems).~~]

[~~(B) Each notice shall be conspicuous and shall not contain unduly technical language, unduly small print, or similar items that frustrate the purpose of the notice.~~]

[~~(C) Each notice shall include the telephone number of the owner, operator, or designee of the public water system as a source of additional information concerning the notice.~~]

[~~(D) Where appropriate, the notice shall be multilingual.~~]

(2) [~~(3)~~] The initial acute public notice and boil water notice required by [~~paragraph (2)(A) of~~] 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 other acute MCL or treatment technique violations shall be issued as soon as possible but in no case later than 72 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(s) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems).

(B) [~~(A)~~] 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) [~~(B)~~] 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 hand delivery or by continuous posting in conspicuous places within the area served by the system.

(D) [~~(C)~~] The owner or operator of a noncommunity water system shall issue the notice violation by hand delivery or by continuously posting the notice in conspicuous places within the area served by the water system.

(3) [~~(4)~~] 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. If the owner or operator of a noncommunity water system issued the initial notice by hand delivery, notice by hand delivery must be repeated at least every three months for as long as the violation exists.

(4) [~~(5)~~] 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 [~~provide a clear and readily understandable explanation of the violation, any potential adverse health effects, the population at risk, the steps that the public water system is taking to correct such violation, the necessity for seeking alternative water supplies, if any, and any preventive measures the consumer should take until the violation is corrected~~].

(1) Violations that require notification under this subsection include: [~~The violation notice for an MCL or treatment technique violation shall include the contaminant-specific language contained in 40 CFR §141.32 and other pertinent information specified by the executive director.~~]

(A) any violation of an MCL, MRDL, or treatment technique not listed under subsection (a) of this section; [~~Each notice shall be conspicuous and shall not contain unduly technical language, unduly small print, or similar items that frustrate the purpose of the notice.~~]

(B) failure to comply with the requirements of any variance or exemption granted under §290.102(d) of this title (relating to General Applicability); or [~~Each notice shall include the telephone number of the owner, operator, or designee of the public water system as a source of additional information concerning the notice.~~]

(C) other violations deemed appropriate by the executive director that pose a non-acute risk to human health. [~~Where appropriate, the notice shall be multilingual.~~]

(2) The initial public notice for any violation identified in this subsection [~~an MCL or treatment technique violation that does not pose an immediate threat to public health~~] must be issued as soon as possible but in no case later than 30 [~~14~~] 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 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 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 issued by hand delivery or by continuous posting in conspicuous places within the area served by the system.

(B) (No change.)

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

(c) Public notification requirements for other violations, variances, exemptions. The owner or operator of a public water system which fails to perform monitoring required by these standards, 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 [~~(relating to General Applicability)~~] 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: [~~Each notice required by this section must provide a clear and readily understandable explanation of any violation variance, or exemption, any potential adverse health effects, the population at risk, the steps that the public water system is taking to correct such violation, the necessity for seeking alternative water supplies, if any, and any preventive measures the consumer should take until the violation is corrected.~~]

(A) exceedance of the SCL for chloride; [~~Each notice shall be conspicuous and shall not contain unduly technical language, unduly small print, or similar items that frustrate the purpose of the notice.~~]

(B) failure to perform monitoring or reporting required by this subchapter; [~~Each notice shall include the telephone number of the owner, operator, or designee of the public water system as a source of additional information concerning the notice.~~]

(C) failure to comply with the analytical requirements or testing procedures required by this subchapter; and [~~Where appropriate, the notice shall be multilingual.~~]

(D) operating under a variance or exemption granted under §290.102(b) of this title.

(2) (No change.)

(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 [~~three~~] 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) (No change.)

(4) (No change.)

(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, or other items that frustrate 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 subsection (a) or (b) of this subsection, the notice must describe potential adverse health effects.

(A) For MCL, MRDL, or treatment technique requirements, the notice must contain the mandatory federal contaminant-specific language contained in 40 CFR §141.32, in addition to any language required by the executive director.

(B) 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 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.

(e) [~~(d)~~] 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 [~~maximum contaminant level~~], 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.

(f) [~~(e)~~] Proof of public notification. A copy of any public notice [~~Example copies of all notifications~~] required under this section [~~paragraph~~] 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 Texas Natural Resource Conservation Commission, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087.

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 January 18, 2002.

TRD-200200273
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: March 3, 2002
For further information, please call: (512) 239-6087

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CHAPTER 331. UNDERGROUND INJECTION CONTROL

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §331.14, Prohibition of Class I Salt Cavern Solid Waste Disposal Wells and Associated Caverns in Geologic Structures or Formations Other Than Salt Stocks of Salt Domes; §331.121, Class I Wells; §331.161, Applicability; and §331.163, Well Construction Standards.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The purpose of this rulemaking is three-fold: 1.) to implement legislation prohibiting the storage, processing, or disposal of hazardous waste in a solution-mined salt dome cavern or a sulphur mine; 2.) to amend and clarify the information required to establish the geologic suitability of a proposed location for a salt cavern disposal well; and 3.) to reinstate technical requirements administratively omitted in 1992.

House Bill (HB) 2912 (an act relating to the continuation and functions of the Texas Natural Resource Conservation Commission; providing penalties), §9.02, 77th Legislature, 2001, amended Texas Health and Safety Code (THSC), §361.114, Prohibition of Disposal of Hazardous Waste Into Certain Geological Formations. The legislation mandates the commission to prohibit, by rule, the storage, processing, or disposal of hazardous waste in a solution-mined salt dome cavern or a sulphur mine. The proposed amendment to §331.14 implements this legislation by creating new §331.14(b) to reflect the prohibition in THSC, §361.114.

The proposal would also amend and clarify the information required to establish the geologic suitability of a proposed location for a salt cavern disposal well. On June 5, 1992, the Texas Water Commission (a predecessor agency of the TNRCC) adopted new rules regulating the permitting of Class I salt cavern disposal wells. This action was taken in response to legislative changes enacted by the 72nd Texas Legislature in 1991.

Solution-mined salt caverns have been permitted by other agencies for the storage of petroleum products, but none have ever been permitted in the United States for the purpose of disposing of solidified commercial industrial waste. The commission was cautious but deliberate in developing regulations for these activities and wanted to ensure that any proposed site would be geologically suitable, that any proposed salt cavern disposal well would meet stringent construction standards, and that the design and operation of any project would preclude the escape of hazardous constituents from the salt cavern injection zone.

A total of five applications for salt cavern waste disposal projects have been evaluated by the commission, four of which were received before Class I salt cavern disposal well rules were adopted in 1992. Of the four, two applications were received from United Resource Recovery (URR), one from TEXSTOR, and one from Hunter Industrial Facilities, Inc. (HIFI). All were ultimately denied. The fifth application, from Secured Environmental Management, Inc. (SEM), is currently under technical review by commission staff.

On June 5, 2000, Baker Botts, L.L.P. (Baker Botts), on behalf of SEM, filed a petition for rulemaking requesting revision of 30 TAC §331.121(d)(1) to clarify and amend the requirements for information necessary to establish the geologic suitability of a proposed site for a salt cavern Class I injection well. The petitioner requested that the requirement to submit three-dimensional (3-D) seismic survey data sufficient to delineate the edge of the salt stock and image underneath all suspected overhangs be deleted from the rule and that it be replaced with a requirement to conduct a 3-D seismic survey over the cavern location.

SEM, in its petition, interpreted the current language as requiring a 3- D seismic survey of the salt dome in its entirety. SEM argued that such a requirement would thwart applicants from proposing Class I salt cavern injection wells in large salt domes due to the expense of the 3-D seismic survey requirement, and noted the difficulty in obtaining surface access to neighboring properties to conduct the survey.

By order dated September 11, 2000, the commission directed the executive director to examine the issues in the petition and initiate rulemaking if deemed necessary. As a result of the examination, the executive director determined that the current requirements for the 3-D seismic survey are ambiguous, and amended rules were drafted. On February 21, 2001, proposed amended rules were approved by the commission for publication in the *Texas Register*. The proposed rules were published on March 9, 2001, followed by a 73-day comment period (including extensions) that concluded on May 22, 2001. During the time executive director staff was preparing the response to comments, the Texas Legislature passed HB 2912 which, in part, directs the commission to prohibit by rule the storage, processing, or disposal of hazardous waste in a solution-mined salt dome cavern or a sulphur mine. Because it would have been inconsistent for the commission to adopt amended rules pertaining to activities prohibited by new legislation, on July 11, 2001, the commission withdrew the proposal to adopt the amended rules based on its decision to consider reproposal at the same time rules are proposed implementing §9.02 of HB 2912. This proposed rulemaking follows through with that plan.

The commission today proposes amendments and clarifications of §331.121(d)(1)(A), concerning establishing geologic suitability of proposed salt cavern locations. The commission also proposes to reformat §331.121(d)(1)(A) to improve readability. The existing 3-D seismic survey rule, stated in §331.121(d)(1)(A), requires an applicant to submit seismic reflection data "sufficient to image underneath all suspected overhangs and to delineate the edge of the stock." Although this language has been interpreted by some as requiring delineation of the entire edge of the salt stock, the executive director believes that the rule only requires delineation of that portion of the edge of the salt stock that is technically relevant to the application. The commission proposes new §331.121(d)(1)(B) that would require a surface-recorded 3-D seismic survey, the lateral extent of which is to be determined by the executive director. This survey, in conjunction with §331.121(d)(1)(A), will support demonstration of the geologic suitability of the site.

This rulemaking is also proposed to reinstate technical requirements administratively omitted in 1992. While evaluating the previously mentioned Baker Botts petition, staff discovered an administrative error in the original rules the commission submitted to the *Texas Register* of the Office of the Secretary of State in 1992. At that time, the commission adopted changes to the original proposal in response to public comments, including a new requirement for a vertical seismic profile (VSP), and clarification of other provisions in the rules. These adopted changes were inadvertently omitted when the agency submitted the rules to the Office of the Secretary of State.

SECTION BY SECTION DISCUSSION

Section 331.14, Prohibition of Class I Salt Cavern Solid Waste Disposal Wells and Associated Caverns in Geologic Structures or Formations Other Than Salt Stocks of Salt Domes, is proposed to be amended to implement legislation prohibiting the storage, processing, or disposal of hazardous waste in a solution-mined salt dome cavern or a sulphur mine. The proposed amendment to §331.14 implements this legislation by creating new subsection (b) to reflect the prohibition in THSC, 361.114. The existing language in §331.14 is proposed to be retained within new subsection (a). Also, the title of the section is proposed to be amended to add the following phrase at the end of the title: "and Prohibition of Disposal of Hazardous Waste Into Certain Geological Formations."

References to hazardous waste disposal in salt cavern disposal wells occur in 30 TAC §331.2(81)(B), Definitions, salt cavern solid waste disposal well or salt cavern disposal well; §331.142(b), Financial Assurance; §331.165(a)(10)(B), Waste Disposal Operating Requirements; §335.1(63), Definitions, hazardous waste management facility and §335.1(64), hazardous waste management unit; and §335.204, Unsuitable Site Characteristics. These references to hazardous waste disposal in salt cavern disposal wells are not being amended, because proposed §331.14(b), which states, "Notwithstanding any provision to the contrary in this chapter or Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), or any other chapter of this title, the storage, processing, or disposal of hazardous waste in a solution-mined salt dome cavern or a sulphur mine is prohibited" globally removes the effectiveness of these references to hazardous waste disposal in salt caverns without deleting each individual occurrence of the term.

Section 331.121, Class I Wells, is proposed to be amended to clarify information which must be submitted as part of the technical report of the application to perform a thorough characterization of the salt dome to establish the geologic suitability of the location. This information is required as part of the demonstration required by 30 TAC §331.162 (relating to Performance Standard). In §331.121(d)(1)(A), the proposed amendments specify that data and interpretation from all appropriate geophysical methods (such as well logs, seismic surveys, and gravity surveys), subject to approval by the executive director, must be provided. The information required for a thorough geologic characterization of a salt dome is specified in proposed §331.121(d)(1)(A)(i) - (viii), which requires an applicant to: 1.) map the overall geometry of the salt dome, including all edges and any suspected overhangs of the salt stock; 2.) demonstrate the existence of a minimum distance of 500 feet between the boundaries of the proposed salt cavern injection zone and the boundaries of the salt stock; 3.) define the composition and map the top and thickness of the sedimentary rock units between the caprock and surface, including the flanks of the salt stock; 4.) define the composition and map the top and thickness of the caprock overlying the salt stock; 5.) map the top of the salt stock; 6.) calculate the movement and the salt loss rate of the salt stock; 7.) define any other caverns and other uses of the salt dome, and address any conditions that may result in potential adverse impact on the salt dome; and 8.) satisfy any other requirement of the executive director necessary to demonstrate the geologic suitability of the location. The requirements in §331.121(d)(1)(A)(ii) restate the cavern construction standard in 30 TAC §331.164(b)(1), relating to Cavern Construction Standards, to emphasize that the requirement of a minimum distance of 500 feet between the boundaries of the salt cavern injection zone and the boundaries of the salt stock is crucial in determining the geologic suitability of a proposed site. Section 331.121(d)(1)(A)(iv) and (v) is proposed to provide clarification of certain data which is needed to characterize the salt dome

by adding the requirement to define the composition and map the top and thickness of the caprock as well as to map the top of the salt stock.

The specific requirement in existing §331.121(d)(1)(A) to submit seismic reflection data, including a 3-D seismic grid survey to image underneath all suspected overhangs and delineate the edge of the stock, is proposed to be amended by inserting new §331.121(d)(1)(B), which requires a surface-recorded 3-D seismic survey, subject to the following minimum requirements: 1.) the lateral extent of the survey must be determined by the executive director; and 2.) the survey must provide information as part of demonstrating that the location is geologically suitable for the purpose of meeting the performance standard in §331.162. Depending on the information submitted with the application and the geology of the location, the executive director will determine the lateral extent of the 3-D seismic survey necessary to support the demonstration of geologic suitability. The information must be provided before completion of technical review and before a draft permit may be issued.

In the previous version of the proposed amended rules published in the March 9, 2001 issue of the *Texas Register*, new §331.121(d)(1)(B) called for "a surface-recorded three-dimensional seismic survey, as determined by the executive director to be required to establish the geologic suitability of the location to show compliance with the performance standard in §331.162 of this title, considering the data presented by the applicant under subparagraph (A) of this paragraph." Unlike the previous proposal, §331.121(d)(1)(B) in this proposed rulemaking does not provide discretion of the executive director in determining whether a 3-D seismic survey is necessary. Requiring a 3-D seismic survey over the proposed cavern location focuses the information obtained from this technology on the area of greatest interest, the cavern location. The executive director will determine the lateral extent of the survey needed to supplement other geologic information to establish the geologic suitability of the proposed location. This proposed amended provision incorporates flexibility in the use of 3-D seismic to serve the most geologically-relevant purpose at a given site.

The commission proposes a correction in §331.121(d)(1)(C) by adding the words "identification of" at the beginning of the paragraph for proper grammatical formatting of the subparagraph.

The proposed amendments to §331.161 and §331.163 are amendments which were inadvertently omitted, through an administrative error, when the agency originally submitted these rules to the Office of the Secretary of State in 1992. All of these changes were adopted at that time as a result of comments during the 1992 public comment period. The proposed amendments under §331.161 and §331.163 are the same as those originally adopted, except: 1.) the type of VSP is no longer specified; and 2.) the purpose and use of the VSP is no longer stated.

Section 331.161 is proposed to be amended to make clear that the rules contained in Subchapter J, Standards for Class I Salt Cavern Solid Waste Disposal Wells, apply only to salt caverns located in the salt stocks of salt domes. The term "horizontally bedded salt formation" was not specifically defined previously, and the prohibition on salt cavern disposal wells and associated caverns was not specified for "geologic structures or formations other than salt stocks of salt domes." The commission proposes this clarification to provide consistency with existing requirements in §331.14.

Section 331.163(b)(1) is proposed to be amended to add the words "and waste" to the phrase "to prevent the movement of fluids" to clarify that all fluids and waste must be prevented from moving into underground sources of drinking water or freshwater aquifers, and to prevent potential leaks of fluid and waste from the well. This additional clarification is necessary because any waste disposed of in the salt caverns must be stabilized. The word "period" is also added to modify the term "post-closure care."

Section 331.163(c) is proposed to be amended to substitute the word "tubings" for "tubing" and to clarify the requirement that two concentric and removable injection tubings are to be utilized for injection activities. Paragraph (1) of subsection (c) is also proposed to be amended to replace the term "corrosion inhibiting" with the word "non-corrosive." This proposed change allows greater flexibility in the type of annulus fluid used. Paragraph (2) of subsection (c) is proposed to be amended to replace the phrase "removable injection tubing" with the phrase "the inner tubing."

Section 331.163(d)(2) is proposed to be amended to add the words "and waste" to clarify that the requirements for a tubing and packer system must consider both the fluid and the waste in stabilized form.

Section 331.163(e)(1)(F) is proposed to be amended to add a requirement for a VSP that is slightly altered from the version originally adopted by the commission, but inadvertently omitted from the Secretary of State's published rules. The original rule required a three-component offset VSP, which would be required after drilling the cavern pilot hole, to depict the 3-D nature of the salt- sediment interface. In this proposal, a VSP is required without specifying the type or purpose of the VSP. By not specifying the type or purpose, the proposed rule would give the permittee flexibility to select the appropriate VSP survey to meet the most relevant geologic objectives since the objectives will vary from site to site. The VSP would supplement or confirm information submitted to demonstrate compliance with the performance standard under §331.162, to gain approval of the well construction stage under §331.163(i), or to gain approval of the completion of the cavern construction stage under §331.164(f)(2).

Section 331.163(e)(2)(A) is proposed to be amended to modify the pressure testing requirements for the surface casing to specify a more commonly accepted engineering practice. Section 331.163(e)(3)(D), which would allow the executive director to waive or modify future coring projects, is proposed to be deleted. Such a requirement would allow the permittee to construct new caverns without performing confirming cores for each subsequent cavern. Numerous commenters in 1992 pointed out the danger of making assumptions from the original cavern due to foreign matter which may be present within the salt and which could compromise the integrity of waste containment. The commission continues to agree with this concern.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for each year of the first five-year period the proposed amendments are in effect there will be no anticipated fiscal implications for units of state and local government as a result of administration or enforcement of the proposed amendments.

The proposed amendments will implement certain provisions of HB 2912, 77th Legislature, 2001, which required the TNRCC

to prohibit, by rule, the storage, processing, or disposal of hazardous waste in a solution-mined salt dome cavern or a sulphur mine. This rulemaking will also amend and clarify the information required to establish the geologic suitability of a proposed location for a salt cavern disposal well through the use of a 3-D seismic survey, and will reinstate the requirement for a VSP survey to the battery of logging and testing required during the initial construction phase for a new Class I solution-mined salt cavern injection well.

Units of state and local government are not anticipated to be users of Class I disposal wells. Also, these amendments will not substantially affect the commission's current practices relative to review of such applications. Therefore, the commission does not anticipate any fiscal implications to units of state and local government as a result of implementing the proposed amendments.

PUBLIC BENEFITS AND COSTS

Mr. Davis has also determined for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of implementing the proposed amendments will be continued environmental protection through the incorporation of more clearly defined and expanded geological requirements for any proposed salt cavern Class I injection wells.

The proposed amendments are intended to implement provisions of HB 2912, which required the TNRCC to prohibit, by rule, the storage, processing, or disposal of hazardous waste in a solution- mined salt dome cavern or a sulphur mine. This rulemaking will also amend and clarify the information required to establish the geologic suitability of a proposed location for a salt cavern disposal well through the use of a 3-D seismic survey, and will reinstate the requirement for a VSP survey to the battery of data logging and testing required during the initial construction phase for a new Class I solution-mined salt cavern injection well. If authorized by the commission, salt dome cavern Class I waste disposal wells can be used to dispose of stabilized nonhazardous industrial solid waste.

There are currently no Class I solution-mined salt cavern injection wells permitted in Texas; therefore, the proposed amendments would not affect any existing sites. There is currently one company with an application pending before the commission. The only potential additional cost to comply with this rulemaking will be the cost of conducting a VSP survey. Based on an estimate provided by a geophysical service company, the commission expects that a VSP would cost approximately $23,000 to perform.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be adverse economic effects, which are not anticipated to be significant, to only one small or micro-business as a result of the implementation of the proposed amendments. There should be no adverse economic effects to any other small or micro-business as a result of this rulemaking. The proposed amendments are intended to implement provisions of HB 2912, which required the TNRCC to prohibit, by rule, the storage, processing, or disposal of hazardous waste in a solution- mined salt dome cavern or a sulphur mine. This rulemaking will also amend and clarify the information required to establish the geologic suitability of a proposed location for a salt cavern disposal well through the use of a 3-D seismic survey, and will reinstate the requirement for a VSP survey to the battery of data logging and testing required during the initial construction phase for a new Class I solution-mined salt cavern injection well. If authorized by the commission, salt dome cavern Class I waste disposal wells can be used to dispose of stabilized nonhazardous industrial solid waste.

The commission is aware of only one company, a micro-business, which would be affected by these proposed rule amendments. At the present time that company consists of eight employees, although that number may rise to approximately 75 employees if a Class I solution-mined salt cavern injection well permit is issued to the company and authorized activities are initiated. The only potential additional cost to comply with this rulemaking will be the cost of conducting a VSP survey. Based on an estimate provided by a geophysical service company, the commission expects that a VSP survey would cost approximately $23,000 to perform.

The following is an analysis of the cost per employee for small or micro-businesses affected by the proposed amendments. Small and micro-business are defined as having fewer than 100 or 20 employees respectively. The cost to comply with this rulemaking for the one company affected could be approximately $23,000. The commission believes that the potential one-time cost would be approximately $2,875 per employee for the one known small business currently expected to be affected by the proposed amendments.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule amendments do 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 that section because it does not meet the definition of a "major environmental rule." 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.

The primary purpose of this rulemaking is to clarify the information to be submitted in the technical report under §331.121(d)(1); to remove prescriptive language that may not be applicable to all proposed sites; to emphasize the purpose and use of the data as they relate to the performance standard of no release of hazardous constituents from the salt cavern and to the geologic suitability of a proposed site; and to implement the statutory prohibition on storage, processing, or disposal of hazardous waste in a solution-mined salt dome cavern or a sulphur mine. There is, however, a potential new technical requirement for persons granted permits for salt dome cavern waste disposal wells. Proposed new §331.163(e)(1)(F) requires that permittees perform a VSP.

The commission believes the amendments are as protective as those which currently exist in the agency's rules. The goal under either set of rules is to maximize protection of human health and the environment by establishing the geologic suitability of a proposed site for a salt cavern Class I injection well. By clarifying what information is required in the application, and by tying the

information to current construction and performance standards, the commission believes the amendments provide appropriate flexibility while maintaining the level and degree of protectiveness of the permitting process.

The proposed rulemaking is not a "major environmental rule" because it is not expected 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. The proposed amendments should not have a materially adverse effect on any of the listed categories. The amendments are intended primarily to clarify requirements which already exist in the commission's regulations; eliminate prescriptive language relating to the requirement for a 3-D seismic survey, and relate the demonstrations required in a permit application to the geologic suitability of a specific site, in order to ensure there will be no release of hazardous constituents from the proposed salt cavern injection zone; and to implement the statutory prohibition on storage, processing, or disposal of hazardous waste in a solution-mined salt dome cavern or a sulphur mine. Because the proposed rulemaking does not constitute a "major environmental rule," a full regulatory impact analysis under Texas Government Code, §2001.0225 is not required.

Furthermore, the proposed rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Section 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 these four applicability requirements.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether these proposed rules constitute a takings under Texas Government Code, Chapter 2007. The purpose of this proposed rulemaking is to remove prescriptive language relating to which methodologies must be employed to make specific demonstrations of geologic suitability; clarify the information to be submitted in the technical report to support an application for a Class I salt cavern injection well; add requirements inadvertently left out of the agency's transmission to the Secretary of State in 1992; add a requirement for a VSP; and implement the statutory prohibition on storage, processing, or disposal of hazardous waste in a solution-mined salt dome cavern or a sulphur mine. The commission believes the proposed amendments would substantially advance this purpose by more specifically describing which geologic features of a salt dome are to be analyzed, and authorizing the executive director to specify the lateral extent of the 3-D seismic survey as needed to ensure that a proposed cavern location and any subsequently constructed caverns meet the performance standard "of no escape of hazardous constituents from the salt cavern injection zone" in §331.162. The proposed rule prohibiting the storage, processing, or disposal of hazardous waste in a solution-mined salt dome cavern or a sulphur mine implements the statutory mandate to the commission in THSC, §361.114 to prohibit this activity by rule. Texas Health and Safety Code, §361.002, provides that it is the state's policy and purpose of the Solid Waste Disposal Act to safeguard the health, welfare, and physical property of the people and to protect the environment by controlling the management of solid waste.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed rules do not burden real property, nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These rules mainly clarify the technical requirements and submissions for applications for authorization of waste disposal in a salt dome and implement the statutory prohibition of storage, processing, or disposal of hazardous waste in a solution-mined salt dome or sulphur mine. Although the proposed rules affect the ability to use real property for hazardous waste treatment, storage, and disposal in a solution-mined salt dome cavern or sulphur mine, the commission believes that there are off-setting benefits to the value of real property because the possibility of property damage from this type of waste management technique is reduced. The benefits to society from the proposed rulemaking are the protection of health, welfare, and the environment. Because this proposed rulemaking implements a statutory mandate to prohibit the storage, processing, or disposal of hazardous waste in solution-mined salt domes or sulphur mines, there is no alternative action that could accomplish this specific purpose.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the rule amendments are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rules are not subject to the CMP.

ANNOUNCEMENT OF HEARINGS

Public hearings on this proposal will be held in Wharton, on February 19, 2002, at 7:00 p.m. at the Wharton Community Civic Center, in the Main Hall located at 1924 North Fulton; in Mont Belvieu, on February 26, 2002, at 7:00 p.m. at the Barbers Hill High School, in the CTJ Conference Center located at 9600 Eagle Drive; and in Austin on February 28, 2002, at 2:00 p.m. in Building E, Room 201S at the commission's central office located at 12100 Park 35 Circle. The hearings will be 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 discussions will not occur during the hearings; however, agency staff members will be available to discuss the proposal 30 minutes prior to the hearings and will answer questions before and after the hearings.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-080-331-WT. Comments must be received by 5:00 p.m., March 4, 2002. For further information contact Ray Henry Austin at (512) 239-6814.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §331.14

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and THSC, §336.114, which requires the commission to prohibit by rule the storage, processing, or disposal of hazardous waste in a solution-mined salt dome cavern or a sulphur mine.

The proposed amendment implements TWC, Chapter 27, Injection Wells, and THSC, §361.114.

§331.14. Prohibition of Class I Salt Cavern Solid Waste Disposal Wells and Associated Caverns in Geologic Structures or Formations Other Than Salt Stocks of Salt Domes and Prohibition of Disposal of Hazardous Waste into Certain Geological Formations.

(a) Construction and operation of Class I salt cavern solid waste disposal wells and associated caverns in geologic structures or formations other than salt stocks of salt domes is prohibited until such time at which this section is amended to provide for authorization of such facilities and activities, and specific rules for such facilities and activities are promulgated.

(b) Notwithstanding any provision to the contrary in this chapter, Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), or any other chapter of this title, the storage, processing, or disposal of hazardous waste in a solution-mined salt dome cavern or a sulphur mine is prohibited.

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 January 17, 2002.

TRD-200200242
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: March 3, 2002
For further information, please call: (512) 239-0348

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SUBCHAPTER G. CONSIDERATION PRIOR TO PERMIT ISSUANCE

30 TAC §331.121

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells.

The proposed amendment implements TWC, Chapter 27, Injection Wells.

§331.121. Class I Wells.

(a)-(c) (No change.)

(d) The commission shall also consider the following additional information [~~criteria~~], which must be submitted in the technical report of the application as part of demonstrating that the facility will meet the performance standard in §331.162 of this title (relating to Performance Standard) [~~addressed in the technical report of the application~~], before issuing a salt cavern Class I injection well permit:

(1) a thorough characterization of the salt dome to establish the geologic suitability of the location, including:

(A) data and interpretation from all appropriate geophysical methods (such as well logs, seismic surveys, and gravity surveys), subject to the approval of the executive director, necessary to: [~~a thorough geologic characterization of the salt dome, including the geometry of the salt stock and its calculated movement and calculated salt loss rate. Data submitted must be sufficient to image underneath all overhangs, to delineate the edge of the salt stock, to define any other caverns or co-uses of the salt stock, and to address any conditions that may result in potential adverse impact on the salt stock. Well logs, seismic reflection surveys, gravity surveys, and any other appropriate geophysical methods necessary to characterize the salt dome are to be utilized. Seismic reflection data submitted must include a surface recorded three-dimensional seismic grid survey sufficient to image underneath all suspected overhangs and to delineate the edge of the stock;~~]

(i) map the overall geometry of the salt dome, including all edges and any suspected overhangs of the salt stock;

(ii) demonstrate the existence of a minimum distance of 500 feet between the boundaries of the proposed salt cavern injection zone and the boundaries of the salt stock;

(iii) define the composition and map the top and thickness of the sedimentary rock units between the caprock and surface, including the flanks of the salt stock;

(iv) define the composition and map the top and thickness of the caprock overlying the salt stock;

(v) map the top of the salt stock;

(vi) calculate the movement and the salt loss rate of the salt stock;

(vii) define any other caverns and other uses of the salt dome, and address any conditions that may result in potential adverse impact on the salt dome; and

(viii) satisfy any other requirement of the executive director necessary to demonstrate the geologic suitability of the location;

(B) a surface-recorded three-dimensional seismic survey, subject to the following minimum requirements:

(i) the lateral extent of the survey will be determined by the executive director; and

(ii) the survey must provide information as part of demonstrating that the location is geologically suitable for the purpose of meeting the performance standard in §331.162 of this title;

(C) [~~(B)~~] identification of any unusual features, such as depressions or lineations observable at the land surface or within or detectable within the subsurface, which may be indicative of underlying anomalies in the caprock or salt stock, which might affect construction, operation, or closure of the cavern;

(D) [~~(C)~~] the petrology of the caprock, salt stock, and deformed strata; and

(E) [~~(D)~~] for strata surrounding the salt stock, information on their nature, structure, hydrodynamic properties, and relationships to USDWs, including a demonstration that the proposed salt cavern injection zone will not be in or above a formation which within 1/4 mile of the salt cavern injection zone contains a USDW;

(2)-(5) (No change.)

(e)-(g) (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.

Filed with the Office of the Secretary of State, on January 17, 2002.

TRD-200200243
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: March 3, 2002
For further information, please call: (512) 239-0348

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SUBCHAPTER J. STANDARDS FOR CLASS I SALT CAVERN SOLID WASTE DISPOSAL WELLS

30 TAC §331.161, §331.163

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells.

The proposed amendments implement TWC, Chapter 27, Injection Wells.

§331.161. Applicability.

The sections of this subchapter apply to all Class I salt cavern solid waste disposal wells and their associated salt caverns located in the salt stocks of salt domes, and not to such facilities in horizontally bedded or non-domal salt. As provided by §331.14 of this title (relating to Prohibition of Class I Salt Cavern Solid Waste Disposal Wells and Associated Caverns in Geologic Structures or Formations Other Than Salt Stocks of Salt Domes and Prohibition of Disposal of Hazardous Waste into Certain Geological Formations), salt cavern solid waste disposal wells and associated caverns in geologic structures or formations other than salt stocks of salt domes [~~horizontally bedded or non-domal salt~~] are prohibited until such time at which §331.14 of this title and this subchapter are amended to allow the subject facilities, and any necessary specific rules for such facilities [~~in horizontally bedded or non-domal salt~~] are added by amendment to this subchapter or promulgated as a new subchapter.

§331.163. Well Construction Standards.

(a) (No change.)

(b) Casing and cementing.

(1) All Class I salt cavern disposal wells shall be cased and all casings which extend to the surface shall be cemented to the surface to prevent the movement of fluids and waste into or between underground sources of drinking water (USDWs) or freshwater aquifers, and to prevent potential leaks of fluids and waste from the well. Cementing shall be by the pump and plug or other method approved by the commission, and cement circulated shall be of a volume equivalent to at least 120% of the calculated volume needed to fill the annular space between the hole and casing and between casing strings to the surface of the ground. Circulation of cement may be accomplished by staging. The executive director may approve an alternative method of cementing in cases where the cement cannot be recirculated to the surface, provided the owner or operator can demonstrate by using logs that the cement is continuous or does not allow any fluid and waste movement behind the well casings. Casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well, including the post-closure care period.

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

(2) (No change.)

(c) Injection tubings [~~tubing~~]. Except for circulation of drilling fluids during well construction, all injection activities for salt cavern construction and waste disposal in a salt cavern shall be performed using two concentric and removable injection tubings suspended from the wellhead [~~through removable injection tubing installed inside of the cemented long string casing and extending from the wellhead at ground surface to the salt borehole or salt cavern below the long string casing seat~~].

(1) All injection activities during cavern construction shall be performed with the annulus between the tubing and long string casing filled with a noncorrosive [~~corrosion inhibiting~~] fluid sufficient to protect the bond between salt, cement, and the long string casing seat.

(2) All injection of waste into a salt cavern shall be performed through the inner tubing [~~removable injection tubing~~] with a packer to seal the annulus between the tubing and long string casing near the bottom of the long string casing.

(d) Well annulus system factors for consideration. All elements of the design of the well's tubing-long string [~~tubing-longstring~~]

casing annulus system, including the outer tubing and packer, shall be approved by permit or by the executive director's approval that any proposed modifications to the plans and specifications in the permit application will provide protection equivalent to or greater than the original plans and specifications. In determining and specifying requirements for a tubing and packer system, the following factors shall be considered:

(1) (No change.)

(2) characteristics of injection fluid and waste;

(3)-(7) (No change.)

(e) Logs and tests.

(1) Geophysical logging [~~Logging~~]. Appropriate logs and other tests shall be conducted during the drilling and construction phases of the well including drilling into the salt. All logs and tests shall be interpreted by the service company which processed the logs or conducted the test; or by other qualified persons. A minimum of the following logs and tests shall be conducted:

(A)-(D) (No change.)

(E) fracture detector log from the base of the surface casing to the total investigated depth including all core hole or pilot hole; and [~~.~~]

(F) a vertical seismic profile.

(2) Pressure tests.

(A) After installation and cementing of casings, and prior to drilling out the cemented casing shoe, surface casing shall be pressure tested at mill test pressure or 80% of the calculated internal pressure at minimum yield strength [~~to 1,000 psi for 30 minutes~~], and the intermediate and long string casing shall be tested to 1,500 pounds per square inch (psi) [~~psi~~] for 30 minutes, unless otherwise specified by the executive director.

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

(3) Coring.

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

[~~(D) Upon satisfactory completion of all coring requirements of this subsection and all reports and certification requirements of subsection (i) of this section, for at least one salt cavern disposal well in a multi-cavern waste disposal project, the executive director may modify or waive provisions in subparagraphs (A), (B), and (C) of this paragraph.~~]

(4) (No change.)

(f)-(i) (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.

Filed with the Office of the Secretary of State, on January 17, 2002.

TRD-200200244
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: March 3, 2002
For further information, please call: (512) 239-0348

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CHAPTER 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

SUBCHAPTER A. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL

30 TAC §335.5

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §335.5, Deed Recordation of Waste Disposal. The commission proposes this revision to Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, to implement the provisions of House Bill (HB) 3355, 77th Legislature, 2001.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

House Bill 3355 amended Texas Agriculture Code, §201.026, to authorize the Texas State Soil and Water Conservation Board (TSSWCB) to develop and certify a water quality management plan for any agricultural or silvicultural land at the request of the landowner. The bill added §201.026(f) to the Agriculture Code requiring that a water quality management plan for the land on which animal carcasses will be buried must describe specific disposal management methods for the carcasses as well as burial site requirements. New §201.026(g) of the Agriculture Code provides that a landowner who requests and complies with a water quality management plan that includes the required disposal management practices and burial site requirements is not required to record the burial of animal carcasses in the county deed records. Prior to the effective date of HB 3355 (September 1, 2001), a person who intended to bury agricultural waste was required by §335.5 to record in the county deed records certain information about the generator, location, and classification of the waste. The proposed rulemaking revises §335.5 to implement an exemption from deed recordation in accordance with HB 3355.

Although HB 3355 gives the option of obtaining a certified water quality management plan to owners of agricultural and silvicultural land, it is important to note that Texas Water Code (TWC), §26.302, as amended by Senate Bill (SB) 1339, 77th Legislature, 2001, requires a person who owns or operates a poultry facility to implement and maintain a water quality management plan for the facility that is certified by the TSSWCB under Texas Agriculture Code, §201.206. Senate Bill 1339 establishes a phased-in schedule for poultry facilities to submit plans for certification.

The TSSWCB proposed an amendment to 31 TAC §523.3, concerning water quality management plans to implement the provisions of SB 1339 in the August 24, 2001 issue of the *Texas Register* (26 TexReg 6277). Additionally, the commission proposed revisions to 30 TAC §321.33(d), regarding facilities operating under certified water quality management plans, to add the phrase "including all poultry operations as described in TWC, §26.302" for consistency with SB 1339 provisions. This proposed amendment was published in the September 28, 2001 issue of the *Texas Register* (26 TexReg 7482). The commission anticipates no need for further rulemaking to implement the provisions of SB 1339.

SECTION DISCUSSION

The proposed amendment to §335.5 adds subsection (d) to provide an exemption from deed recordation for a landowner who

requests and complies with a water quality management plan developed under Texas Agriculture Code, §201.026(f). This proposed amendment is necessary to implement HB 3355, which exempts a landowner who requests and complies with a water quality management plan that includes the required disposal management practices and burial site requirements from the requirement to record the burial of animal carcasses in the county deed records.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed amendment is in effect, there will be no significant fiscal implications for the commission and other units of state and local government due to administration and enforcement of the proposed amendment.

This rulemaking is intended to implement provisions of HB 3355. The bill prohibits the commission from requiring a landowner to record the burial of animal carcasses in the county deed records if the landowner requests and complies with a water quality management plan developed and certified by the TSSWCB.

The water quality management plans pertinent to this rulemaking cover agricultural or silvicultural land on which animal carcasses will be buried and are intended to ensure compliance with state water quality rules. Since state and local governments are not routinely engaged in agricultural or silvicultural operations which generate animal carcasses, this rulemaking is not expected to affect units of state and local government.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendment will be lessening the burden of deed recordation on landowners who comply with water quality management plans. Additionally, in order to be exempted from the requirement to deed record, facilities that are not already required to have a certified water quality management plan may choose to request and comply with one which should lead to increased compliance with state water quality rules at those facilities.

This rulemaking is intended to implement provisions of HB 3355 which prohibits the commission from requiring a landowner to record the burial of animal carcasses in the county deed records if the landowner requests and complies with a water quality management plan developed and certified by the TSSWCB.

The proposed amendment does not introduce additional regulatory requirements for landowners who bury animal carcasses on their property, but provides an exemption from deed recordation requirements for owners of agricultural or silvicultural land who request and comply with a certified water quality management plan.

Since owners or operators of poultry facilities are required by existing state regulations to implement and maintain a certified water quality management plan, the commission anticipates that there will be a cost savings resulting from this rule to the owners or operators of compliant poultry facilities in not being required to record the burial of animal carcasses in the county deed records. The cost savings from being exempt from filing a deed recordation is estimated to be $125 per waste burial, which is based on the following estimates: $15 filing fee, $10 notary fee, and $100 attorney fee, if needed. Additionally, property value may be maintained or increased, in an amount that cannot be determined, due to the implementation of a water quality management plan which is intended to result in improved carcass burial practices and protection of natural resources.

For the owners and operators of other agricultural or silviculutral facilities, requesting and complying with a certified water quality management plan is optional. There may be an increased cost or a savings to owners or operators of agricultural or silvicultural facilities who choose to request and comply with a certified water quality management plan and, therefore, obtain exemption from deed recordation requirements.

The cost savings from being exempted from the deed recordation requirements is estimated to be $125 per waste burial. Additionally, property value may be maintained or increased, in an amount that cannot be determined, due to the implementation of a water quality management plan which is intended to result in improved carcass burial practices and protection of natural resources. However, there are costs associated with the development and implementation of a water quality management plan. The commission anticipates that the average cost of implementing a water quality management plan at a facility will be approximately $3,000. The decision to obtain a certified water quality management plan and exemption from deed recordation requirements is optional for owners or operators of agricultural or silvicultural facilities other than poultry facilities.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There may be adverse fiscal implications to small or micro-business as a result of implementing the proposed amendment, which is intended to implement provisions of HB 3355. The bill prohibits the commission from requiring a landowner to record the burial of animal carcasses in the county deed records if the landowner requests and complies with a water quality management plan developed and certified by the TSSWCB.

The proposed amendment does not introduce additional regulatory requirements for landowners who bury animal carcasses on their property, but provides an exemption from deed recordation requirements for landowners of agricultural or silvicultural land who request and comply with a certified water quality management plan. The commission anticipates that there may be small and micro-businesses affected by the proposed amendment.

Since owners or operators of poultry facilities are required by existing state regulations to implement and maintain a certified water quality management plan, the commission anticipates that there will be a cost savings resulting from this rule to the owners or operators of compliant poultry facilities in not being required to record the burial of animal carcasses in the county deed records. The cost savings from being exempt from filing a deed recordation is estimated to be $125 per waste burial. Additionally, property value may be maintained or increased, in an amount that cannot be determined, due to the implementation of a water quality management plan which is intended to result in improved carcass burial practices and protection of natural resources.

For the owners and operators of other agricultural or silviculutral facilities, requesting and complying with a certified water quality management plan is optional. There may be an increased cost or a savings to owners or operators of agricultural or silvicultural facilities who choose to request and comply with a certified water quality management plan and, therefore, obtain exemption from deed recordation requirements.

The cost savings from being exempted from the deed recordation requirements is estimated to be $125 per waste burial. Additionally, property value may be maintained or increased, in an amount that cannot be determined, due to the implementation of a water quality management plan which is intended to result in improved carcass burial practices and protection of natural resources. However, there are costs associated with the development and implementation of a water quality management plan. The commission anticipates that the average cost of implementing a water quality management plan at a facility will be approximately $3,000. The decision to obtain a certified water quality management plan and exemption from deed recordation requirements is optional for owners or operators of agricultural or silvicultural facilities other than poultry facilities.

The following is an analysis of the estimated cost per employee for a small or micro-business to develop and implement a water quality management plan which would be required for the facility to be exempt from deed recordation requirements under this proposed rule. A small business is defined as a business with 100 or fewer employees, while a micro-business is defined as having fewer than 20 employees. For a small business to develop and implement a certified water quality management plan, it would cost an additional $30 per employee. For a micro-business to develop and implement a certified water quality management plan, it would cost an additional $150 per employee.

LOCAL EMPLOYMENT IMPACT

The commission 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 because it does not meet the definition of a "major environmental rule" as defined in that 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 intent of the rule is to implement HB 3355, which prohibits the commission from requiring a landowner to deed record the burial of carcasses in the county deed records if the landowner has requested and is complying with a water quality management plan. To the extent a landowner elects or is required, as is the case for poultry facilities, to seek and comply with a water quality management plan, this rule could protect human health and the environment; however, should the landowner of facilities other than poultry facilities not wish to seek and comply with a water quality management plan, the current potential requirement to deed record the burial of animal carcasses on the landowner's property is unchanged. Furthermore, the rulemaking does not meet any of the four applicability requirements listed in §2001.0225(a). Specifically, the proposed rules do not exceed a federal standard, exceed an express requirement of state law, or exceed a requirement of a delegation agreement. Finally, the proposed rules were not developed solely under the general powers of the commission, but were specifically developed to implement HB 3355, which prohibits the commission from requiring a landowner to deed record the burial of carcasses in the county deed records if the landowner has requested and is complying with a water quality management plan. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rules and performed a preliminary assessment of whether the proposed rules constitute a takings under Texas Government Code, Chapter 2007. The specific purpose of these proposed rules is to implement HB 3355, which prohibits the commission from requiring a landowner to deed record the burial of carcasses in the county deed records if the landowner has requested and is complying with a water quality management plan. The proposed rules would substantially advance this stated purpose by exempting a landowner from the requirement to deed record the burial of carcasses in the county deed records if the landowner has requested and is complying with a water quality management plan.

Promulgation and enforcement of the proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed rule does not affect a landowner's rights in private real property because this rulemaking does not burden, nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, the proposed rule exempts a landowner from the requirement to deed record the burial of carcasses in the county deed records if the landowner has requested and is complying with a water quality management plan. There are no burdens imposed on private real property under this rulemaking as the proposed rule neither relates to nor has any impact on the use or enjoyment of private real property, and there is no reduction in value of the property as a result of this rulemaking.

Further, property value may be maintained or increased due to the implementation of a water quality management plan which is intended to result in improved carcass burial practices and protection of natural resources..

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking is subject to the Coastal Management Program (CMP). In accordance with the regulations of the Coastal Coordination Council, the commission reviewed the proposed rulemaking for consistency with the CMP goals and policies. The CMP goals applicable to this rulemaking are the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)), and the goal to ensure sound management of all coastal resources (31 TAC §501.12(2)). The CMP policy applicable to this rulemaking is the policy related to the construction and operation of solid waste treatment, storage, and disposal facilities (31 TAC §501.14(d)).

House Bill 3355 provides that a landowner who requests and complies with a water quality management plan that includes the required disposal management practices and burial site requirements is not required to record the burial of animal carcasses in the county deed records. The purpose of the proposed rulemaking is to implement the exemption from deed recordation in accordance with HB 3355. Promulgation and enforcement of the proposed rule will not have a direct or significant adverse effect on any coastal natural resource areas, nor will the rulemaking have a substantive effect on commission actions subject to the

CMP. However, due to promulgation of the proposed rulemaking, facilities that are not already required to have a certified water quality management plan may choose to request and comply with one in order to be exempted from the requirement to deed record which should lead to increased compliance with state water quality rules at those facilities. Therefore, the rulemaking is consistent with the applicable goals and policy. The commission seeks public comment on this preliminary consistency determination.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-060-335-WS. Comments must be received by 5:00 p.m., March 4, 2002. For further information, please contact Jill Burditt, Regulation Development Section, (512) 239-0560.

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103 and §5.105, which provide the commission with authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state. Specific statutory authorization is derived from HB 3355, 77th Legislature, 2001, which prohibits the commission from requiring a landowner to deed record the burial of carcasses in the county deed records if the landowner has requested and is complying with a water quality management plan.

The proposed amendment implements, in part, Texas Agriculture Code, §201.026, as amended by HB 3355, 77th Legislature, 2001.

§335.5. Deed Recordation of Waste Disposal.

(a) - (c) (No change.)

(d) Exemption. A landowner who disposes of animal carcasses on-site and requests and complies with a water quality management plan developed under Texas Agriculture Code, §201.026(f) (relating to Nonpoint Source Pollution) is exempt from the deed recordation requirements of this section.

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 January 17, 2002.

TRD-200200256
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: March 3, 2002
For further information, please call: (512) 239-5017

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER B. NATURAL GAS PRODUCTION TAX

34 TAC §3.18

The Comptroller of Public Accounts proposes an amendment to §3.18, concerning tax reimbursement. The proposed amendment adds definitions, eliminates outdated provisions, clarifies tax reimbursement is not included in the tax base, and establishes requirements for taxpayers to prove the existence of tax reimbursement.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. LeBas also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code 201.102.

§3.18. Tax Reimbursement[~~Included in Department of Energy Rates~~].

(a) Definitions.

(1) Contract--A signed written agreement between two parties for the sale and purchase of natural gas.

(2) Tax Reimbursement--A payment that a purchaser of gas makes to a producer for the purpose of reimbursing the producer for Texas severance taxes that are due under Tax Code, Chapter 201.

[~~(a) Tax reimbursement collected by gas producers under rates prescribed by the U. S. Department of Energy as a result of the Natural Gas Policy Act of 1978 shall not be considered a part of the producer's gross cash receipts subject to the Texas gas occupation tax and should not be included on either the producer's or the purchaser's tax reports.~~]

(b) If gas is sold for cash only, then tax shall be computed on the producer's gross cash receipts. If a purchaser reimburses a producer for severance tax, then the reimbursement is not part of the producer's gross cash receipts and is not subject to severance tax.[~~The maximum lawful price of "certain Permian Basin" gas as defined by the Federal Energy Regulatory Commission Regulation, Chapter I, Subchapter H, (271)(K) (December 1, 1978), shall be deemed to include tax reimbursements of 2.6 cents per mcf for large producers and 3.05 cents per mcf for small producers whenever the taxable value equals or exceeds 34.7 cents for large producers and 4.07 cents for small producers. These tax reimbursements and any reimbursement in excess of these amounts are not a part of the producer's gross cash receipts subject to the Texas gas occupation tax and should not be included on either the producer's or purchaser's tax reports.~~]

(c) Requirements to Establish Tax Reimbursement[~~Whenever the taxable value is less than 34.7 cents for large producers and 40.7~~

~~cents for small producers, taxable value shall be determined in the following manner: Taxable value equals T minus C divided by 1.075, where T equals total rate being received and C equals marketing costs being deducted for tax purposes.~~]

(1) The amount of the tax reimbursement must be separately stated in the contract, check stub, and/or purchaser statement. For example, the contract might specifically state a price per MCF or MMBTU to be paid to the producer by the purchaser for the gas and state an additional amount to be paid per MCF or MMBTU for severance tax reimbursement; or

(2) A written contract between the parties must contain an express statement that the payment that the purchaser made includes severance tax reimbursement to the producer for tax that is due on the gas. Contracts or other documents that merely state that "all taxes" are included are not specific enough to establish that the purchaser has made a severance tax reimbursement. The total amount that is shown on such documents will be presumed to be the producer's gross receipts without tax reimbursement. Either party may overcome the presumption by using the purchaser's records to show that severance tax reimbursement was included in the total payment that was made to the producer. When the total price that the purchaser paid to the producer includes severance tax reimbursement, the taxable value for that gas is computed by dividing the sum of one plus the tax rate into the sum of the total receipts minus marketing costs.

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 January 16, 2002.

TRD-200200214
Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Earliest possible date of adoption: March 3, 2002
For further information, please call: (512) 475-0387

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SUBCHAPTER L. MOTOR FUEL TAX

34 TAC §3.201

(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 Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §3.201, concerning motor fuel testing fee. This rule is being repealed because the authority for the administration and collection of the motor fuel testing fee was transferred to the Texas Department of Agriculture, effective May 22, 2001.

James LeBas, Chief Revenue Estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government.

Mr. LeBas also has determined that there will be no cost or benefit to the public from the repeal of this rule. This repeal is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeal.

Comments on the repeal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This repeal is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeal implements Texas Civil Statutes, Title 132, Art. 8614 §9(b).

§3.201. Motor Fuel Testing 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 January 17, 2002.

TRD-200200239
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: March 3, 2002
For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Texas Department of Human Services (DHS) proposes to amend §19.408, concerning grievances, and §19.1921, concerning general requirements for a nursing facility, in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter. The purpose of the amendments is to implement House Bill 482 to ensure that family members and guardians are protected against retaliation for complaints or grievances against nursing facilities.

James R. Hine, Commissioner, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Hine also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of adoption of the proposed sections will be to give family members and guardians the freedom to make legitimate complaints without fear of retaliation against them or a resident. There will be no adverse economic effect on small or micro businesses because the sections have no economic impact. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There will be no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of this proposal may be directed to Connie Pate at (512) 438- 3529 in DHS's Long Term Care Policy section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-074, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

SUBCHAPTER E. RESIDENT RIGHTS

40 TAC §19.408

The amendment is proposed under the Health and Safety Code, Chapter 242, which authorizes DHS to license and regulate convalescent and nursing homes and related institutions.

The amendment implements the Health and Safety Code, §§242.001-242.268.

§19.408. Grievances.

(a) (No change.)

(b) A nursing facility may not retaliate or discriminate against a resident, a family member or guardian of the resident, or a volunteer because the resident, the resident's family member or guardian, a volunteer, or any other person:

(1)-(3) (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.

Filed with the Office of the Secretary of State, on January 17, 2002.

TRD-200200234
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 3, 2002
For further information, please call: (512) 438-3734

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SUBCHAPTER T. ADMINISTRATION

40 TAC §19.1921

The amendment is proposed under the Health and Safety Code, Chapter 242, which authorizes DHS to license and regulate convalescent and nursing homes and related institutions.

The amendment implements the Health and Safety Code, §§242.001-242.268.

§19.1921. General Requirements for a Nursing Facility.

(a)-(d) (No change.)

(e) Each licensed facility must conspicuously and prominently post the information listed in paragraphs (1)-(11) of this subsection in an area of the facility that is readily [~~and customarily~~] available to residents, employees, and visitors [~~the public~~]. The posting must be in a manner that each item of information is directly visible at a single time. In the case of a licensed section that is part of a larger building or complex, the posting must be in the licensed section or public way leading to it [~~thereto~~]. Any exceptions must be approved by the Texas Department of Human Services (DHS). The following items must be posted:

(1)-(8) (No change.)

(9) a notice that employees, other staff, residents, volunteers, and family members and guardians of residents are protected from discrimination or retaliation as provided by the Health and Safety Code, §§242.133 and 242.1335; and that the facility has available for public inspection a copy of the Health and Safety Code, Chapter 242, Subchapter (E). [~~in a form prescribed by DHS stating that:~~]

[~~(A) a person has a cause of action against a facility, or the owner or employee of the facility, that suspends or terminates the employment of the person or otherwise disciplines or discriminates against the person, for reporting the abuse or neglect of a facility resident to the person's supervisors, to DHS, or to a law enforcement agency, in accordance with the Health and Safety Code, Chapter 242; and~~]

[~~(B) a person making a bad faith, malicious, or reckless report of abuse or neglect is subject to a criminal penalty, in accordance with the Health and Safety Code, Chapter 242; and~~]

[~~(C) the facility has available for public inspection a copy of the Health and Safety Code, Chapter 242 (E), pertaining to abuse and neglect.~~]

(10)-(11) (No change.)

(f)-(m) (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.

Filed with the Office of the Secretary of State, on January 17, 2002.

TRD-200200235
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 3, 2002
For further information, please call: (512) 438-3734

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CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Texas Department of Human Services (DHS) proposes new §19.805, concerning permanency planning for pediatric residents; and to amend §19.801, concerning resident assessment, §19.1911, concerning contents of the clinical record, and §19.1912, concerning additional clinical record service requirements, in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter. The purpose of the amendments is to include permanency planning components in response to Senate Bill 368. Section 19.805 is added to specifically address nursing facility responsibilities regarding permanency planning.

James R. Hine, Commissioner, has determined that for the first five-year period the proposed sections will be in effect, there will be fiscal implications for state government as a result of enforcing or administering the sections.

The effect on state government for the first five-year period the sections will be in effect is an estimated additional cost of $150,000 in fiscal year (FY) 2002; $75,000 in FY 2003; $0 in FY 2004; $0 in FY 2005; and $0 in FY 2006.

Mr. Hine also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of adoption of the proposed sections will be to aid in matching children in nursing facilities with community resources to achieve the goal of assisting families to keep their disabled children at home with community support. There will be a negligible effect on small or micro businesses as a result of enforcing or administering the sections because the only additional responsibilities for facilities will be additional telephone calls to the pediatric nurse specialist and the community resource coordination group in the county where the parent or guardian resides. This occurs only when a child is admitted to a facility. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There will be no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of this proposal may be directed to Connie Pate at (512) 438- 3529 in DHS's Long Term Care Policy section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-074, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

SUBCHAPTER I. RESIDENT ASSESSMENT

40 TAC §19.801, §19.805

The amendment and new section are proposed under the Health and Safety Code, Chapter 242, which authorizes DHS to license and regulate convalescent and nursing homes and related institutions.

The amendment and new section implement the Health and Safety Code, §§242.001- 242.268.

§19.801. Resident Assessment.

The facility must conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. In Medicaid-certified and dually certified nursing facilities, admission, annual, quarterly, and significant change assessments must be transmitted electronically to the Texas Department of Human Services (DHS).

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

(3) Quarterly review assessment. A facility must assess a resident using the quarterly review instrument specified by DHS and approved by the Centers for Medicare & Medicaid Services (CMS) [~~Health Care Financing Administration (HCFA)~~] not less frequently than once every three months.

(4)-(5) (No change.)

(6) Automated data processing requirement for Medicaid-certified and dually certified facilities only.

(A) (No change.)

(B) Transmitting data. Within seven days after a facility completes a resident's assessment, a facility must be capable of transmitting to DHS information for each resident contained in the MDS in a format that conforms to standard record layouts and data dictionaries, and that passes standardized edits defined by CMS [~~HCFA~~] and DHS.

(C) (No change.)

(D) Data format. The facility must transmit data in the format specified by DHS and approved by CMS [~~HCFA~~].

(E) (No change.)

(7)-(11) (No change.)

(12) Pediatric resident assessment.

(A) Pediatric assessments should be performed by licensed facility staff experienced in the care and assessment of children. Parents or guardians should be included in the assessment process. The potential for community transition should be discussed with the parents or guardians whenever an assessment occurs.

(B)-(D) (No change.)

~~[(E) The facility must coordinate educational opportunities for pediatric residents from birth to age three with the local office of Early Childhood Intervention (ECI).]~~

~~[(F) The facility must coordinate educational opportunities for pediatric residents age three to 22 years with the local school district. See §19.1934 of this title (relating to Educational Requirements for Persons Under 22).]~~

~~[(G) Not later than the third day after a child with a developmental disability is placed in a facility, the facility must notify:]~~

~~*[(i)* the local community resource coordination group (CRCG); and]~~

~~*[(ii)* the regional DHS office, which will notify the CRCG in the county of residence of the parent or guardian.]~~

(13) PASARR referrals for a client making a transition to a community-based setting. Each resident considered for transition to a community-based care setting must be identified to determine the presence of mental illness or mental retardation, regardless of whether the resident is receiving treatment or services for a mental illness or mental retardation. If the resident making the transition has ever been determined to meet the PASARR eligibility criteria, the facility must promptly notify the PASARR unit of DHS and the mental retardation authority in accordance with §19.2500(c) of this title (relating to Preadmission Screening and Resident Review (PASARR)) before the transition.

§19.805. Permanency Planning for Pediatric Residents.

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

(1) Permanency planning--a philosophy and planning process that focuses on the outcome of family support by facilitating a permanent living arrangement, with the primary feature of an enduring and nurturing parental relationship. Family-directed planning empowers the family of a child under the age of 18 to direct the development of supports and services that meet the child and family's personal outcomes as related to that child. Person-directed planning empowers the child who is between 18 and 22 years of age to direct the development of a plan of supports and services that meets the needs for self-determination.

(2) Child--a person with a developmental disability who is younger than 22 years of age; and

(3) Community resource coordination group (CRCG)--a coordination group established under the memorandum of understanding adopted under the Family Code, §264.003.

(b) Facility responsibilities regarding permanency planning.

(1) A Preadmission Screening and Resident Review (PASARR) must be requested on every child who is a potential admission to a nursing facility, as well as on all children currently residing in a nursing facility who have not had a previous PASARR completed. Documentation regarding the request for or completion of a PASARR must be kept in the chart.

(2) A facility must notify the following entities of the child's admission not later than the third day after a child is initially placed in a facility:

(A) the DHS pediatric nurse specialist via fax. Information must include the child's full name, date of birth, date of admission, Social Security number, Medicaid number (if available), the facility name and address, and the name, address, and telephone number of the child's parent or guardian;

(B) the CRCG in the county where the parent or guardian resides;

(C) the local office of Early Childhood Intervention (ECI) for children from birth to age three, with which the facility must coordinate educational opportunities; and

(D) the local school district for children from ages three to younger than 22 years of age, with which the facility must coordinate educational opportunities. See §19.1934 of this title (relating to Educational Requirements for Persons Under 22).

(3) The facility must notify the DHS pediatric nurse specialist within 14 days if there is a significant change of condition in a child residing in the facility.

(4) The facility must keep documentation regarding all the above notifications and a copy of the most current permanency plan documentation in a separate section in the front of each child's records.

(5) Each facility in which a child resides must:

(A) allow appropriate health and human services agencies and the individuals designated by DHS access to the child's records; and

(B) add the permanency planning goal to the care plan.

(6) The facility administrator must ensure that the social worker or other appropriate staff, as needed, will contribute to the development of the permanency plan.

(7) Subsection (b)(3) through (6) do not apply to short-stay care of less than 14 days; however, the facility must notify the DHS pediatric nurse specialist, the CRCG, and ECI or the local school district as required in (b)(2) subparagraphs (A) through (D).

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 January 17, 2002.

TRD-200200236

Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 3, 2002
For further information, please call: (512) 438-3734

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SUBCHAPTER T. ADMINISTRATION

40 TAC §19.1911, §19.1912

The amendments are proposed under the Health and Safety Code, Chapter 242, which authorizes DHS to license and regulate convalescent and nursing homes and related institutions.

The amendments implement the Health and Safety Code, §§242.001-242.268.

§19.1911. Contents of the Clinical Record.

The clinical record of each resident must contain:

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

(3) The comprehensive, interdisciplinary plan of care and services provided (see also §19.802 of this title (relating to Comprehensive Care Plans)), and the permanency plan for pediatric residents younger than 22 years of age.

(4) The results of any Preadmission Screening and Resident Review [~~preadmission screening and annual resident review~~] conducted by the Texas Department of Human Services (DHS) or the Texas Department of Mental Health and Mental Retardation (TXMHMR).

(5)-(14) (No change.)

§19.1912. Additional Clinical Record Service Requirements.

(a)-(c) (No change.)

(d) Required record retention. Periodic thinning of active clinical records is permitted; however, the following items must remain in the active clinical record:

(1)-(7) (No change.)

(8) current lab and x-ray reports; [~~and~~]

(9) the admission record; and[~~.~~]

(10) the current permanency plan.

(e) Readmissions.

(1) If a resident is discharged for 30 days or less and readmitted to the same facility, upon readmission, to update the clinical record, staff must:

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

(D) obtain signed copies of the hospital or transferring facility history and physical and discharge summary. A transfer summary, containing this information is acceptable; [~~and~~]

(E) complete a new RAI and update the comprehensive care plan if evaluation of the resident indicates a significant change which appears to be permanent. If no such change has occurred, then update only the resident comprehensive care plan; and[~~.~~]

(F) comply with §19.805 of this title (regarding Permanency Planning for Pediatric Residents).

(2) (No change.)

(f)-(h) (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.

Filed with the Office of the Secretary of State, on January 17, 2002.

TRD-200200237
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: March 3, 2002
For further information, please call: (512) 438-3734

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PART 2. TEXAS REHABILITATION COMMISSION

CHAPTER 106. PURCHASE OF GOODS AND SERVICES BY TEXAS REHABILITATION COMMISSION

SUBCHAPTER K. HISTORICALLY UNDERUTILITZED BUSINESSES

40 TAC §106.355

The Texas Rehabilitation Commission (TRC) proposes a change to Title 40, Chapter 106, §106.355, concerning purchase of goods and services by TRC. The change is being proposed to update for the new name of the Texas Building and Procurement Commission.

Charles E. Harrison, Jr., Deputy Commissioner for Financial Services, has determined that for the first five-year period the section is in effect, there will be no material fiscal implications for state or local government.

Mr. Harrison also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the agency's compliance with Chapter 111, Human Resources Code. There will be no material effect on small businesses. There is no material anticipated economic cost to persons who are required to comply with the section as proposed. In accordance with Government Code, §2001.022, TRC has determined that the proposed rule will not affect a local economy.

Comments on the proposal may be submitted to Roger Darley, Assistant General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

The amendment is proposed under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

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

§106.355. Definitions.

In this subchapter, the following definitions apply.

(1) Economically Disadvantage Person--A person who is economically disadvantaged because of the person's identification as a member of a certain group, as defined in Texas Administrative Code, Title 1, Part 5, Chapter 111, Subchapter B, Rule 111.12, and who has suffered the effects of discriminatory practices or other similar insidious circumstances over which the person has no control.

(2) Good Faith Effort (GFE)--Evidence of certain criteria used by prime contractors to promote inclusion of HUBs in contracts over $100,000 or more as defined in TAC §111.13 and §111.14. When applied to agency GFE, the state auditor shall consider whether the agency; has adopted rules under §2161.003, Government Code; has used the Texas Building and Procurement Commission (TBPC) [~~General Services Commission (GSC)~~] directory and other resources to identify HUBs that are able to contract with the agency; made good faith, timely efforts to contact identified HUBs regarding contracting opportunities; and conducted its procurement program in accordance with the good faith methodology set out in TBPC [~~GSC~~] rules.

(3) Historically Underutilized Business (HUB)--A business entity that is a corporation, sole proprietorship, partnership, joint venture, etc. owned or operated by an economically disadvantaged person or persons as defined in Texas Administrative Code, Title 1, Part 5, Chapter 111, Subchapter B, Rule 111.12 with its principal place of business in Texas.

(4) HUB Subcontracting Plan (HSP)--a plan required to be submitted with bids, proposals, offers, or other applicable expressions of interest that determine or describe HUB subcontracting opportunities probable under the contract as defined in Texas Administrative Code, Title 1, Part 5, Chapter 111, Subchapter B, Rules 111.13 and 111.14.

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 January 18, 2002.

TRD-200200270
Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
Earliest possible date of adoption: March 3, 2002
For further information, please call: (512) 424-4050

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40 TAC §106.357

The Texas Rehabilitation Commission (TRC) proposes a change to Title 40, Chapter 106, §106.357, concerning purchase of goods and services by TRC. The change is being proposed to update for the new name of the Texas Building and Procurement Commission.

Charles E. Harrison, Jr., Deputy Commissioner for Financial Services, has determined that for the first five-year period the section is in effect, there will be no material fiscal implications for state or local government.

Mr. Harrison also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the agency's compliance with Chapter 111, Human Resources Code. There will be no material effect on small businesses. There is no material anticipated economic cost to persons who are required to comply with the section as proposed. In accordance with Government Code, §2001.022, TRC has determined that the proposed rule will not affect a local economy.

Comments on the proposal may be submitted to Roger Darley, Assistant General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

The amendment is proposed under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

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

§106.357. Adoption of Rules.

In accordance with Government Code §2161.003, TRC adopts the rules of the Texas Building and Procurement Commission [~~General Services Commission~~] at Title 1, Part 5, Chapter 111, Subchapter B, §§111.11 through 111.28, Texas Administrative Code (relating to the HUB Program), which rules were promulgated by the General Services Commission pursuant to Government Code, §2161.002.

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 January 18, 2002.

TRD-200200271
Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
Earliest possible date of adoption: March 3, 2002
For further information, please call: (512) 424-4050

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CHAPTER 117. SPECIAL RULES AND POLICIES

40 TAC §117.5

The Texas Rehabilitation Commission (TRC) proposes a change to Title 40, Chapter 117, §117.5, concerning purchase of goods and services by TRC. The change is being proposed to update for the new name of the Texas Building and Procurement Commission.

Charles E. Harrison, Jr., Deputy Commissioner for Financial Services, has determined that for the first five-year period the section is in effect, there will be no material fiscal implications for state or local government.

Mr. Harrison also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the agency's compliance with Chapter 111, Human Resources Code. There will be no material effect on small businesses. There is no material anticipated economic cost to persons who are required to comply with the section as proposed. In accordance with Government Code section 2001.022, TRC has determined that the proposed rule will not affect a local economy.

Comments on the proposal may be submitted to Roger Darley, Assistant General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

The amendment is proposed under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

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

§117.5. Charge for Copies of Public Records.

Except as otherwise specified, the Texas Rehabilitation Commission adopts by reference the definitions, methods, procedures and charges for public records established by the Texas Building and Procurement Commission [~~General Services Commission~~] as set forth in 1 TAC §§111.61-111.70.

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 January 18, 2002.

TRD-200200272
Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
Earliest possible date of adoption: March 3, 2002
For further information, please call: (512) 424-4050

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 841. WORKFORCE INVESTMENT ACT

SUBCHAPTER C. ELIGIBLE TRAINING PROVIDER CERTIFICATION SYSTEM

40 TAC §841.39, §841.45

The Texas Workforce Commission (Commission) proposes amendments to §841.39 and §841.45 regarding the Eligible Training Provider Certification System (ETPS) required under the Workforce Investment Act of 1998.

A key goal of the federal Workforce Investment Act (WIA) of 1998 (42 U.S.C.A. Section 2801 et seq.) is to improve the effectiveness and efficiency of federally-funded job training programs. WIA recognized Texas state statutes regarding the workforce development system as prior consistent state law. Specifically, the state statutes are grandfathered under the provisions of WIA and are codified primarily in Texas Government Code Chapter 2308 and Texas Labor Code Chapter 302. These state laws create the foundation upon which workforce reform in Texas regarding employment and training service delivery was built. The ETPS is an important component of the workforce reform and employment and training services in Texas.

The Commission has continued to work closely with representatives of the training provider community, Boards and partner agencies to provide formal and informal opportunities to improve the ETPS. The Commission oversees the operational aspects of the Texas workforce development system to ensure compliance with the WIA while providing options for the Boards and the training provider community. The Commission continues to seek options for streamlining processes, including those for the certification process and for performance reporting by eligible training providers. A key objective is to maximize participant access to

education and training options, while minimizing providers' reporting burdens.

The purpose of Subchapter C is to address the ETPS as required under WIA. Changes are proposed for the purposes of streamlining the Initial Eligibility Application for non-exempt providers and to allow Boards discretion in the annual adoption of their local performance requirements for initial and subsequent eligibility determination.

Section 841.39 addresses the initial eligibility application for non-exempt providers. Changes are proposed to subsection (c) to decrease the number of required application items in an effort to further streamline the application submission and review process.

Section 841.45 addresses the annual adoption of standards of performance. Changes are proposed to allow Boards discretion in the annual adoption of their local performance requirements for initial and subsequent eligibility determination.

The Commission will solicit comments via the ETPS Advisory Committee regarding modifications to the automated ETPS necessitated by any adopted amendments.

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rule will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rule;

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule;

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule;

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rule; and

There are no anticipated economic costs to persons required to comply with the rule.

Mr. Townsend, Chief Financial Officer, has determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering these rules because any regulatory burdens or impact on small businesses (including micro-businesses) as well as foreseeable adverse economic effects or costs, if any, would be a result of federal statute and regulations, which are the basis for these proposed rules. In addition, as far as can be determined, small businesses (including micro-businesses) are not required to do anything as a result of these rules that is not required to receive WIA funding for provision of training services. In the event that a Board, Board's contractor, or a subrecipient of the Agency is required to expend funds as a result of applying for the training provider certification, the expense may in part or whole be covered by the federal funds for WIA. The expenses may be more for larger entities and less for smaller entities. The expenses for any entity will be proportionate to the amount of training activities provided and for which certification is sought.

James Barnes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in this state as a result of the proposed rule.

Luis Macias, Acting Director of Workforce and Development, has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to reduce the requirements upon eligible training providers for initial and subsequent certification.

Comments on the proposal may be submitted to John Moore, Texas Workforce Commission Building, 101 East 15th Street, Room 608, Austin, Texas 78778, (512) 463-3041. Comments may also be submitted via fax to (512) 463-1426 or e-mailed to: *John.Moore@twc.state.tx.us.* Comments must be received by the Agency within thirty days from the date of the publication in the *Texas Register*.

The amendments are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules impact Texas Labor Code Chapters 301 and 302.

§841.39. Initial Certification Process for Non-Exempt Providers.

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

(c) All training provider applicants under this section shall provide the following information to the LWDB:

(1) the name, mailing address and physical address of the training facility;

~~[(2) documentation of financial stability of the applicant, which may include audits or financial statements, unless the applicant is one of the following entities that are subject to regulatory or audit provisions of Texas or another state regarding financial stability: a public university, college, community or technical college;]~~

(2) [~~(3)~~] the name of the program(s) of training services submitted for WIA funding;

(3) [~~(4)~~] the total hours of instruction associated with each program of training services;

(4) [~~(5)~~] the cost of each program of training services, including tuition, fees, books, and any required tools, uniforms, equipment, or supplies;

(5) [~~(6)~~] a description of the skill set which will be acquired through each program of training services;

(6) [~~(7)~~] a list of occupations determined by using a coding system specified by the Commission, in which these skill sets are of primary interest;

(7) [~~(8)~~] if all of the occupations described in paragraph (6) [~~(7)~~] of this subsection are not on the Occupations in Demand List provided by the LWDB, evidence from employers, in a format and meeting specification set by the LWDB, that demonstrates that the occupation is in demand;

~~[(9) description of the class size, instructor/student ratio;]~~

(8) [~~(10)~~] information on whether the students in the course are eligible for Title IV of the Higher Education Act funding (Pell grant);

(9) [~~(11)~~] an outline of the course or program curriculum, including criteria for successful completion; and

~~[(12) the qualifications of the training instructors;]~~

[~~(13) a description of any minimum entry level requirement (e.g. reading or math level, previous education requirements such as high school diploma or GED);~~]

[~~(14) description of equipment utilized in the course and equipment/student ratio; and~~]

(10) [~~(15)~~] any additional information that is required by the LWDB in the LWDA in which the training provider is located.

(d) - (f) (No change.)

§841.45. Standards of Performance.

(a) (No change.)

(b) Each LWDB shall adopt local performance standards after[~~within 30 calendar days of~~] the Commission's annual publication of state performance standards. LWDB standards shall meet or exceed the standards adopted by the Commission.

(c) (No change.)

(d) Each LWDB shall notify the Commission upon adoption of local performance standards. Until such notification occurs, the LWDB's local performance standards shall be considered by the Commission to be consistent with state performance standards for the determination of initial or subsequent eligibility.

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 January 15, 2002.

TRD-200200186
John Moore
Assistant General Counsel
Texas Workforce Commission
Earliest possible date of adoption: March 3, 2002
For further information, please call: (512) 463-2573

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 daysafter the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federalstatute or regula tion requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. REGIONAL PLANS--STANDARDS

1 TAC §251.6

The Commission on State Emergency Communications (CSEC) adopts the amendment to §251.6, concerning guidelines for submission of requests from councils of governments regarding strategic plans, amendments, and allocation of equalization surcharge funds, without changes to the proposed text as published in the November 2, 2001, issue of the *Texas Register* (26 TexReg 8620) .

The section is amended, based on the review of the notification amendment process and on recent internal audit findings, to eliminate the notification amendment reporting requirement from 15 working days to a schedule to be set by the CSEC staff of no more than twice a year. The amendments also bring the rule in alignment with Sunset recommendations and legislative mandates enacted during the 76th and 77th Legislative sessions on CSEC's funding authority and revenue allocation.

There were no comments received on the proposal during the comment period.

The amendment is adopted pursuant to the Texas Health and Safety Code, Chapter 771, §§771.051, 771.055, 771.056, 771.057, 771.071, 771.0711, 771.072, 771.075, 771.078, and 771.079 which authorize the Commission to adopt policies and procedures prescribing the distribution and use of 9-1-1 funds for providing 9-1-1 service.

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 January 18, 2002.

TRD-200200267

Paul Mallett
Executive Director
Commission on State Emergency Communications
Effective date: February 7, 2002
Proposal publication date: November 2, 2001
For further information, please call: (512) 305-6933

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CHAPTER 255. FINANCE

1 TAC §255.6

The Commission on State Emergency Communications (CSEC) adopts the repeal of §255.6, concerning the 9-1-1 service fee and surcharge exemption, which prohibits a service provider from billing or collecting the fee from any agency or branch of the Federal Government, without changes to the proposed repeal as published in the November 2, 2001, issue of *Texas Register* (26 Tex Reg 8624).

The section is being repealed to reflect consistency with the 77th Texas Legislature's passage of HB 2914 which states that the 9-1-1 service fee and surcharge authorized by Health and Safety Code, Chapter 771, Chapter 772, or a home-rule municipality may not be imposed on or collected from the state or the federal government.

There were no comments received on the repeal of this rule.

The repeal is adopted pursuant to the Health and Safety Code, Chapter 771, §§771.071, 771.072, 771.073, 771.075, and 771.076.

The other statute affected by the proposed repeal is Health and Safety Code, Chapter 772.

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 January 18, 2002.

TRD-200200268
Paul Mallett
Executive Director
Commission on State Emergency Communications
Effective date: February 7, 2002
Proposal publication date: November 2, 2001
For further information, please call: (512) 305-6933

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

The Texas Education Agency (TEA) adopts amendments to 19 TAC §§66.10, 66.28, 66.78, 66.101, 66.104, and 66.107, concerning state adoption and distribution of instructional materials. The sections specify requirements and procedures related to administrative penalties, state adoption of instructional materials, and local operations. Section 66.78 is adopted with changes to the proposed text as published in the November 30, 2001, issue of the *Texas Register* (26 TexReg 9714). Sections 66.10, 66.28, 66.101, 66.104, and 66.107 are adopted without changes to the proposed text as published in the November 30, 2001, issue of the *Texas Register* (26 TexReg 9714) and will not be republished.

House Bill (HB) 992 and HB 623, 77th Texas Legislature, 2001, both affect the textbook purchase and distribution process. HB 992 pertains to circumstances under which a publisher or manufacturer of textbooks must maintain or arrange for a textbook depository in this state. HB 623 pertains to the selection, distribution, and use of state-adopted textbooks and provides for administrative and criminal penalties for specific violations of the law. The adopted amendments to 19 TAC Chapter 66 implement the changes required by HB 992 and HB 623 as well as several other necessary changes.

In response to comments, the following change has been made to §66.78 since published as proposed.

Subsection (f) was revised to increase the required notification from 30 to 60 days that publishers must give the TEA when changing from one depository to another. The revision includes the requirement of a 120-day written notification for newly adopted instructional materials when changing depositories during the first year of adoption.

The following comments were received regarding adoption of the amendment.

Comment. The chief executive officer of Barrett Kendall Publishing, Ltd., commented that under proposed §66.78, publishers must give the TEA at least 30 days notice when changing textbook depositories. He made the recommendation to increase the required notification to 60 days, except during the first year of adoption. During the first year of the adoption, he recommended the requirement that publishers give the TEA 120 days notice when changing depositories. He commented that this would ensure that publishers deliver textbooks in a timely and efficient manner.

Agency Response. The agency agrees with the comment and has modified the section. The increased notification will ensure that, in the event of depository changes, publishers' inventories will be transferred to new depositories efficiently and new depositories will be prepared to receive additional orders.

Comment. A charter school textbook coordinator commented that language in §66.107 about covering textbooks does not specify if it includes class sets of textbooks as well as the textbooks that go home with students. The textbook coordinator asked whether this rule pertains to all student textbooks being used.

Agency Response. Section 66.107 includes all state-adopted, state-purchased textbooks, other than electronic textbooks. The textbooks must be covered by the student under the direction of the teacher.

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §66.10

The amendment is adopted under the Texas Education Code, §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

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 January 18, 2002.

TRD-200200277
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Effective date: February 7, 2002
Proposal publication date: November 30, 2001
For further information, please call: (512) 463-9701

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SUBCHAPTER B. STATE ADOPTION OF INSTRUCTIONAL MATERIALS

19 TAC §66.28, §66.78

The amendments are adopted under the Texas Education Code, §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

§66.78. Delivery of Adopted Instructional Materials.

(a) Under the Texas Education Code (TEC), §31.151, each publisher of adopted instructional materials is required to maintain a depository in this state or arrange with a depository in this state to receive and fill orders for textbooks. Publishers whose products are delivered on-line or are warehoused and shipped from a facility less than 300 miles from the Texas border are not required to maintain a depository in Texas. Publishers who do not maintain a depository in Texas in accordance with TEC, §31.151, must deliver textbooks to a school district or open-enrollment charter school without a delivery charge to the school district, open-enrollment charter school, or state.

(b) Each publisher is required to have adopted instructional materials in stock and available for distribution to school districts throughout the entire adoption period. A back order is defined as adopted instructional material not in stock when ordered and not available for delivery to school districts or open-enrollment charter schools on the specified shipment date. The commissioner of education shall report the number of back-ordered materials by publisher to the State Board of Education (SBOE).

(c) Each publisher shall guarantee delivery of textbooks at least ten business days before the opening day of school of the year

for which the textbooks are ordered if the textbooks have been ordered by a date specified in the sales contract.

(d) Each publisher with instructional materials on back order shall notify affected school districts of the expected ship dates for each title on back order.

(e) Payments from the Texas Education Agency (TEA) for adopted instructional materials shall be made directly to the publisher or to any agent or trustee designated in writing by the publisher.

(f) Any publisher, at its discretion, and at least 60 days after notifying the TEA in writing, may change from one depository to another approved depository, except with respect to newly adopted instructional materials in the first year of adoption, when at least 120 days written notice to the TEA is required.

(g) Any request to establish a new depository shall be submitted to the commissioner of education by September 1. The effective date for any new depository shall be April 1 of the year following approval. Each party requesting authority to establish a new depository shall:

(1) present evidence of financial viability adequate to ensure performance of obligations under all contracts on an annual basis;

(2) provide specifications for the warehouse; equipment; as appropriate, evidence of a climate- controlled environment for storage of electronic media; plans for staffing of the proposed depository; and computer capability to receive and process orders and communicate in the automated format specified by the TEA;

(3) submit assurances that a proper stock of instructional materials is available; and

(4) submit a list of publishers under contract with the request.

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 January 18, 2002.

TRD-200200278
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Effective date: February 7, 2002
Proposal publication date: November 30, 2001
For further information, please call: (512) 463-9701

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SUBCHAPTER C. LOCAL OPERATIONS

19 TAC §§66.101, 66.104, 66.107

The amendments are adopted under the Texas Education Code, §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

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 January 18, 2002.

TRD-200200279
Cristina De La Fuente-Valadez
Manager, Policy Planning
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Effective date: February 7, 2002
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For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §501.53

The Texas State Board of Public Accountancy adopts an amendment to §501.53 concerning Applicability of Rules of Professional Conduct with a slight grammatical change to the proposed text as published in the November 30, 2001 issue of the *Texas Register* (26 TexReg 9732). The change is in paragraph (5) in which a semicolon is added to the end of the sentence. Because this change is editorial rather than substantive, public action is not required.

The amendment allows the Board to remove language from Rule 501.53 that is no longer referenced by the Public Accountancy Act, due to amendments to the Act.

The amendment will function by allowing the Board to administer its rule properly in accordance with the provisions of the Public Accountancy Act as amended. As a result of enforcing this rule, extraneous language in the rule will have no further effect.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 2001) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

§501.53. Applicability of Rules of Professional Conduct.

(a) All of the rules of professional conduct shall apply to and must be observed by a certificate or registration holder engaged in the client practice of public accountancy.

(b) No certificate or registration holder shall issue, or otherwise be associated with, financial statements that do not conform to the accounting principles described in Section 501.61 of this title (relating to Accounting Principles).

(c) The following rules of professional conduct shall apply to and be required to be observed by certificate or registration holders when not employed in the client practice of public accountancy:

(1) Section 501.73 of this title (relating to Integrity and Objectivity);

(2) Section 501.74 of this title (relating to Competence);

(3) Section 501.77 of this title (relating to Acting through Others);

(4) Section 501.90 of this title (relating to Discreditable Acts);

(5) Section 501.91 of this title (relating to Reportable Events);

(6) Section 501.92 of this title (relating to Frivolous Complaints);

(7) Section 501.93 of this title (relating to Responses); and

(8) Section 501.94 of this title (relating to Mandatory Continuing Education Reporting).

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 January 17, 2002.

TRD-200200257
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 6, 2002
Proposal publication date: November 30, 2001
For further information, please call: (512) 305-7848

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SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

22 TAC §501.93

The Texas State Board of Public Accountancy adopts an amendment to §501.93, concerning Responses with a change to the proposed text as published in the November 30, 2001, issue of the *Texas Register* (26 TexReg 9733). The change is in subsection (d) in which the following sentence should be added to the end of the sentence, "Any such party may seek a protective order concerning the place of deposition on grounds stated in Texas Rule of Civil Procedure 192.6." Because this change is more liberal than the rule proposed, the Board did not re-notice the rule.

The amendment allows and makes explicit the Board's authority to depose a party to a contested case at the Board's offices in Austin, Texas as set out in the Texas Rules of Civil Procedure for civil cases.

The amendment will function by allowing the Board to depose a party to a contested case at the Board's offices in Austin, Texas.

One comment was received regarding adoption of the rule. The commenter alleged that the Board's proposed amendment to Rule 501.93 directly contradicts Section 2001.096 of the Administrative Procedure Act ("APA"), which describes where depositions may be taken in a contested administrative case. In response, the Board notes that Section 2001.001 of the APA states that the APA sets minimum standards of procedure. The State Office of Administrative Hearings ("SOAH") promulgates its own set of procedural rules that supplement the APA and control in contested cases falling within its jurisdiction, as the Board's contested cases do. However, SOAH's rules are silent regarding deposition locations; therefore, the Board may itself supplement the APA's provisions regarding deposition locations.

In support of the Board's authority to supplement Section 2001.096 of the APA, Texas Rule of Civil Procedure 199.2(b)(2)(c) permits the deposition of a party to a civil case in the county of suit. The Board's contested cases are initiated and completed in Travis County in Austin, Texas. Where SOAH's Rules are silent, the Texas Rules of Civil Procedure are often used by SOAH to determine the proper procedural result in a contested case. Therefore, the Board's reliance on the Texas Rules of Civil Procedure in the adoption of the amendment to Rule 501.93 is in keeping with this custom.

The commenter also alleged that depositions of parties to contested cases taken in Austin, Texas would create undue financial hardship for licensees so deposed. In response, the Board notes that parties to civil litigation routinely bear such costs. In addition, the cost of a deposition, wherever the location, is a cost that must be shouldered by both parties to a case. Therefore, no undue financial hardship will be imposed against licensees by the Board's adoption of the amendment to Rule 501.93.

In considering the rule and this comment, the Board decided that it should also expressly incorporate the protections afforded litigants in Texas Rule of Civil Procedure 192.6. Therefore, a party who can show harassment, undue burden, or annoyance among other things, may not be subject to deposition in Austin.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon 2001) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

§501.93. Responses.

(a) An applicant, certificate or registration holder shall substantively respond in writing to any communication from the board requesting a response, within 30 days of the mailing of such communication by registered or certified mail to the last address furnished to the board by the applicant, certificate or registration holder.

(b) Failure to respond substantively to written board communications, or failure to furnish requested documentation and/or working papers, constitutes conduct indicating lack of fitness to serve the public as a professional accountant.

(c) Each applicant, certificate holder and each person required to be registered with the board under the Act shall notify the board, in writing, of any and all changes in such person's mailing address and the effective date thereof within 30 days before or after such effective date.

(d) An applicant, certificate or registration holder who is a party to a contested case in a disciplinary action brought by the board may be deposed at the board's offices in Austin, Texas. Any such party may seek a protective order concerning the place of deposition on grounds stated in Texas Rule of Civil Procedure 192.6.

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 January 17, 2002.

TRD-200200262

William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: February 6, 2002
Proposal publication date: November 30, 2001
For further information, please call: (512) 305-7848

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TITLE 25. HEALTH SERVICES

PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 414. PROTECTION OF CONSUMERS AND CONSUMER RIGHTS SUBCHAPTER K. CRIMINAL HISTORY CLEARANCES

25 TAC §§414.501 - 414.509

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeals of §§414.501 - 414.509 of Chapter 414, Subchapter K, concerning criminal history clearances, without changes to the proposal as published in the October 5, 2001, issue of the *Texas Register* (26 TexReg 7796). New §§414.501 - 414.509 of Chapter 414, Subchapter K, concerning criminal history and registry clearances, which replace the repealed sections, are contemporaneously adopted in this issue of the *Texas Register*.

The repeals allow for the adoption of new sections governing the same matters.

The contemporaneous repeal and adoption of these subchapters would fulfill the requirements of the Texas Government Code, §2001.039, concerning the periodic review of agency rules.

No comment on the proposal was received.

These sections are adopted for repeal under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board (board) with broad rulemaking authority; §250.002(d), which authorizes a regulatory state agency to adopt rules relating to the processing of criminal history information; §533.007(b), which authorizes the board to adopt rules relating to the use of criminal history information; and the Texas Government Code, §411.115, which authorizes TDMHMR to obtain criminal history information from the Texas Department of Public Safety.

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 January 17, 2002.

TRD-200200252

Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: February 6, 2002
Proposal publication date: October 5, 2001
For further information, please call: (512) 206-5216

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SUBCHAPTER K. CRIMINAL HISTORY AND REGISTRY CLEARANCES

25 TAC §§414.501 - 414.509

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§414.501 - 414.509 of Chapter 414, Subchapter K, concerning criminal history and registry clearances. Sections 414.502 - 414.504, 414.507, 414.509 are adopted with changes to the proposed text as published in the October 5, 2001, issue of the *Texas Register* (26 TexReg 7796-7800). Sections 414.501, 414.505, 414.506, and 414.508 are adopted without changes. The repeals of existing §§414.501 - 414.509 of Chapter 414, Subchapter K, concerning criminal history clearances, which the new sections replace, are contemporaneously adopted in this issue of the *Texas Register*.

The new subchapter describes the process by which criminal history and registry clearances are conducted for applicants for employment and volunteer status with facilities, local authorities, community centers, and their respective contract providers of residential services. The subchapter also requires facilities, local authorities, community centers, and contract providers to have an effective self-reporting procedure for employees and volunteers.

The new subchapter applies to local authorities in the same manner as it applies to TDMHMR facilities and community MHMR centers. It implements Senate Bill 1245 and House Bill 1418 (77th Legislature), each of which amends the Texas Health and Safety Code, §250.006, to include as a bar to employment a conviction under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense otherwise listed in §250.006. House Bill 1418 additionally includes as a bar to employment a felony conviction for theft under the Penal Code, Chapter 31, which occurred within the previous five years. Because both bills allow a facility, local authority, or community center to obtain criminal history record information directly from the Texas Department of Public Safety (TDPS), the subchapter eliminates the requirement (as well as the option) to obtain criminal history record information through the IS Coordinator, Criminal History Records Information (CHRI), at TDMHMR Central Office. Additionally, the new subchapter bars from employment or volunteer status applicants who are listed as revoked in the Nurse Aide Registry and who are listed as unemployable in the Employee Misconduct Registry.

The contemporaneous adoption and repeal of these subchapters fulfill the requirements of the Texas Government Code, §2001.039, concerning the periodic review of agency rules.

Minor grammatical changes have been made throughout the subchapter for clarification. Reference to the city of Austin in §414.502(a)(1), §414.503(5), and §414.509(a)(2) as it relates to TDMHMR Central Office has been deleted. Psychiatry has been included as a professional degree program in the definition of "professional clinical intern." Language has been added to

the definition of "volunteer" to be consistent with the definition of "volunteer" that is in the rules governing community relations (25 TAC Chapter 417, Subchapter G) and to clarify that "volunteer" does not include a professional clinical intern. Definitions for "visiting group" and "volunteer services council" have been added because the two terms are used in the revised definition of "volunteer." Language has been added to §414.504(c) clarifying that the written agreement with a university or college must state that background checks of professional clinical interns must ensure compliance with §414.504(d), which describes who may not serve as an employee, volunteer, or professional clinical intern, and that the written agreement must also include a description of how background checks will be conducted and funded. Language has been added to §414.504(d) to include professional clinical interns.

A provision has been added as a new subsection (a) in §414.507 requiring each facility, local authority, community center, and provider to initiate a registry check of all current employees and volunteers upon the effective date of the subchapter. The provision requires immediate discharge of an employee/volunteer who is listed as revoked in the Nurse Aide Registry or listed as unemployable in the Employee Misconduct Registry. The self-reporting requirement in §414.507 has been expanded to include reporting of a subsequent listing in the Nurse Aide Registry or Employee Misconduct Registry. Language has been deleted in proposed §414.507(c)(2)(B) that allowed the employer to consider mitigating circumstances in cases in which the employer discovered that, after employment or assignment of volunteer status, an employee/volunteer's criminal history record information revealed a conviction for an offense determined to be a contraindication to employment or volunteer status. Language has been added allowing the employer to consider any contention by the employee/volunteer concerning errors of fact or identity in the criminal history record information; to permit the employee/volunteer to rectify the accuracy of the information; and to remove the employee/volunteer from direct contact with consumers while the employee/volunteer attempts to rectify the accuracy of the information. New language also states that if the employee/volunteer fails to rectify the accuracy of the information, as provided by Texas Health and Safety Code, §250.005(b), then the employer must immediately discharge the employee/volunteer. Language has been added to §414.507(d) that requires immediate discharge of an employee/volunteer who is listed as revoked in the Nurse Aide Registry or listed as unemployable in the Employee Misconduct Registry.

The fiscal note for the proposed rules stated that there were no foreseeable significant fiscal implications because the proposed new rules were not substantially different from the rules proposed for repeal. However, a change in FBI charges and procedures has fiscal implications for facilities, community centers, local authorities, and providers related to the requirement to obtain criminal history information from the FBI for applicants who have lived outside the State of Texas at any time during the two years preceding the application. The cost of each FBI fingerprint check has increased by $15, from $24 to $39.

Written comment on the proposal was received from Spindletop MHMR Services, Beaumont; Texana MHMR Center, Rosenberg; Lubbock Regional MHMR, Lubbock; Parent Association for the Retarded of Texas, Austin; and the parent of a state school resident in Garland.

Two commenters acknowledged that the proposed rules prohibit a facility, local authority, or community center from hiring an applicant who is listed as revoked in the Nurse Aide Registry or listed as unemployable in the Employee Misconduct Registry. The two commenters asked if facilities, local authorities, and community centers were supposed to check the registries to determine whether any current employee were listed and, if a current employee were listed, whether the employee should be discharged. One of the commenters asked if there was latitude for discretion. The two commenters expressed concern that since the definition of "reportable conduct" as it applies to the Employee Misconduct Registry has not been resolved, their organizations may be forced to discharge an employee for a minor incident. TDMHMR responds that language has been added requiring facilities, local authorities, community centers, and providers to initiate registry checks for all current employees and volunteers upon the effective date of the subchapter, and, as required by law (Texas Health and Safety Code, §250.003(c)), to immediately discharge any employee/volunteer who is listed in a registry as revoked or unemployable. Regarding the unresolved definition of "reportable conduct," TDMHMR notes that the Texas Health and Safety Code, §253.001(5), defines "reportable conduct" to include abuse or neglect that causes or may cause death or harm to a resident or consumer of a facility; sexual abuse of a resident or consumer of a facility; financial exploitation of a resident or consumer of a facility in an amount of $25 or more; and emotional, verbal, or psychological abuse that causes harm to a resident or consumer of a facility. ("Facility" is defined to mean a facility licensed by DHS or an adult foster care provider that contracts with DHS.) Additionally, the Texas Department of Protective and Regulatory Services (PRS) has recently proposed rules governing the Employee Misconduct Registry (40 TAC Chapter 711, Subchapter O), in which harm that is related to abuse or neglect is clarified as *serious physical injury*, and harm that is related to emotional or verbal abuse is clarified as *substantial*. TDMHMR also notes that PRS's proposed rules would apply only to local authority and community center employees who perform services for a Medicaid home and community-based services waiver program (i.e., HCS, HCS-O, and MRLA) and who are found to have committed reportable conduct.

One commenter questioned the proposal's fiscal note which stated there was no foreseeable significant implications relating to cost or revenue of the state or local governments. The commenter expressed concern that the charge increase for obtaining criminal history information from the Texas Department of Public Safety (DPS) from $1 to $3.15 is considered significant for the commenter's organization. TDMHMR responds that the charge for obtaining criminal history information from the Texas Department of Public Safety (DPS) did not increase; it remains at $1 per name check.

A commenter asked why the proposed rules did not recognize "that people do become rehabilitated at some point" and whether there was any possibility that persons whose names are listed in the registry for certain types of misconduct might be removed after 10 or 15 years. TDMHMR responds that it is not authorized to adopt rules governing the Employee Misconduct Registry or the Nurse Aide Registry. The registries are maintained by the Texas Department of Human Services (DHS), pursuant to the Texas Health and Safety Code, Chapters 250 and 253. Only DHS and PRS may adopt rules governing the submission of names to the registries.

Regarding the requirement for local authorities to require their contract providers of residential services to comply with the subchapter in §414.502(b), one commenter stated that the provision would require a change in the MRLA Provider Principles because MRLA providers contract with TDMHMR Central Office and are not currently held to the subchapter's standards. The commenter also stated that such a requirement "will be an issue for both those providers and for Survey/Certification at the local authority level." TDMHMR responds that there is no connection between the MRLA Provider Principles and this subchapter. TDMHMR notes that MRLA providers who contract with TDMHMR Central Office must conduct criminal history and registry checks of their employees, applicants, and contractors pursuant to Chapter 409, Subchapter L of this title (concerning Mental Retardation Local Authority (MRLA) Program), P41. of the MRLA Program Principles for Program Providers.

Regarding criminal history and registry clearances for interns in §414.504(c)(2), one commenter asked if there was a definition for intern and recommended that a definition include only those who serve more than 50 hours at the facility, local authority, or community center. The commenter stated that her community center provides experimental work sites for 80 to 100 students per year, with some students spending less than eight hours on site. The commenter expressed concern that the charge for criminal history information ($1 for a DPS check and approximately $40 for a FBI check) for every intern, regardless of the amount of time served on-site, could cause a center reduce the number of interns permitted to serve, which would severely limit the exposure of students to the behavioral health field. TDMHMR responds that a definition for "professional clinical intern" is contained in §414.503(8), and does not include a minimum number of hours of service. TDMHMR notes that language has been added to §414.504(c) clarifying that the written agreement with a university or college must state that background checks of professional clinical interns must ensure compliance with §414.504(d), which describes who may not serve as an employee, volunteer, or professional clinical intern, and that the written agreement must also include a description of how background checks will be conducted and funded. The rule does not preclude a facility, local authority, or community center from requiring the university or college to pay for the costs of conducting background checks.

Regarding obtaining criminal history information from the FBI for applicants who have lived outside the State of Texas any time during the past two years in §414.505(c), one commenter expressed concern that the approximately $40 charge could prove costly over time, particularly for volunteers who have a high rate of turnover. TDMHMR responds that state statute clearly intends for TDMHMR, local authorities, community centers, and contract providers of residential services to take reasonable steps to ensure the safety of individuals with mental illness and mental retardation in their care by conducting criminal history checks of applicants, employees, and volunteers. It is unfortunate that the charge for obtaining criminal history information through the FBI has increased so dramatically, but FBI checks have proven to be effective at revealing convictions that are absolute bars to employment/volunteer status. TDMHMR notes that if FBI checks for volunteers become too costly, the facility, local authority, community center, or provider has the option of limiting volunteer applicants to those individuals who have lived in the State of Texas during the past two years.

Regarding reassignment of an employee until resolution of matters relating to an arrest warrant or wanted person's notice in §414.507(c)(1), one commenter recommended establishing a reasonable timeframe for resolution. The commenter stated that a lengthy reassignment period could create a hardship for the employer. TDMHMR responds that reassignment of an employee until resolution of matters relating to an arrest warrant or wanted person's notice is permissive. Depending upon the matters related to the warrant or notice, the employer may choose to not reassign the employee pending resolution. TDMHMR notes that §414.507(c) requires each facility, local authority, community center, and provider to develop written policies and procedures consistent with this subchapter describing how it will respond to information obtained through self-reporting and subsequent criminal history and registry checks. These policies and procedures could establish a reasonable timeframe for reassignment or for resolution. TDMHMR also notes that the Texas Health and Safety Code, §533.007(b), prohibits adverse personnel action (e.g., discharge, demotion) based on arrest warrant or wanted persons information.

Regarding reassignment of an employee while the employee attempts to rectify the accuracy of criminal history information in §414.507(c)(2)(A), one commenter recommended establishing a reasonable timeframe for reassignment. The commenter stated that a lengthy reassignment period could create a hardship for the employer. TDMHMR responds that reassignment of an employee while the employee attempts to rectify the accuracy of criminal history information that indicates a conviction for an offense that is a bar to employment is permissive. The facility, local authority, community center, or provider may choose to immediately discharge the employee. TDMHMR notes that §414.507(c) requires each facility, local authority, community center, and provider to develop written policies and procedures consistent with this subchapter describing how it will respond to information obtained through self-reporting and subsequent criminal history and registry checks. These policies and procedures could establish a reasonable timeframe for reassignment or for rectifying inaccurate criminal history information.

Two commenters objected to use of the term "consumer" instead of "individual," which is used in the repealed rules. The commenter stated "there is no reason to change from 'individual'" and that "there is nothing wrong with using the term 'individual.'" TDMHMR responds that "individual" is a generic term used throughout this subchapter to describe several different kinds of people. To reduce the potential for confusion, "consumer" is defined to mean only those individuals receiving services from a facility, local authority, community center, or provider. TDMHMR notes that the definition of "volunteer" uses the term "individual," and individual is used to describe an elderly or disabled person in §414.504(g)(6).

Regarding the definition of "provider" in §414.503(7), two commenters asked why checks are conducted only for staff who deliver services to "individuals with mental illness or mental retardation who have been furloughed or discharged from a facility or community center as described in the Texas Government Code, §411.115(b)." The commenter asked if the rules applied to group homes and day programs and stated that individuals served in group homes and day programs need to be protected as well. TDMHMR responds that the language in the definition of provider comes from the Texas Government Code, §411.115(b)(1)(C), which entitles TDMHMR, a local authority, or a community center to obtain criminal history information for "an applicant for employment with or an employee of a business or person that contracts with the Texas Department of Mental Health and Mental

Retardation, a local mental health or mental retardation authority, or a community center *to provide residential services to patients with mental illness or clients with mental retardation who were furloughed or discharged from a Texas Department of Mental Health and Mental Retardation facility or community center*." Regarding group home and day programs, TDMHMR responds that it agrees with the commenter that persons served in group homes and day programs need to be protected; however, state statute does not authorize TDMHMR, local authorities, or community centers to obtain criminal history information for applicants and employees of contract providers that deliver non-residential services, such as day programs. Group homes are considered residential services; therefore, a group home provider that contracts with TDMHMR, a local authority, or a community center would be required to comply with this subchapter. Since day programs are not residential services this subchapter does not apply to day program providers that contract with TDMHMR, a local authority, or a community center. TDMHMR notes that the subchapter does not preclude TDMHMR, a local authority, or community center from requiring its contract providers of day programs to conduct criminal history and registry checks of the contractor's applicants and employees.

Regarding professional clinical interns in §414.504(c), two commenters asked why interns were exempted from criminal history and registry clearances. The commenter requested that the rule require interns to go through the same clearances as other applicants. TDMHMR responds that the subchapter does not exclude interns from criminal history checks. TDMHMR notes that language has been added requiring background checks of interns to comply with §414.504(d), which describes who may not serve as an employee, volunteer, or professional clinical intern.

Regarding the criminal convictions that constitute an absolute bar to employment in §414.504(g), two commenters requested that "assault" and "rape" be added. TDMHMR responds that the types of criminal offenses for which a conviction would bar employment is contained in state statute (Texas Health and Safety Code, §250.006). TDMHMR is not authorized to add offenses to the statutory list; however, state statute allows TDMHMR, local authorities, community centers, and providers to identify other offenses for which a conviction would be a contraindication to employment or volunteer status at that entity. TDMHMR notes that *aggravated* assault is a bar to employment as described in §414.504(g)(5), and rape, which is sexual assault, is a bar to employment as described in §414.504(g)(4).

Regarding criminal history checks through the FBI in §414.505(c), two commenters asked how the facility, local authority, or community center finds out if the applicant has lived outside the State of Texas within the past two years. TDMHMR responds that the employer finds out by asking the applicant, conducting a thorough review of the application, and calling references.

Regarding §414.507(c)(1) in which an employer may reassign an employee/volunteer to a non-direct care area, two commenters recommended that the rule *require* reassignment to a non-direct care area. TDMHMR responds that since the provision in §414.507(c)(1) relates to information pertaining to arrest warrants or wanted persons' notices, the decision to reassign the employee should depend on the matter that is associated with the warrant or notice, e.g., there should be no need to reassign an employee to a non-direct care area if the employee has an arrest warrant for an unpaid parking ticket.

Regarding proposed §414.507(c)(2)(B) in which the employer may consider mitigating circumstances, two commenters asked what could be considered "mitigating circumstances" and recommended deleting the subparagraph. TDMHMR responds language has been deleted that allowed the employer to consider mitigating circumstances in cases in which the employer discovered that, after employment or assignment of volunteer status, an employee/volunteer's criminal history record information revealed a conviction for an offense determined to be a contraindication to employment or volunteer status. Language has been added allowing the employer to consider any contention by the employee/volunteer concerning errors of fact or identity in the criminal history record information; to permit the employee/volunteer to rectify the accuracy of the information; and to remove the employee/volunteer from direct contact with consumers while the employee/volunteer attempts to rectify the accuracy of the information. New language also states that if the employee/volunteer fails to rectify the accuracy of the information, as provided by Texas Health and Safety Code, §250.005(b), then the employer must immediately discharge the employee/volunteer. TDMHMR notes that facilities, local authorities, community centers, and providers may consider mitigating circumstances in determining whether or not a conviction (for an offense not listed as a bar to employment) is a contraindication to employment or volunteer status.

Two commenters expressed concern that the proposed rules did not address how employees are reported to the Employee Misconduct Registry and the Nurse Aide Registry. The commenter suggested adding a section and asked what the guidelines were for reporting to the registries. TDMHMR responds that it is not authorized to adopt rules governing the Employee Misconduct Registry or the Nurse Aide Registry. The registries are maintained by the Texas Department of Human Services (DHS), pursuant to the Texas Health and Safety Code, Chapters 250 and 253. Only DHS and the Texas Department of Protective and Regulatory Services may adopt rules governing the submission of names to the registries.

One commenter asked if a state school employee who has committed abuse would be listed in the Employee Misconduct Registry. TDMHMR responds that, pursuant to the Texas Health and Safety Code, Chapter 253, only employees of a "facility" who have committed "reportable conduct" are listed in the Employee Misconduct Registry. "Facility" means a facility licensed by DHS or an adult foster care provider that contracts with DHS. "Reportable conduct" includes abuse or neglect that causes or may cause death or harm to a resident or consumer of a facility; sexual abuse of a resident or consumer of a facility; financial exploitation of a resident or consumer of a facility in an amount of $25 or more; and emotional, verbal, or psychological abuse that causes harm to a resident or consumer of a facility. Additionally, DHS rules (40 TAC, §93.4(b)) state that "Only acts of misconduct that occur on or after September 1, 1999, will be recorded in the registry."

These sections are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board (board) with broad rulemaking authority; §250.002(d), which authorizes a regulatory state agency to adopt rules relating to the processing of criminal history information; §533.007(b), which authorizes the board to adopt rules relating to the use of criminal history information; and the Texas Government Code, §411.115, which authorizes TDMHMR to obtain criminal history information from the Texas Department of Public Safety.

§414.502. Application.

(a) This subchapter applies to:

(1) facilities (which include TDMHMR Central Office);

(2) local authorities; and

(3) community centers.

(b) Facilities, local authorities, and community centers must require their contract providers of residential services, including residences certified by the intermediate care facilities for the mentally retarded or persons with a related condition (ICF/MR or ICF/MR/RC) program that are owned and operated by a local authority or community center, to comply with the applicable provisions of this subchapter.

(c) This subchapter does not apply to residences certified by the ICF/MR or ICF/MR/RC program that are owned by a local authority or community center but operated under contract by a private provider, or that are privately owned and operated. Criminal history and registry clearances are conducted for such residences in accordance with rules of the Texas Department of Human Services (TDHS) in 40 TAC §§76.101- 76.106.

§414.503. Definitions.

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

(1) Applicant--At the employer's discretion, either a person who is one of a select number of final candidates for a position as an employee or volunteer or a person to whom the employer intends to offer a position as an employee or volunteer. The term "applicant" does not include a member of the Texas MHMR Board, a member of a local authority's or community center's board of trustees, or a member of a facility's, local authority's, or community center's advisory committee that is not a public responsibility committee (PRC).

(2) Community center--A community mental health and mental retardation center established under the Texas Health and Safety Code, Title 7, Chapter 534, Subchapter A.

(3) Consumer--An individual receiving services from a facility, local authority, community center, or contract provider of residential services.

(4) Conviction--The adjudication of guilt, plea of guilty or nolo contendere, or the assessment of probation or community supervision for a violation of the Penal Code.

(5) Facility--Any state hospital, state school, or state center operated by TDMHMR, or TDMHMR Central Office.

(6) Local authority--An entity designated by the TDMHMR commissioner in accordance with the Texas Health and Safety Code, §533.035(a).

(7) Provider--Any entity or person who contracts with a facility, local authority, or community center to deliver residential services to individuals with mental illness or mental retardation who have been furloughed or discharged from a facility or community center as described in the Texas Government Code, §411.115(b). This does not include private ICF/MR or ICF/MR/RC providers.

(8) Professional clinical intern--A person who is enrolled in a formal clinical rotation at a university/college in a professional training program accredited by the appropriate licensing authority or board of examiners, or is engaged in a recognized graduate level, clinical professional degree program. Professional degree programs include, but are not limited to, clinical psychology, dentistry, medicine, nursing, occupational therapy, pharmacy, physical therapy, psychiatry, and social work.

(9) Registry--

(A) The Nurse Aide Registry maintained by the Texas Department of Human Services in accordance with §94.11 of Title 40 (relating to Registry, Findings, Inquiries); and

(B) the Employee Misconduct Registry maintained by the Texas Department of Human Services in accordance with the Texas Health and Safety Code, Chapter 253.

(10) Visiting group--A group of varying individuals associated with an organization (e.g., civic, fraternal, corporate, religious, social, service, or education), which is not affiliated with a facility, local authority, community center, or provider, that visits a facility, local authority, community center, or provider (e.g., tours) or participates in a special event and has constant and adequate staff supervision.

(11) Volunteer--An individual who is not part of a visiting group and who provides time or services to consumers, a facility, local authority, community center, volunteer services council, or provider without compensation from the facility, local authority, community center, volunteer services council, or provider other than reimbursement for actual expenses. The term does not include a professional clinical intern.

(12) Volunteer services council--A 501(c)(3) organization that is formed for the purpose of generating resources on behalf of a facility, local authority, or community center.

§414.504. Pre-employment and Pre-assignment Clearance.

(a) Each facility, local authority, community center, and provider must conduct:

(1) a pre-employment criminal history and registry clearance of all applicants (as defined) for employment; and

(2) a pre-assignment criminal history and registry clearance of all applicants for volunteer status.

(b) A provider that is required to conduct criminal history and registry clearances in accordance with the Texas Health and Safety Code, Chapter 250, must provide evidence of compliance with that law to the facility, local authority, or community center with which it contracts.

(c) For professional clinical interns, a written agreement must exist between the facility, local authority, or community center and the university/college. The written agreement must include:

(1) a statement that responsibility for the care of consumers is retained by the facility, local authority, or community center;

(2) a statement that background checks of professional clinical interns must ensure compliance with subsection (d) of this section; and

(3) a description of how background checks of professional clinical interns will be conducted and funded.

(d) The following individuals may not be employed by, assigned volunteer status at, or serve as a professional clinical intern at, a facility, local authority, community center, or provider:

(1) an individual who has been convicted of any of the criminal offenses listed in subsection (g) of this section;

(2) an individual who has been convicted of a criminal offense that the facility, local authority, community center, or provider has determined to be a contraindication to employment or volunteer status at that entity;

(3) an individual who is listed as revoked in the Nurse Aide Registry; or

(4) an individual who is listed as unemployable in the Employee Misconduct Registry.

(e) The facility, local authority, community center, or provider must inform applicants in writing at the time that application is made of the following:

(1) that a pre-employment/pre-assignment criminal history and registry clearance will be conducted;

(2) the types of criminal offenses for which a conviction would bar employment or volunteer status as required by law;

(3) that conviction of other types of criminal offenses may be considered a contraindication to employment or volunteer status at that entity; and

(4) that being listed as revoked in the Nurse Aide Registry or being listed as unemployable in the Employee Misconduct Registry would bar employment or volunteer status.

(f) An applicant who is not listed as revoked in the Nurse Aide Registry and who is not listed as unemployable in the Employee Misconduct Registry may be employed on a temporary or interim basis pending a criminal history clearance if an emergency exists in which there is a risk to the health and safety of consumers as a result of unfilled positions or in which the operations of the organization are severely impaired as determined by the chief executive officer of the facility, local authority, community center, or provider.

(1) The applicant must furnish the employer with an affidavit stating that the applicant has not been convicted of any of the criminal offenses listed in subsection (g) of this section or any criminal offense that the employer has determined is a contraindication to employment. The affidavit will be kept in the applicant's file. A sample affidavit may be obtained by contacting Human Resource Services, TDMHMR, P.O. Box 12668, Austin, Texas 78711-2668.

(2) Within 72 hours of the time the person is employed on a temporary or interim basis, the facility, local authority, community center, or provider must initiate a criminal history clearance of that person as described in §414.505 of this title (relating to Obtaining or Requesting Criminal History Record Information and Checking Registry).

(3) If the criminal history record information reveals a conviction for any of the criminal offenses listed in subsection (g) of this section or for any criminal offense that the employer has determined is a contraindication to employment, then the facility, local authority, community center, or provider must immediately discharge the person as unemployable.

(4) An applicant may not receive volunteer assignment on a temporary or interim basis pending a criminal history clearance.

(g) Consistent with the Texas Health and Safety Code, §250.006, convictions of criminal offenses which constitute an absolute bar to employment are:

(1) criminal homicide (Penal Code, Chapter 19);

(2) kidnapping and unlawful restraint (Penal Code, Chapter 20);

(3) indecency with a child (Penal Code, §21.11);

(4) sexual assault (Penal Code, §22.011);

(5) aggravated assault (Penal Code, §22.02);

(6) injury to a child, elderly individual, or disabled individual (Penal Code, §22.04);

(7) abandoning or endangering a child (Penal Code, §22.041);

(8) aiding suicide (Penal Code, §22.08);

(9) agreement to abduct from custody (Penal Code, §25.031);

(10) sale or purchase of a child (Penal Code, §25.08);

(11) arson (Penal Code, §28.02);

(12) robbery (Penal Code, §29.02);

(13) aggravated robbery (Penal Code, §29.03);

(14) a conviction under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense listed under paragraphs (1)-(13) of this subsection; and

(15) a felony conviction for theft (Penal Code, Chapter 31) which occurred within the previous five years.

§414.507. Self-Reporting and Subsequent Criminal History and Registry Checks.

(a) Upon the effective date of this subchapter, each facility, local authority, community center, and provider must initiate a registry check of all current employees and volunteers. If an employee/volunteer is listed as revoked in the Nurse Aide Registry or listed as unemployable in the Employee Misconduct Registry, then the employer must immediately discharge the employee or volunteer.

(b) Following employment with or assignment of volunteer status at a facility, local authority, community center, or provider, all employees and volunteers must report to a person designated by that facility, local authority, community center, or provider:

(1) any subsequent convictions or offenses for which they are charged; and

(2) a subsequent listing as revoked in the Nurse Aide Registry or listing as unemployable in the Employee Misconduct Registry.

(c) A facility, local authority, community center, or provider may conduct subsequent criminal history and registry checks on any employee or volunteer at any time it deems appropriate.

(d) Each facility, local authority, community center, and provider must develop written policies and procedures consistent with this subchapter describing how it will respond to information obtained through self-reporting and subsequent criminal history and registry checks.

(1) Pursuant to the Texas Health and Safety Code, §533.007(b), adverse personnel action may not be taken if the information received pertains to arrest warrants or wanted persons' notices. However, the employer may reassign the employee/volunteer to a non-direct care area until resolution of the matters relating to the arrest warrant or wanted persons' notice.

(2) If the information reflects a conviction for an offense listed in §414.504(g) of this title (relating to Pre-employment and Pre-assignment Clearance), then consideration may be given to any contention by the employee/volunteer concerning errors of fact or identity in the criminal history record information. While the employee/volunteer is attempting to rectify the accuracy of the information, the employer must remove the employee/volunteer from direct contact with consumers. If the employee or volunteer fails to rectify the accuracy of the information, as provided by Texas Health and Safety Code, §250.005(b), then the employer must immediately discharge the employee or volunteer.

(3) If the information reflects a conviction for an offense determined to be a contraindication to employment or volunteer status, then consideration may be given to any contention by the employee/volunteer concerning errors of fact or identity in the criminal history record information. While the employee/ volunteer is attempting to rectify the accuracy of the information, the employer may remove the employee/volunteer from direct contact with consumers. If the employee or volunteer fails to rectify the accuracy of the information, as provided by Texas Health and Safety Code, §250.005(b), then the employer must immediately discharge the employee or volunteer.

(4) If the information indicates the employee/volunteer is listed as revoked in the Nurse Aide Registry or listed as unemployable in the Employee Misconduct Registry, then the employer must immediately discharge the employee or volunteer.

§414.509. Distribution.

(a) This subchapter will be distributed to:

(1) members of the Texas MHMR Board;

(2) executive, management, and program staff at TDMHMR Central Office;

(3) chief executive officers of all facilities, local authorities, and community centers; and

(4) advocacy organizations.

(b) A copy of this subchapter will be made available upon request to:

(1) any person who applies for employment or volunteer status with TDMHMR, a local authority, community center, or provider;

(2) any employee or volunteer of TDMHMR, a local authority, community center, or provider;

(3) the counsel of record of an applicant, employee, or volunteer; and

(4) any interested person.

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 January 17, 2002.

TRD-200200251
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: February 6, 2002
Proposal publication date: October 5, 2001
For further information, please call: (512) 206-5216

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CHAPTER 415. PROVIDER CLINICAL RESPONSIBILITIES
SUBCHAPTER C. USE AND MAINTENANCE OF TDMHMR DRUG FORMULARY

25 TAC §§415.101 - 415.114

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeals of §§415.101 - 415.114 of Chapter 415, Subchapter C, concerning use and maintenance of *TDMHMR Drug Formulary*, without changes to the proposal as published in the August 31, 2001, issue of the *Texas Register* (26 TexReg 6543). New §§415.101 - 415.114 of Chapter 415, Subchapter C, concerning the same, which replace the repealed sections, are contemporaneously adopted in this issue of the *Texas Register*.

The repeals allow for the adoption of new sections governing the same matters.

The contemporaneous repeal and adoption of these subchapters would fulfill the requirements of the Texas Government Code, §2001.039, concerning the periodic review of agency rules.

No comment on the proposal was received.

These sections are adopted for repeal under the Texas Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and §534.052, which requires the board to adopt rules it considers necessary and appropriate to ensure the adequate provision of community-based mental health and mental retardation services through a local authority.

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 January 17, 2002.

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Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: February 6, 2002
Proposal publication date: August 31, 2001
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25 TAC §§415.101 - 415.114

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§415.101 - 415.114 of Chapter 415, Subchapter C, concerning use and maintenance of *TDMHMR Drug Formulary*. Section 415.102 is adopted with changes to the proposed text as published in the August 31, 2001, issue of the *Texas Register* (26 TexReg 6543-6547). Sections 415.101 and 414.103 - 415.114 are adopted without changes. The repeals of existing §§415.101 - 415.114 of Chapter 415, Subchapter C, concerning the same, which the new sections replace, are contemporaneously adopted in this issue of the *Texas Register*.

The new subchapter describes the policies and procedures governing the use and maintenance of the *TDMHMR Drug Formulary* in TDMHMR facilities and in community settings for mental health and mental retardation services that are funded by TDMHMR.

The contemporaneous adoption and repeal of these subchapters fulfill the requirements of the Texas Government Code, §2001.039, concerning the periodic review of agency rules.

Language has been modified in §415.102 clarifying that the use of the *TDMHMR Drug Formulary* is limited to only those medications and medication-related services that are funded by TDMHMR.

Written comment on the proposal was received from Lubbock Regional MHMR Center in Lubbock and the parent of a state school resident in Garland.

One commenter asked if the subchapter applies only to those services paid for with general revenue funds. As an example, the commenter asked if the formulary restrictions apply to medications prescribed by a practitioner for a consumer whose medications were paid for by a source other than general revenue funds. TDMHMR responds that language has been modified in §415.102 clarifying that the formulary's use is limited to only those medications and medication-related services that are funded by TDMHMR.

Regarding reporting adverse drug reactions in §415.111(a), one commenter asked whether the local authority or the prescribing practitioner should report adverse drug reactions to the Food and Drug Administration (FDA). The commenter also asked what format or process is used for reporting; whether there is a reporting requirement for practitioners who are not associated with a local authority; and what law or regulation dictates the reporting of adverse drug reactions to the FDA. TDMHMR responds that the local authority is responsible for determining the process for reporting adverse drug reactions to the FDA, including who should report and how the reports are made. There is no law requiring private practitioners to report adverse drug reactions. It is good practice to do so, so that other health care professionals can be warned about adverse effects.

Regarding the requirement to comply with all applicable laws, rules, and regulations relating to drug research in §415.104(e), one commenter stated that since the formulary rules apply to both mental health and mental retardation services, a reference to the subchapter governing standards and quality assurance for mental retardation community services and supports should be added. TDMHMR declines to add the reference because the subchapter governing standards and quality assurance for mental retardation community services and supports does not contain a provision related to drug research.

Regarding the position of TDMHMR associate medical director for mental retardation/developmental disability in §415.106(b)(9), one commenter suggested changing "developmental disability" to "related conditions" because "almost all Individuals with developmental disabilities, not already covered by TX Law's/TDMHMR's definition for 'Related Conditions,' have no cognitive disability." The commenters further stated that "TDMHMR does not have enough funding for all Individuals that are already included in their service population." TDMHMR declines to change the language as suggested because the term is part of a job title and has no bearing on TDMHMR's service population.

These sections are adopted under the Texas Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and §534.052, which requires the board to adopt rules it considers necessary and appropriate to ensure the adequate provision of community-based mental health and mental retardation services through a local authority.

§415.102. Application.

(a) This subchapter applies to TDMHMR facilities, Central Office, local authorities, and their respective contractors for medications and medication-related services funded by the Texas Department of Mental Health and Mental Retardation (TDMHMR). (The *TDMHMR Drug Formulary* in its entirety applies to all TDMHMR facilities in all circumstances except when an individual receives acute care services of limited duration in a general hospital.)

(b) TDMHMR facilities, Central Office, and local authorities are responsible for amending the contracts of their contractors that provide TDMHMR-funded medications and medication-related services to ensure their compliance with this subchapter.

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 January 17, 2002.

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Texas Department of Mental Health and Mental Retardation
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

CHAPTER 216. WATER QUALITY PERFORMANCE STANDARDS FOR URBAN DEVELOPMENT

SUBCHAPTER A. WATER QUALITY PROTECTION ZONES

30 TAC §§216.1 - 216.11

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of §§216.1 - 216.11, concerning Water Quality Performance Standard for Urban Development *without change* to the proposal published in the October 26, 2001 issue of the *Texas Register* (26 TexReg 8487).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED REPEALS

The purpose of the rulemaking is to remove rules that are based on a statute that has been invalidated by opinion of the Texas Supreme Court and by opinion of the Texas Attorney General.

The commission also is adopting, in concurrent action, the review of Chapter 216 as required by Texas Government Code, §2001.039. The adopted rules review can be found in the Review of Agency Rules section in this issue of the *Texas Register*. The commission also terminated a rulemaking it authorized to be commenced (Rule Log Number 1997-187-216-WT) in 1998 in response to a petition by the City of Austin to revise Chapter 216, Subchapter A.

Chapter 216, Subchapter A sets out the procedures and criteria to be used by the commission: 1.) in the review and approval of water quality plans and amendments submitted for tracts of land, 500 acres or larger, designated as water quality protection zones; and 2.) in the designation of water quality protection zones for tracts of land that are less than 1,000 acres but not less

than 500 acres in size. In accordance with Texas Water Code (TWC), §26.179, the repeals apply only to areas within the extraterritorial jurisdictions of cities with a population greater than 5,000 (in 1999, raised to 10,000), and in which the municipality has enacted or proposed at least three ordinances to regulate water quality within their extraterritorial jurisdictions in the five years prior to June 17, 1995, or enacts or attempts to enforce three or more ordinances or amendments attempting to regulate water quality or control or abate water pollution in the area in any five-year period. This law does not apply to areas within the extraterritorial jurisdiction of a city with a population greater than 900,000 that has extended an ordinance to prevent the pollution of an aquifer which is the sole or principal drinking water source for the municipality.

The commission believes that the adoption of the repeal of the rules in Chapter 216, Subchapter A is necessary because TWC, §26.179 on which the subchapter is based, was invalidated by the Texas Supreme Court in the case of *FM Properties Operating Co. v. City of Austin*, 22 S.W. 3d 868 (Tex. 2000). In that case, the court held that the pre-1999 version of TWC, §26.179 is an unconstitutional delegation of legislative power to private landowners. The court did not address the 1999 amendments to TWC, §26.179 because they were enacted after the case began and apply prospectively. However, the Texas Attorney General in Opinion Number JC-0402 (August 2, 2001) concluded consistent with the Supreme Court's decision that the current version of the statute is unconstitutional. Accordingly, the repeal of Chapter 216, Subchapter A, is appropriate. The commission also terminated a rulemaking it authorized to be commenced (Rule Log Number 1997-187- 216-WT) in 1998 in response to a petition by the City of Austin to revise Chapter 216, Subchapter A.

SECTION BY SECTION DISCUSSION

Sections 216.1, *Applicability*; 216.2, *Definitions*; 216.3, *Designation of Water Quality Protection Zones*; 216.4, *Expiration*; 216.5, *Agents*; 216.6, *Water Quality Plan*; 216.7, *Actions and Notice*; 216.8, *Annual Reporting Requirements*; 216.9, *Corrective Action*; 216.10, *Enforcement*; and 216.11, *Fee Schedule* are repealed because the statute on which they are based has been invalidated.

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 rulemaking is not subject to §2001.0225 because the repeal of Chapter 216, Subchapter A, would not result in a rule which meets the definition of a "major environmental rule" as defined in that 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. Because the specific intent of the rulemaking is to repeal rules based on a statute that has been invalidated by decision of the Texas Supreme Court and does not add regulatory requirements to existing rules, the rulemaking is not anticipated to have an adverse material effect on 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. In addition, this repeal is not intended to protect the environment or reduce risks to human health from environmental exposure. Therefore, this rulemaking does not meet the definition of a "major environmental rule." In addition, §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. The rulemaking specifically repeals rules that lack statutory foundation and does not meet any of these four criteria of a "major environmental rule."

TAKINGS IMPACT ASSESSMENT

The commission evaluated the repeal and performed an assessment of whether the repeal constitutes a taking under Texas Government Code, Chapter 2007. The following is a summary of that assessment. The specific purpose of the rulemaking is to repeal Subchapter A because the statute on which it is based has been invalidated. Adoption of the rulemaking would not affect private real property, restrict or limit the owner's right to property that otherwise would exist in the absence of the rulemaking, or be the producing cause of the reduction in the market value of private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has determined that the rulemaking does not relate to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Management Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*) and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. Therefore, the repeal of Subchapter A is not subject to the CMP.

PUBLIC COMMENTS

The public comment period closed on November 26, 2001, and no comments were received. A public hearing was not held.

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.102, which provides the commission with the general powers to carry out its duties under TWC; and §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state. The repeals are adopted as a result of a rule review done in accordance with the requirements of Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years.

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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CHAPTER 220. REGIONAL ASSESSMENTS OF WATER QUALITY
SUBCHAPTER B. PROGRAM FOR WATER QUALITY ASSESSMENT FEES

30 TAC §220.21

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to Subchapter B, Program for Water Quality Assessment Fees; §220.21, Water Quality Assessment Fees. This amendment is made concurrently with amendments to Chapters 303 and 304. Section §220.21 is adopted *without changes* to the proposed text as published in the September 7, 2001 issue of the *Texas Register* (26 TexReg 6851) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

Chapter 220 implements the Texas Clean Rivers Program, under Texas Water Code (TWC), 26.0135. The Texas Clean Rivers Program monitors and assesses water quality conditions that support water quality management decisions necessary to maintain and improve the quality of the state's water resources (as defined in TWC, §26.001(5)). Under TWC, §26.0135, water right holders and wastewater permit holders are assessed fees to pay for the costs of this program. The adopted rule will implement Senate Bill (SB) 289 of the 77th Legislature, 2001, which amends TWC, §26.0135, to provide that the commission shall not assess water quality assessment fees against a holder of a non-priority hydroelectric water right that owns or operates privately-owned facilities that collectively have a capacity of less than two megawatts. This will be a change from the existing rules, which provide that water quality assessment fees shall be established for each water right holder for each water right authorized by category of use, except for irrigation water rights. Amended §220.21 will specify that the commission may not assess water quality assessment fees against a holder of a non-priority hydroelectric right that owns or operates privately-owned facilities that collectively have a capacity of less than two megawatts.

SECTION DISCUSSION

Adopted §220.21 will add the provision that the commission may not assess water quality assessment fees against a holder of a non-priority hydroelectric right that owns or operates privately-owned facilities that collectively have a capacity of less than two megawatts.

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 rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute because the specific intent of this amendment is not to protect the environment or reduce risks to human health from environmental exposure. The intent of the amendment is to exempt small privately-owned hydroelectric facilities from paying water quality assessment fees under the Texas Clean Rivers Program.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rule and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific purpose of the rulemaking action is to implement legislation which changes who may be assessed water quality assessment fees under the Texas Clean Rivers Program. This rulemaking substantially advances this purpose by amending §220.21 of the water quality management rules to provide that the Texas Clean Rivers Program may not assess fees against small privately-owned hydroelectric facilities.

The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to this rule because this rule amendment does not affect any private real property that is the subject of this rulemaking 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. This rulemaking only relates to fees charged for water quality assessment.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the adopted rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adoption is not subject to the CMP.

HEARING AND COMMENTERS

A public hearing was held on this rulemaking on October 4, 2001 in San Antonio. No oral comments were received at the hearing, and no written comments were received on the proposed rule amendment.

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.0135, which requires assessments of fees against water right holders and wastewater permit holders to pay for the administrative costs of periodic monitoring and assessment of water quality conditions in each watershed and river basin in the 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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CHAPTER 303. OPERATION OF THE RIO GRANDE

SUBCHAPTER H. FINANCING RIO GRANDE WATERMASTER OPERATION

30 TAC §303.71

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to Subchapter H, Financing Rio Grande Watermaster Operation; §303.71, Costs of Administration. This adoption is being made concurrently with amendments to Chapters 220 and 304. Section 303.71 is adopted *without changes* to the proposed text as published in the September 7, 2001 issue of the *Texas Register* (26 TexReg 6853) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

Chapter 303 implements water rights and the duties and responsibilities of watermaster operations in portions of the Rio Grande Basin and the Nueces - Rio Grande Basin. Under Texas Water Code (TWC), §11.329, holders of water rights that are administered by a watermaster shall reimburse the commission for the expense of watermaster operations. This amendment implements Senate Bill (SB) 289 of the 77th Legislature, 2001, which amends TWC, §11.329, to provide that the watermaster shall not assess fees against a holder of hydroelectric rights that own or operate privately- owned facilities that collectively have a capacity of less than two megawatts. This will be a change from the existing rules, which provide that watermaster costs shall be established for each water right holder for each water right authorized by category of use. Subchapter H establishes the procedures for establishing accounts; commission approval of assessments and budget; and assessment of costs of watermaster operations. The existing rule provides that costs shall be established for each water right holder for each water right authorization by category of use. This amendment to §303.71 specifies that the commission may not assess costs against a holder of a non-priority hydroelectric right that owns or operates privately-owned facilities that collectively have a capacity of less than two megawatts.

SECTION DISCUSSION

Section 303.71 is amended to add the provision that the commission may not assess costs against a holder of a non-priority hydroelectric right that owns or operates privately-owned facilities that collectively have a capacity of less than two megawatts. This amendment implements SB 289, and deletes an obsolete requirement.

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 rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute because the specific intent of this amendment is not to protect the environment or reduce risks to human health from environmental exposure. The intent of the amendment is to exempt small privately-owned hydroelectric facilities from paying watermaster fees.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rule and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific purpose of the rulemaking action is to implement legislation which changes who may be assessed fees for a watermaster. This rulemaking substantially advances this purpose by amending §303.71 of the Rio Grande watermaster rules to provide that a watermaster may not assess fees against small privately-owned hydroelectric facilities.

The commission's assessment indicates that Texas Government Code, Chapter 2007, does not apply to this adopted rule because this rule amendment does not affect any private real property that is the subject of this rulemaking 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. This rulemaking only relates to fees charged for the services of a watermaster.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the adopted rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adoption is not subject to the CMP.

HEARING AND COMMENTERS

A public hearing was held on this rulemaking on October 4, 2001 in San Antonio. No oral comments were received at the hearing, and no written comments were received on the proposed rule amendment.

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.0135, which requires assessments of fees against water right holders and wastewater permit holders to pay for the administrative costs of periodic monitoring and assessment of water quality conditions in each watershed and river basin in the 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.

Filed with the Office of the Secretary of State on January 17, 2002.

TRD-200200247
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: February 6, 2002
Proposal publication date: September 7, 2001
For further information, please call: (512) 239-4712

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CHAPTER 304. WATERMASTER OPERATIONS
SUBCHAPTER G. FINANCING WATERMASTER OPERATIONS

30 TAC §304.61

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to Subchapter G, Financing Watermaster Operations, §304.61, Costs of Administration. This amendment is being made concurrently with amendments to Chapters 220 and 303. Section §304.61 is adopted *without changes* to the proposed text as published in the September 7, 2001 issue of the *Texas Register* (26 TexReg 6855) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

Chapter 304 implements the duties and responsibilities of watermaster operations. Under Texas Water Code (TWC), §11.329, holders of water rights that are administered by a watermaster shall reimburse the commission for the expense of watermaster operations. This amendment implements Senate Bill (SB) 289 of the 77th Legislature, 2001, which amends TWC, §11.329, to provide that the watermaster shall not assess fees against hydroelectric rights that own or operate privately-owned facilities that collectively have a capacity of less than two megawatts. This will be a change from the existing rules, which provide that watermaster costs shall be established for each water right holder for each water right authorized by category of use. Subchapter G establishes the procedures for establishing accounts, commission approval of assessments and budget, and assessment of costs of watermaster operations. The existing rule provides that costs shall be established for each water right holder for each water right authorization by category of use. This adopted rule would amend §304.61 to specify that the commission may not assess costs for a non-priority hydroelectric right that owns or operates privately-owned facilities that collectively have a capacity of less than two megawatts.

SECTION DISCUSSION

Section 304.61 is amended to add the provision that the commission may not assess costs against a holder of a non-priority hydroelectric right that owns or operates privately-owned facilities that collectively have a capacity of less than two megawatts. This amendment implements SB 289, and deletes an obsolete requirement.

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 rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute because the specific intent of this amendment is not to protect the environment or reduce risks to human health from environmental exposure. The intent of the amendment is to exempt small privately-owned hydroelectric facilities from paying watermaster fees.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this adopted rule and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific purpose of the rulemaking action is to implement legislation which changes who may be assessed fees for a watermaster. This rulemaking substantially advances this purpose by amending §304.61 of the watermaster rules to provide that a watermaster may not assess fees against small privately-owned hydroelectric facilities.

The commission's assessment indicates that Texas Government Code, Chapter 2007, does not apply to this proposed rule because this rule amendment does not affect any private real property that is the subject of this rulemaking 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. This rulemaking only relates to fees charged for the services of a watermaster.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the adopted rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adoption is not subject to the CMP.

HEARING AND COMMENTERS

A public hearing was held on this rulemaking on October 4, 2001 in San Antonio. No oral comments were received at the hearing, and no written comments were received on the proposed rule amendment.

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency; and §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §26.0135, which requires assessments of fees against water right holders and wastewater permit holders to pay for the administrative costs of periodic monitoring and assessment of water quality conditions in each watershed and river basin in the 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.

Filed with the Office of the Secretary of State on January 17, 2002.

TRD-200200248
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: February 6, 2002
Proposal publication date: September 7, 2001
For further information, please call: (512) 239-4712

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 353. INTRODUCTORY PROVISIONS

SUBCHAPTER G. TEXAS NATURAL RESOURCES INFORMATION SYSTEM PARTNERSHIPS

31 TAC §353.100, §353.101

The Texas Water Development Board (board) adopts new 31 TAC §353.100 and §353.101 concerning Introductory Provisions. Section 353.100 and §353.101 are adopted without changes to the proposed text as published in the November 30, 2001 issue of the *Texas Register* (26 TexReg 9665) and will not be republished. These new sections are adopted in response to Senate Bill 312, 77th Texas Legislature, Regular Session, 2001.

First, the board adopts these new sections into a new subchapter, Subchapter G, relating to Texas Natural Resources Information System Partnerships. This is to properly organize these new rules in the chapter.

The board adopts new §353.100 to comply with Texas Water Code §16.021(b), which was amended by Senate Bill 312 to authorize the executive administrator to enter partnerships with private entities to provide additional funding for improved access to Texas Natural Resources Information System (TNRIS) information. Section 353.100 authorizes the executive administrator to enter partnerships with private entities that provide services related to TNRIS goals and responsibilities. These partnerships will allow the entities to have their information and a hyperlink to their web site posted on the TNRIS web site. TNRIS is a division of the board that serves as the state's centralized clearinghouse and referral center for natural resource, census, and other socioeconomic data. As such, it is the starting place for citizens wanting natural resource data. There are several private entities that provide services that add value to the data maintained by TNRIS. Providing links to and information on these entities to TNRIS customers, through the TNRIS web site, will enable customers to obtain all of the data and services they desire. It will also raise funds for TNRIS by charging each entity a fee for having its information and link posted on the TNRIS web site. Senate Bill 312 amended Texas Water Code §16.021(b) to allow the executive administrator to enter partnerships specifically designed to raise more funds for TNRIS, which will be used to improve access to TNRIS information. These partnerships will only be entered with entities that have been determined to provide services that are related to TNRIS goals and responsibilities. The partnerships will be created through a written agreement that lasts one year but which can be renewed upon request. The charge for posting a partner's information and hyperlink on the TNRIS web site will be determined by the executive administrator, upon board approval.

The board adopts new §353.101, which is also intended to comply with Texas Water Code §16.021(b). This new section allows the executive administrator, with board authorization, to enter partnerships with private entities that wish to form a relationship with the board to pass donations from donors to TNRIS. Some nonprofit corporations accept donations on behalf of other organizations and provide some tax benefits to the donors. Senate Bill 312 amended Texas Water Code §16.021(b) specifically to allow the executive administrator to enter partnerships with private entities in order to raise additional funds for TNRIS, which will be used to improve access to TNRIS information for the public. By making it easier for donors to present gifts and grants to TNRIS, the board will be following the instructions of Senate Bill 312.

All gifts and grants will be accepted pursuant to Subchapter F of Chapter 353, relating to The Relationship Between the Board and Donors. New §353.101 also allows the executive administrator, with board authorization, to enter a partnership with a private entity in order to accept volunteer workers who will perform labor for TNRIS. This is intended to comply with Texas Water Code §16.021(b). This will allow private entities to lend workers to TNRIS at no charge to the board. This will enable TNRIS to accomplish more work without additional state resources, which will improve access to TNRIS information for the public.

No comments were received on the proposed rules.

The new sections are adopted under the authority of Texas Water Code §6.101 and §16.021.

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 January 16, 2002.

TRD-200200221
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: February 5, 2002
Proposal publication date: November 30, 2001
For further information, please call: (512) 463-7981

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CHAPTER 377. HYDROGRAPHIC SURVEY PROGRAM

31 TAC §377.3, §377.4

The Texas Water Development Board (board) adopts amendments to 31 TAC §377.3 and §377.4 concerning the Hydrographic Survey Program. Section 377.3 and §377.4 are adopted without changes to the proposed text as published in the November 30, 2001 issue of the *Texas Register* (26 TexReg 9665) and will not be republished. These new sections are adopted in response to Senate Bill 312, 77th Texas Legislature, Regular Session, 2001 and pursuant to the four-year rule review requirement of Texas Government Code §2001.039.

The board adopts amendments to §377.3(a) to comply with the new language of Texas Water Code §15.804, which was amended by Senate Bill 312. This statute originally authorized the board to conduct hydrographic surveys on the request of political subdivisions of the state. Senate Bill 312 amended the law to authorize the board to also conduct hydrographic surveys on the request of political subdivisions and agencies of neighboring states and agencies of the federal government and the State of Texas. The law was also amended to authorize the board to conduct hydrographic surveys in Texas and outside Texas if the information collected will benefit Texas. The board adopts amendments to §377.3 to reflect these changes in the

law. The adopted amendments describe which entities can request a hydrographic survey and state that the survey can be performed in Texas or out of Texas if the information collected will benefit Texas.

Senate Bill 312 also amended Texas Water Code §15.804 to state that hydrographic surveys may be performed to collect information relating to water-bearing formations. The board adopts amendments to §377.3(c) to include this new statutory provision. Specifically, the board adds the collection of geohydrologic information to the list of activities that a hydrographic survey may include. This amendment will enable the board to perform studies of water-bearing formations of all types, as encouraged by Senate Bill 312.

Due to the amendments required by Senate Bill 312, the board also amends §377.4. Currently, the hydrographic surveys performed by the board are done on surface water. The adopted addition of the collection of geohydrologic information for other water-bearing formations will allow the board to use processes like drilling to survey formations. The costs and charges involved with surveying surface water are different than those for surveying groundwater. Therefore, the board adopts amendments to §377.4 to state that the executive administrator shall develop and implement, with board approval, as many user charge schedules as necessary. This will allow the executive administrator to develop charge schedules that accurately reflect the charges for specific work being performed.

Lastly, the board amends §377.3(b) to handle the adopted amendments in §377.4. By having different charge schedules for different work, it is desirable to use separate subaccounts within the hydrographic survey account to track the money coming into and going out of the accounts. Separate accounts will enable the board to accurately and more easily track costs and collections for the various work being performed.

No comments were submitted to the board within the prescribed period following the publication of the proposed rules.

The amendments are adopted under the authority of Texas Water Code §6.101 and §15.804.

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 January 16, 2002.

TRD-200200216
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: February 5, 2002
Proposal publication date: November 30, 2001
For further information, please call: (512) 463-7981

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 3. TEXAS COMMISSION ON ALCOHOL AND DRUG ABUSE

CHAPTER 150. COUNSELOR LICENSURE

40 TAC §§150.1 - 150.10, 150.31 - 150.33, 150.35 - 150.40, 150.51 - 150.54, 150.60, 150.61, 150.71, 150.72, 150.75 - 150.78

The Texas Commission on Alcohol and Drug Abuse adopts the repeal of §§150.1 - 150.10, 150.31 - 150.33, 150.35 - 150.40, 150.51 - 150.54, 150.60, 150.61, 150.71, 150.72, and 150.75 - 150.78, concerning Counselor Licensure without changes to the proposed text as published in the August 17, 2001, issue of the *Texas Register* (26 TexReg 6083).

These rules are being repealed to allow adoption of a revised version of the rules. The new rules will be published in this issue of the *Texas Register*.

The repeal of these rules eliminates duplicative rules and prevents conflict with newer rules.

The repeal is adopted under the Texas Occupations Code, Chapter 504, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules for the licensure of chemical dependency counselors.

The code affected by the adopted repeals is the Texas Occupations Code, Chapter 504.

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 January 16, 2002.

TRD-200200223
Karen Pettigrew
General Counsel
Texas Commission on Alcohol and Drug Abuse
Effective date: March 1, 2002
Proposal publication date: August 17, 2001
For further information, please call: (512) 349-6607

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40 TAC §§150.1, 150.11 - 150.14, 150.21 - 150.28, 150.31 - 150.34, 150.41 - 150.43, 150.51 - 150.56, 150.62

The Texas Commission on Alcohol and Drug Abuse adopts new §§150.1, 150.11 - 150.14, 150.21 - 150.28, 150.31 - 150.34, 150.41 - 150.43, 150.51 - 150.56, and 150.62, concerning Counselor Licensure. Sections 150.11, 150.24, 150.26, 150.31, 150.42, 150.43, 150.51, 150.52, 150.54 and are adopted with changes to the proposed text that appeared in the November 23, 2001, issue of the *Texas Register* (26 TexReg 9538). Editing changes were made to these sections.

Section 150.55 is also adopted with changes. Changes were made to this section to clarify the responsibility of the qualified credentialed counselor with regard to supervising interns. Sections 150.1, 150.12 - 150.14, 150.21 - 150.23, 150.25, 150.27, 150.28, 150.32 - 150.34, 150.41, 150.53, 150.56, 150.62, are adopted without changes to the proposed text and will not be republished.

The Commission adopts these rules to reflect statutory changes resulting from this year's legislative session. Content changes have been made in other areas as well, including revisions that strengthen the counselor training system and provide consumer protection for the students. The defining reference for chemical

dependency counseling services has been updated to incorporate new national standards. New sections have been added to establish minimum documentation standards, a continuing education program administered by the commission, and a system for monitoring the conduct of interns. The rules have also been reorganized to provide a more accessible format.

Section 150.1 and §§150.11 - 150.14 of the new rules define terms, state the scope of practice, and list the schedule for fees.

Sections 150.21 - 150.28 of the new rules establish requirements for licensure, establish educational, practicum and supervised work experience standards, as well as delineate processes for issuing licenses through examination and reciprocity.

Sections 150.31 - 150.34 of the new rules establish criminal history standards, delineate procedures for renewing a license and requesting inactive status, and establish criteria for continuing education hours.

Sections 150.41 - 150.43 of the new rules describe minimal standards for clinical documentation, establish ethical standards and grounds for taking action against a licensee.

Sections 150.51 - 150.56 of the new rules establish guidelines for transition from pre-service education institutions and practicum providers to proprietary schools, and establish criteria for becoming a clinical training institution. Additionally, standards for clinical training institutions, supervising interns, and grounds for taking action against an intern are described.

Section 150.62 of the new rules establish continuing education provider standards.

The following is a summary of general comments received.

Comment: Texas Association of Addiction Professionals (TAAP) supports the revised rules and applauds TCADA's efforts in working to ensure that the new rules do not have the unintended consequence of diminishing the number or quality of professional counselors entering the field of substance abuse treatment.

Comment: Association of Substance Abuse Programs (ASAP) supports the proposed Chapter 150 rules as revised.

Comment: I have reviewed the proposed changes and find them very appropriate. I believe 150 serves the best interest of the clients and counseling field.

The following comments were received regarding §150.21.

Comment: Reduce the LCDC continuing education hours to match other mental health professionals. After a counselor has been in the field a certain number of years (e.g., 10 or 12) and reached a certain age (e.g., 50 or 55), waive the continuing education hours. If we as a group are now required to face criminal background checks all mental health worker should also have to meet this requirement. No matter what their training or education.

Response: Requirements for continuing education are set by the Texas Occupations Code. The commission does not have authority to reduce or waive continuing education hours.

Comment: If we as a group are now required to face criminal background checks all mental health workers should also have to meet this requirement.

Response: The requirement for criminal background checks is established by statute.

Comment: Consider requiring a degree to qualify as LCDC and make it a competency based credential.

Response: Requirements for licensure, including education and testing, are established by statute.

The following comments were received regarding §150.23 and §150.26.

Comment: Does the practicum provider, accredited institution of higher education, or proprietary school maintain a record of practicum hours? Will a list of registered education institutions be posted? Should currently registered practicum providers solicit new contracts with educational institutions?

Response: Educational institutions maintain records of completed coursework. Because these entities will not be registered with the commission, a list cannot be compiled or posted. Current practicum providers may choose to solicit new contracts with educational institutions.

Comment: Consider allowing people to take the test as many times as needed since it is hard and many people have learning disabilities.

Response: These rules implement new legislation allowing additional opportunities for testing. An individual who fails the examination four times can become eligible for additional testing opportunities by completing 24 hours of approved coursework.

Comment: Does the five year time limit and number of times an applicant can take the exam (four) start over if an applicant reapplies for licensure?

Response: Yes. For individuals who have already submitted an application to the commission, a new five-year time limit begins from the date of registration.

The following comments were received regarding §§150.54, 150.55, and 150.62.

Comment: Bravo for the proposed CTI, direct supervision and CEP guidelines. They will close up loopholes that have existed for some years. On the downside, it will increase the initial cost of becoming an LCDC and maintaining the license.

Response: The commission has not identified any increased cost associated with the proposed CTI, direct supervision, and CEP standards. Fees charged by providers are not regulated under current or proposed rules.

Comment: I suggest a statement such as the following be added: The qualified credentialed counselor shall assume responsibility for the actions of the intern within the scope of the intern's clinical training.

Response: The language in §150.55(a) has been revised to include the suggested language.

Comment: I feel that Level III and graduate counselor interns should be allowed to co-facilitate continuing education sessions under the direct observation and supervision of qualified credentialed counselors. This would help improve the intern's presentation skills and reinforce the knowledge of the subject matter being presented.

Response: The Commission disagrees. Individuals teaching courses should not be less experienced and knowledgeable than those they are teaching. A clinical training institution instructor may use a variety of teaching techniques to reinforce an intern's knowledge of subject matter, including having the intern give a

supervised presentation of information to peers in the classroom setting.

The new rules are adopted under the Texas Occupations Code, Chapter 504, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules for the licensure of chemical dependency counselors.

The code affected by the new rules is the Texas Occupations Code, Chapter 504.

§150.11. License Required.

(a) An individual identified to the public as a chemical dependency counselor must be licensed or exempt under this chapter. Except as provided by this section, individuals who are not licensed chemical dependency counselors shall not:

(1) offer or provide chemical dependency counseling services other than education;

(2) represent themselves as chemical dependency counselors; or

(3) use any name, title, or designation that implies licensure as a chemical dependency counselor.

(b) The following people are exempt from this chapter when they are acting within the scope of their authorized duties:

(1) counselors employed by federal institutions;

(2) school counselors certified by the Texas Education Agency;

(3) licensed psychologists, licensed professional counselors, licensed marriage and family therapists, and licensed master social workers;

(4) religious leaders of congregations providing pastoral counseling within the scope of their congregational duties and people who are working for or providing counseling with a program exempted under Chapter 145 of this title (relating to Faith-Based Chemical Dependency Treatment Centers);

(5) students who are participating in a practicum as part of a supervised course of clinical training at a regionally accredited institution of higher education or a proprietary school; and

(6) counselor interns who are registered with the commission and working under the auspices of a registered Clinical Training Institution.

(c) Residents of other states are exempt if they:

(1) are legally authorized to provide chemical dependency counseling in those states; and

(2) do not offer or provide chemical dependency counseling in Texas for more than 30 days in any 12-month period.

(d) A person who qualifies for an exemption but chooses to get a license from the commission is subject to the same rules and sanctions as other licensees.

§150.24. Standards for Supervised Work Experience.

(a) An applicant must be registered with the commission as described in §150.21 of this title (relating to Requirements for Licensure by Examination) before accumulating supervised work experience with the following exceptions.

(1) Individuals with an application on file with the commission who began accumulating work experience at a Clinical Training Institution before March 1, 2002 shall submit fingerprint cards by August 31, 2002. Registration must be complete to provide chemical dependency counseling services and accumulate additional hours after October 15, 2002.

(2) Individuals who began accumulating supervised work experience hours at a Clinical Training Institution before March 1, 2002 but had not submitted an application to the commission by that date shall submit an application and the fingerprint cards by August 31, 2002. Registration must be complete to provide chemical dependency counseling services and accumulate additional hours after October 15, 2002.

(3) The commission shall not accept work experience completed more than five years preceding the date of registration.

(b) All supervised work experience obtained in Texas must be completed at a registered clinical training institution (CTI).

(c) Work experience must be documented on the commission's Supervised Work Experience Documentation Form and signed by the agency's CTI coordinator.

(1) All hours included in the documented supervised work experience must be performed within the KSA domains.

(2) The supervised work experience form must be accompanied by the intern's job description reflecting duties in the KSA domains.

(d) Out of state work experience will be accepted only if the following conditions are met.

(1) The applicant is either certified or licensed or in the process of seeking licensure or certification in the other state.

(2) The standards for clinical supervision of work experience must meet or exceed Texas standards and be outlined in the governing agency's rules or standards. A copy of the governing rules or standards must be submitted with the other required documentation of supervised work experience.

(3) The supervised work experience must be documented on the commission's Supervised Work Experience form or a comparable form used by the governing agency of the other state.

(e) Supervised work experience may be paid or voluntary.

(f) An intern must complete all supervised work experience and pass the written and oral examination within five years from the date of registration.

(g) A person who has completed the 4,000 hours of supervised work experience and is currently eligible to take or retake the examination is a graduate intern and may continue to provide chemical dependency services under the auspices of a registered clinical training institution during the five-year registration period.

(h) It is the applicant's responsibility to verify that the training institution is registered with the commission. The commission shall not accept hours from an unregistered provider. A list of registered CTIs is available on the commission's website.

§150.26. Examination.

(a) To be eligible for examination, an applicant shall:

(1) be registered with the commission as an intern as described in §150.25 of this title (relating to Licensure Application and Registration Process);

(2) submit an acceptable case study to the test administrator; and

(3) pay the examination fee to the test administrator.

(b) All required documentation and fees must be submitted to the test administrator by the specified deadlines. It is the applicant's responsibility to obtain testing information.

(c) An applicant may only take the examination four times, and all testing must be completed within five years from the date of registration. An applicant shall take the written and oral portions of the examination together unless the applicant has already passed one part of the examination.

(d) If an applicant does not pass both parts of the examination within five years of the date of registration and/or does not complete the required 4,000 hours of supervised work experience, the commission shall deny the application.

(1) A person whose license application has been denied is no longer an intern or a graduate and cannot provide chemical dependency counseling services under the auspices of a clinical training institution.

(2) A person whose application has been denied under this section may reapply for licensure only after completing 24 semester hours of course work pre-approved by the commission at an institution of higher education. The new application shall not be considered complete without an official college transcript documenting the required coursework.

(3) If the commission accepts the new application, the person may take the failed portion(s) of the examination an additional three times. The additional tests must be completed within three years of the new date of registration. During this period, the applicant may provide chemical dependency counseling services as an intern under the auspices of a registered clinical training institution.

§150.31. Criminal History Standards.

(a) The commission reviews the criminal history of every applicant for licensure. Reviews are conducted when:

(1) an applicant for licensure through examination registers with the commission as an intern;

(2) an applicant has met all other requirements for licensure;

(3) a licensed chemical dependency counselor applies for license renewal; and

(4) the commission receives information that a counselor or intern has been charged, indicted, placed on deferred adjudication, community supervision, or probation, or convicted of an offense described in subsection (d) of this section.

(b) An applicant shall disclose and provide complete information about all misdemeanor and felony charges, indictments, deferred adjudications, episodes of community supervision or probation, and convictions. Failure to make full and accurate disclosure will be grounds for immediate application denial, disciplinary action, or license revocation.

(c) The commission obtains criminal history information from the Texas Department of Public Safety, including information from the Federal Bureau of Investigations (FBI).

(d) The commission determines whether an offense is directly related to the duties and responsibilities of a licensed chemical dependency counselor. The commission has identified the following related offenses and categorized them according to the seriousness of the offense. If an offense is not listed in one of these categories and the commission determines that it is directly related to chemical dependency counseling, the commission shall determine the appropriate category.

(1) Category X includes:

(A) capital offenses;

(B) sexual offenses involving a child victim;

(C) felony sexual offenses involving an adult victim who is a client (single count);

(D) multiple counts of felony sexual offenses involving any adult victim; and

(E) homicide.

(2) Category I includes:

(A) kidnapping;

(B) arson;

(C) manslaughter; and

(D) felony sexual offenses involving an adult victim who is not a client (single count).

(3) Category II includes felony offenses that result in actual or potential harm to others and/or animals not listed separately in this section.

(4) Category III includes:

(A) class A misdemeanor alcohol and drug offenses;

(B) class A misdemeanor offenses resulting in actual or potential harm to others or animals;

(C) felony alcohol and drug offenses; and

(D) other felony offenses that do not result in actual or potential harm to others and/or animals.

(5) Category IV includes:

(A) class B misdemeanor alcohol and drug offenses; and

(B) class B misdemeanor offenses resulting in actual or potential harm to others or animals.

(e) The commission shall deny the initial or renewal license application of a person who has been convicted or placed on community supervision in any jurisdiction for a:

(1) category X offense during the person's lifetime;

(2) category I offense during the fifteen years preceding the date of application;

(3) category II offense during the ten years preceding the date of application;

(4) category III offense during the seven years preceding the date of application; or

(5) category IV offense during the five years preceding the date of application.

(f) Except as provided in subsection (j) of this section, the commission shall deny the intern registration application of a person who has been convicted or placed on community supervision in any jurisdiction for a:

(1) category X offense during the person's lifetime;

(2) category I offense during the ten years preceding the date of application;

(3) category II offense during the five years preceding the date of application;

(4) category III offense during the two years preceding the date of application; or

(5) category IV offense during the year preceding the date of application.

(g) The commission shall defer action on the application of a person who has been charged, indicted, or placed on deferred adjudication, community supervision, or probation for an offense described in subsection (d) of this section. The person may reapply when:

(1) the charges are dropped or the person is found not guilty; or

(2) the timeframes established in subsection (e) of this section have been met.

(h) The commission shall suspend a counselor's license or an intern's registration if the commission receives notice from the Texas Department of Public Safety or another law enforcement agency that the individual has been charged, indicted, placed on deferred adjudication, community supervision, or probation, or convicted of an offense described in subsection (d) of this section.

(1) The commission shall send notice stating the grounds for summary suspension by certified mail to the license holder at the address listed in the commission's records. The suspension is effective five days after the date of mailing.

(2) The commission shall restore the person's license upon receipt of official documentation that the charges have been dismissed or the person has been found not guilty.

(i) A person whose license has been denied or suspended under this section may only appeal the action if:

(1) The person was convicted or placed on community supervision; and

(2) The appeal is based on the grounds that the timeframes defined in subsection (e) of this section have been met.

(j) Transitional provisions for criminal background standards apply to intern registration applicants who enrolled in a course of study to become licensed chemical dependency counselors on or before March 1, 2002.

(1) To qualify for the transitional provisions, a person must submit a complete application for intern registration by March 1, 2003.

(2) The commission shall deny the intern registration application if the applicant has ever been convicted or placed on community supervision for a Category X offense in any jurisdiction.

(3) If the applicant has been convicted or placed on community supervision in any jurisdiction for a category I, II, III, or IV offense, the commission shall approve the registration application if the applicant provides a letter of present fitness from a Clinical Training Institution. The letter of present fitness shall state that the Clinical Training Institution:

(A) currently employs the applicant or has agreed to employ the applicant pending intern registration;

(B) has reviewed the applicant's criminal background and evaluated the applicant's present fitness to provide chemical dependency counseling services in relation to the criminal history;

(C) has explained the commission's criminal history standards and timeframes applied at the time of licensure to the applicant; and

(D) is satisfied that the applicant is presently fit and appropriate to provide chemical dependency counseling services.

(4) If the applicant has been convicted or placed on community supervision in any jurisdiction for a category I, II, III, or IV offense and is unable to provide a letter of present fitness, the commission shall apply the criminal history standards stated in subsection (f) of this section.

§150.42. Ethical Standards.

(a) All applicants, and licensed chemical dependency counselors shall comply with these ethical standards.

(b) The licensed chemical dependency counselor shall not discriminate against any client or other person on the basis of gender, race, religion, age, national origin, disability, sexual orientation, or economic condition.

(c) The licensed chemical dependency counselor shall maintain objectivity, integrity, and the highest standards in providing services to the client.

(d) The licensed chemical dependency counselor shall:

(1) promptly report to the commission any suspected, alleged, or substantiated incidents of abuse, neglect, or exploitation committed by self or other licensed chemical dependency counselors or registered counselor interns;

(2) promptly report to the commission violations of Texas Occupations Code, Chapter 504, or rules adopted under the statute, including violations of this section by self or others, unless making such a report would violate federal confidentiality regulations found in 42 CFR Part 2;

(3) recognize the limitations of his or her ability and shall not offer services outside the counselor's scope of practice or use techniques that exceed his or her professional competence; and

(4) try to prevent the practice of chemical dependency counseling by unqualified or unauthorized persons.

(e) The licensed chemical dependency counselor shall not engage in the practice of chemical dependency counseling if impaired by, intoxicated by, or under the influence of chemicals, including alcohol.

(f) The licensed chemical dependency counselor shall uphold the law and refrain from unprofessional conduct. In so doing, the licensed chemical dependency counselor shall:

(1) comply with all applicable laws and regulations;

(2) not make any claim, directly or by implication, that the counselor possesses professional qualifications or affiliations that the counselor does not possess;

(3) not mislead or deceive the public or any person; and

(4) refrain from any act which might tend to discredit the profession.

(g) The licensed chemical dependency counselor shall:

(1) report information fairly, professionally, and accurately to clients, other professionals, the commission, and the general public;

(2) maintain appropriate documentation of services provided; and

(3) provide responsible and objective training and supervision to interns and subordinates under the counselor's supervision. This includes properly documenting supervision and work experience and providing supervisory documentation needed for licensure.

(h) In any publication, the licensed chemical dependency counselor shall give written credit to all persons or works, which have contributed to or directly influenced the publication.

(i) The licensed chemical dependency counselor shall respect a client's dignity, and shall not engage in any action that may injure the welfare of any client or person to whom the counselor is providing services. The licensed chemical dependency counselor shall:

(1) make every effort to provide access to treatment, including advising clients about resources and services, taking into account the financial constraints of the client;

(2) remain loyal and professionally responsible to the client at all times, disclose the counselor's ethical code of standards, and inform the client of the counselor's loyalties and responsibilities;

(3) not engage in any activity which could be considered a professional conflict, and shall immediately remove himself or herself from such a conflict if one occurs;

(4) terminate any professional relationship or counseling service which is not beneficial, or is in any way detrimental to the client;

(5) always act in the best interest of the client;

(6) not abuse, neglect, or exploit a client;

(7) not have sexual contact with or intentionally enter into a personal or business relationship with a client (including any client receiving services from the counselor's employer) for at least two years after the client's services end;

(8) not request a client to divulge confidential information that is not necessary and appropriate for the services being provided; and

(9) not offer or provide chemical dependency counseling or related services in settings or locations which are inappropriate, harmful to the client or others, or which would tend to discredit the profession of chemical dependency counseling.

(j) The licensed chemical dependency counselor shall protect the privacy of all clients and shall not disclose confidential information without express written consent, except as permitted by law. The licensed chemical dependency counselor shall remain knowledgeable of and obey all state and federal laws and regulations relating to confidentiality of chemical dependency treatment records, and shall:

(1) inform the client, and obtain the client's consent, before tape-recording the client, allowing another person to observe or monitor the client;

(2) ensure the security of client records;

(3) not discuss or divulge information obtained in clinical or consulting relationships except in appropriate settings and for professional purposes which clearly relate to the case;

(4) avoid invasion of the privacy of the client;

(5) provide the client his/her rights regarding confidentiality in writing as part of informing the client in any areas likely to affect the client's confidentiality; and

(6) ensure the data requested from other parties is limited to information that is necessary and appropriate to the services being provided and is accessible only to appropriate parties.

(k) The licensed chemical dependency counselor shall inform the client about all relevant and important aspects of the professional relationship between the client and the counselor, and shall:

(1) in the case of clients who are not their own consenters, inform the client's parent(s) or legal guardian(s) of circumstances which might influence the professional relationship;

(2) not enter into a professional relationship with members of the counselor's family, close friends or associates, or others whose welfare might be jeopardized in any way by such relationship;

(3) not establish a personal relationship with any client (including any individual receiving services from the counselor's employer) for at least two years after the client's services end;

(4) neither engage in any type or form of sexual behavior with a client (including any individual receiving services from the counselor's employer) for at least two years after the client's services end nor accept as a client anyone with whom they have engaged in sexual behavior; and

(5) not exploit relationships with clients for personal gain.

(l) The licensed chemical dependency counselor shall treat other professionals with respect, courtesy, and fairness, and shall:

(1) refrain from providing or offering professional services to a client who is receiving chemical dependency treatment from another professional, except with the knowledge of the other professional and the consent of the client, until treatment with the other professional ends;

(2) cooperate with the commission, professional peer review groups or programs, and professional ethics committees or associations, and promptly supply all requested or relevant information unless prohibited by law; and

(3) ensure that his/her actions in no way exploit relationships with supervisees, employees, students, research participants or volunteers.

(m) Prior to treatment, the licensed chemical dependency counselor shall inform the client of the counselor's fee schedule and establish financial arrangements with a client. The counselor shall not:

(1) charge exorbitant or unreasonable fees for any treatment service;

(2) pay or receive any commission, consideration, or benefit of any kind related to the referral of a client for treatment;

(3) use the client relationship for the purpose of personal gain, or profit, except for the normal, usual charge for treatment provided; or

(4) accept a private professional fee or any gift or gratuity from a client if the client's treatment is paid for by another funding source, or if the client is receiving treatment from a facility where the counselor provides services (unless all parties agree to the arrangement in writing).

§150.43. Actions Against a License.

(a) Actions against a license include:

(1) refusal to issue or renew a license;

(2) suspension or revocation of a license;

(3) placing a counselor on probation if the counselor's license has been suspended; and

(4) reprimand of a license holder.

(b) The commission shall take action against a license for:

(1) violating or assisting another to violate the statute or these rules;

(2) circumventing or attempting to circumvent the statute or these rules;

(3) participating, directly or indirectly, in a plan to evade the statute or these rules;

(4) engaging in false, misleading, or deceptive conduct as defined by Business and Commerce Code, §17.46;

(5) engaging in conduct that discredits or tends to discredit the profession of chemical dependency counseling;

(6) revealing or causing to be revealed, directly or indirectly, a confidential communication made to the licensed chemical dependency counselor by a client or recipient of services, except as required by law;

(7) having a license to practice chemical dependency counseling in another jurisdiction refused, suspended, or revoked for a reason that the commission finds would constitute a violation of this chapter;

(8) refusing to perform an act or service for which the person is licensed to perform under this chapter on the basis of the client's or recipient's sex, race, religion, age, national origin, or handicaps; or

(9) committing an act for which liability exists under Civil Practice and Remedies Code, Chapter 81.

(c) The commission will determine the length of the probation or suspension. The commission may hold a hearing at any time and revoke the probation or suspension.

(d) The commission may impose an administrative penalty against a licensee who violates Texas Occupations Code, Chapter 504, or a rule or order adopted under the statute.

(e) Surrender or expiration of a license does not interrupt an investigation or disciplinary action. The individual is not eligible to regain the license until all outstanding investigations, disciplinary actions, or hearings are resolved.

(f) An individual whose license has been revoked is not eligible to apply for licensure until two years have passed since the date of revocation. During the period of revocation, the individual cannot become a counselor intern.

(g) The commission shall deny, suspend, and/or refuse to renew the license of a person based on criminal history as provided in §150.31 of this title (relating to Criminal History Standards).

(h) The commission shall implement a final order to suspend the license of a counselor for failure to pay child support as provided by the Texas Family Code, Chapter 232.

§150.51. Pre-Service Education Institution (PSEI) Transition.

(a) The commission shall not register new Pre-Service Education Institutions (PSEIs) after March 1, 2002. The registration of any PSEI registered with the commission on March 1, 2002 is valid through and expires on August 31, 2002.

(b) The PSEI shall ensure that all students admitted to the program can complete the 270 hours before the program closes.

(c) The PSEI shall maintain compliance with the standards for PSEIs described in §150.72 of this title (relating to Pre-Service Education Institution (PSEI) Standards) as published on January 1, 2000.

(d) The PSEI shall notify the commission in writing within 30 days of any changes from the information submitted on the initial or renewal application. This includes:

(1) closure of the education program;

(2) addition of a new education site; or

(3) a change in the organization's name.

(e) The commission may withdraw approval if the PSEI fails to comply with all applicable commission rules.

§150.52. Practicum Provider Transition.

(a) The commission shall not register new practicum providers after March 1, 2002. The registration of any practicum provider registered with the commission on March 1, 2002 is valid through and expires on August 31, 2002.

(b) The practicum provider shall ensure that all students admitted to the program can complete the 300-hour practicum before the program closes.

(c) The practicum provider shall maintain compliance with the standards for practicum provider described in §150.73 of this title (relating to Practicum Provider Standards) as published on January 1, 2000.

(d) The practicum provider shall notify the commission in writing within 30 days of any changes from the information submitted on the initial or renewal application. This includes:

(1) closure of the practicum program;

(2) addition of a new practicum site; or

(3) a change in the organization's name.

(e) The commission may withdraw approval if the practicum providers fail to comply with all applicable commission rules.

§150.54. Clinical Training Institution (CTI) Standards.

(a) The training program shall appoint a single training coordinator who is a qualified credentialed counselor (QCC). The training coordinator shall oversee all training activities and ensure compliance with commission requirements and rules.

(b) The clinical training institution (CTI) shall establish admission criteria. No applicant shall be admitted without:

(1) documentation that the applicant is registered with the commission; and

(2) a signed ethics agreement which is consistent with the LCDC Ethical Standards in §150.42 of this title (relating to Ethical Standards).

(c) The CTI shall establish the following level system to classify interns according to hours of supervised work experience:

(1) Level I: 0-1,000 hours of work experience;

(2) Level II: 1,001-2,000 hours of work experience;

(3) Level III: 2,001-4,000 hours of work experience; and

(4) Graduate Status: over 4,000 hours of work experience.

(d) The CTI shall have an organizational structure that includes all intern levels. The CTI shall designate each intern's level in writing and provide the intern with a copy of the documentation.

(e) All interns must be under the direct supervision of a QCC as described in §150.55 of this title (relating to Direct Supervision of Interns).

(f) The CTI shall provide each Level I, II, and III intern with reading assignments and training activities for the supervised work experience that includes material in each KSA domain.

(g) The CTI shall use the commission's KSA evaluation tool to structure the intern's 4,000 hours of supervised work experience.

(1) The clinical supervisor and the intern shall set weekly objectives based on areas that targeted for improvement.

(2) The supervisor shall provide reading, computer, and/or video assignments that address areas needing improvement. The CTI shall allow the intern two hours per month to complete these assignments.

(3) The clinical supervisor shall monitor the intern's progress and provide verbal and written feedback during weekly supervision meetings.

(4) The intern shall complete a written KSA self-evaluation during the first 50 hours of work experience.

(5) The clinical supervisor and the intern shall complete and discuss a written KSA evaluation at the completion of each level of experience (after 1,000 hours, 2,000 hours, and 4,000 hours).

(h) The CTI shall not allow a Level I, II, or III intern to accrue more than 40 hours of work experience per week.

(i) A person who has completed the 4,000 hours of supervised work experience and is currently eligible to take or retake the examination is a graduate intern and may continue to provide chemical dependency counseling services at a registered clinical training institution during the five-year registration period.

(j) The CTI coordinator shall send the following documents directly to the commission and provide the intern with copies within ten working days from the date the intern completes the required 4,000 hours or leaves the agency:

(1) the Supervised Work Experience form signed by the CTI Coordinator; and

(2) a copy of the intern's job description showing job responsibilities within the KSAs.

(k) All activities counted towards the intern's supervised work experience shall be within the scope of chemical dependency counseling service as defined by the KSAs.

(l) The CTI shall not approve hours for which the intern fails to substantially complete related activities and supervision assignments. Any failure to complete assignments shall be documented on the weekly supervision form.

(m) The CTI shall give each student the commission's Student CTI Assessment Form with instructions to complete the assessment and mail it directly to the commission's counselor licensure department.

(n) The CTI shall use all current forms mandated by the commission.

(o) The CTI shall ensure that each clinical supervisor obtains three hours of continuing education in clinical supervision every two years.

(p) The CTI shall inform students of testing requirements and procedures, as well as testing schedules and information provided by the commission.

(q) The CTI shall ensure that interns designate their status by using "intern" or "CI" when signing client record entries.

(r) The CTI shall maintain the following documentation for four years:

(1) documentation of supervised work experience reading assignments and training activities;

(2) verification of current credentials of all training personnel;

(3) documentation of supervisor continuing education; and

(4) student files, which shall include:

(A) letter of registration;

(B) ethics agreement signed by the student;

(C) copies of KSA evaluations;

(D) documentation of all supervision activities;

(E) documentation of intern levels and accumulated hours; and

(F) copy of the Supervised Work Experience Form.

(s) The CTI shall give the student a copy of all information contained in the intern file when the intern completes the required supervised work experience and/or leaves the agency.

(t) The CTI shall ensure that interns admitted to the program before March 1, 2002 apply for registration with the commission as required by §150.21 of this title (relating to Requirements for Licensure by Examination)

§150.55. Direct Supervision of Interns.

(a) Direct supervision is oversight and direction of a counselor intern provided by a qualified credentialed counselor (QCC) that complies with the provisions in this section.

(b) The qualified credentialed counselor (QCC) shall assume responsibility for the actions of the intern within the scope of the intern's clinical training.

(c) If the intern has less than 2,000 hours of supervised work experience, the supervisor must be on site when the intern is providing services. If the intern has at least 2,000 hours of documented supervised work experience, the supervisor may be on site or immediately accessible by telephone.

(d) During an intern's first 1,000 hours of supervised work experience (Level I), the CTI coordinator or QCC shall:

(1) be on duty at the program site where the intern is working;

(2) observe and document the intern performing assigned activities at least once every two weeks (or 80 hours);

(3) provide and document one hour of face-to-face individual or group supervision each week; and

(4) sign off on all clinical assessments, treatment plans, and discharge summaries completed by the intern.

(e) During an intern's second 1,000 hours of supervised work experience (Level II), the CTI coordinator or QCC designee shall:

(1) be on duty at the program site where the intern is working;

(2) observe and document the intern performing assigned activities at least once every month (160 hours);

(3) provide and document one hour of face-to-face individual or group supervision each week; and

(4) sign off on all clinical assessments, treatment plans, and discharge summaries completed by the intern.

(f) During an intern's last 2,000 hours of required supervised work experience (Level III), the CTI coordinator or QCC designee shall:

(1) be available by phone while the intern is working;

(2) observe and document the intern performing assigned activities as determined necessary by the CTI coordinator;

(3) provide and document one hour of face-to-face individual or group supervision each week; and

(4) sign off on all clinical assessments, treatment plans, and discharge summaries completed by the intern.

(g) After an intern achieves graduate status, the CTI coordinator or QCC designee shall:

(1) be available by phone while the graduate intern is working;

(2) provide and document one hours of face-to-face individual or group supervision each week; and

(3) sign off on all clinical assessments, treatment plans, and discharge summaries completed by the graduate intern.

(h) A supervisor's schedule must allow an average of two hours of supervision-related activity per week per intern.

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 January 16, 2002.

TRD-200200222
Karen Pettigrew
General Counsel
Texas Commission on Alcohol and Drug Abuse
Effective date: March 1, 2002
Proposal publication date: November 23, 2001
For further information, please call: (512) 349-6607

TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Final Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96 IMPLEMENTATION OF A MILE-BASED RATING PLAN, TEXAS AUTOMOBILE RULES AND RATING MANUAL, RULE 82 AND ENDORSEMENT 505

The Commissioner of Insurance, at a public hearing under Docket No. 2509 held at 9:30 a.m., January 22, 2002 in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, adopted amendments proposed by Staff to the Texas Automobile Rules and Rating Manual (the Manual). These amendments add a new Rule 82 and new Endorsement 505 in order to establish a rule that provides for an optional mile-based rating plan that insurers may use with the Texas Personal Auto Policy. This action implements new Insurance Code Article 5.01-4, enacted by the 77th Legislature in HB 45. Staff's petition (Ref. No. A-1201-21-I) was published in the December 21, 2001 issue of the *Texas Register* (26 TexReg 10627).

This order adopts a new Manual Rule 82 that will allow an insurer the option to use a mile-based rating plan for the Texas Personal Auto Policy. The policy form used under the mile-based rating plan will be the same as the form used for other policies, except it will be amended by the Mile-Based Rating Plan Endorsement (Endorsement 505), which is also adopted. New Rule 82, as provided in Insurance Code Article 5.01-4, specifies that each insurer that offers the mile-based rating plan shall annually file with the Department for approval a schedule of the rates to be used for that plan.

As specified in Insurance Code Article 5.01-4, Section 5(b)(3), the rule and the endorsement provide for the insurer to audit the mileage of a covered auto at any time by checking the odometer or using some other method to determine whether coverage is in effect. A policy issued through the mile-based rating plan must comply with Manual Rule 6, Policy Term and Renewal Certificate, except coverage will terminate on the expiration date shown in the Declarations or upon a "covered auto" or autos exceeding specified mileage, whichever comes first. If the specified mileage is exceeded prior to the policy's expiration date, coverage for that auto terminates, but the policy will remain in effect until the expiration date of the policy. Coverage will continue until the expiration date in the Declarations for covered autos that have not exceeded their specified mileage. The insured may purchase additional mileage, during the current policy period, for an auto in exchange for additional premium. For any unused mileage that may exist on the termination date of the policy, the insurer, according to its rating plan, may give the insured a refund of unearned premium or a credit to be applied to the renewal policy.

New Manual Rule 82 provides that no other rating rule in the Manual shall apply to a mile-based rating plan. The following Manual rules are applicable to a mile-based rating plan: Rule 6 (Policy Term and Renewal Certificate), Rule 12 (Continuation of Coverage - Cancelled or Terminated Policy), Rule 13 (Cancellations), Rule 14 (Installments for Premium Payments), Rule 15 (Automobile Theft Prevention Authority Pass-Through Fee), Rule 71 (Definitions), Rule 72 (Personal Auto Policy and Coverage - Eligibility).

Insurance Code Article 5.01-4, which became effective September 1, 2001 requires the Commissioner to "adopt rules as necessary or appropriate to govern the use of a mile-based rating plan...." Article 5.01-4, which expires September 1, 2005, applies only to a policy that becomes effective on or after January 1, 2002.

Although the statute provides that an insurer's rates under the mile-based rating plan are exempt from Insurance Code Article 5.101, the Commissioner has the authority to approve such rates under Article 5.01-4, or to reject them if the filed rates are found to be excessive in comparison to rates charged for similar coverage under the current rating plan used by the insurer. Such rejection cannot be later than the 60th day after the rates are filed. Prior to any rejection, the insurer must be given notice and an opportunity for a hearing.

Although the provisions of Insurance Code Article 5.01-4 may be read to contemplate that a mile-based rating plan policy is to be written for a term that expires when the covered auto has been driven a specified number of miles, such a provision must be read in conjunction with Insurance Code Article 21.49-2B, concerning cancellation and nonrenewal. For example, if coverage under a mile-based rating plan policy were to expire after a specified number of miles driven, an insurer could not know in advance the number of miles to be driven, in order to provide the required 30 days notice of nonrenewal set forth in Article 21.49-2B, Section 5. Article 21.49-2B will apply to a policy issued through the mile-based rating plan, as the legislature did not choose to amend the existing statute with regard to policies written on

a mile-based rating plan. Conversely, if a policy's term were to be determined by the number of miles driven, the policy would never expire if the specified number of miles were never driven. It would be impossible to determine a fair rate for a policy that may never expire and that an insurer could not terminate, even for a driver with multiple at-fault accidents.

In this proceeding, the filed comments resulting in changes to Staff's proposals, as well as the Commissioner's responses are as follows:

One commenter indicated that proposed Endorsement 505 should be amended by moving "PART F - GENERAL PROVISIONS" to precede the Policy Period and Territory language. The commenter also suggested amending the schedule in this endorsement by adding a "VIN" column for vehicle identification numbers and by changing the caption of one column from "MILES" to "MILES PURCHASED." The Commissioner agrees with all of these comments and adopts an amended Endorsement 505 incorporating these changes. The amended endorsement was introduced at the hearing.

The amendments as adopted by the Commissioner of Insurance are shown in exhibits on file with the Chief Clerk under Ref. No. A-1201-21-I, which are incorporated by reference into Commissioner's Order No. 02-0062.

The Commissioner of Insurance has jurisdiction over this matter pursuant to Insurance Code Articles 5.01-4, 5.06, 5.10, 5.96, 5.98, and 5.101.

This notification is made pursuant to Insurance Code Article 5.96, which exempts it from the requirements of Government Code Chapter 2001 (Administrative Procedure Act).

Consistent with Insurance Code Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Commissioner's action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the Manual is amended as described herein, and the amendments are adopted to become effective on the 15th day after publication of the notification of the Commissioner's action in the *Texas Register* and optionally applicable to policies that become effective on and after such date.

TRD-200200339
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: January 23, 2002

REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by 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

Commission on State Emergency Communications

Title 1, Part 12

The Commission on State Emergency Communications proposes to review Title 1, Part 12, Chapter 253, §§253.1-253.31, concerning practice and procedure pursuant to the Government Code, §2001.039.

The Commission on State Emergency Communications will consider whether the reasons for adoption of these rules continue to exist. This concludes the review of Chapter 253.

Comments on the proposed review may be submitted in writing within 30 days after publication of the proposal in the *Texas Register* and reply comments may be submitted within 45 days of that publication date to Paul Mallett, Executive Director, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

TRD-200200269
Paul Mallett
Executive Director
Commission on State Emergency Communications
Filed: January 18, 2002

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Texas Department of Transportation

Title 43, Part 1

In accordance with Government Code, §2001.039, the Texas Department of Transportation (department) files this notice of intention to review Title 43 TAC, Part I, Chapter 5, Finance, and Chapter 6, State Infrastructure Bank.

The department will accept comments regarding whether the reasons for adopting these rules continue to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comment or questions regarding this rule review may be submitted in writing to James Bass, Director, Finance Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483, or at (512) 463-8835.

TRD-200200265
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: January 18, 2002

♦ ♦ ♦

Adopted Rule Review

Texas Natural Resource Conservation Commission

Title 30, Part 1

The Texas Natural Resource Conservation Commission (commission) adopts the rules review Texas Natural Resource Conservation Commission and the concurrent repeal of Chapter 216, Water Quality Performance Standards for Urban Development, Subchapter A, concerning Water Quality Protection Zones, §§216.1 - 216.11, which is published in the Adopted Rules section in this issue of the *Texas Register*. This review of Chapter 216 is adopted in accordance with Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist. The proposed notice of intention to review was published in the October 26, 2001 issue of the *Texas Register* (26 TexReg 8551).

CHAPTER SUMMARY

Chapter 216, Subchapter A sets out the procedures and criteria to be used by the commission: 1.) in the review and approval of water quality plans and amendments submitted for tracts of land, 500 acres or larger, designated as water quality protection zones; and 2.) in the designation of water quality protection zones for tracts of land that are less than 1,000 acres but not less than 500 acres in size. In accordance with Texas Water Code (TWC), §26.179, Subchapter A applies only to areas within the extraterritorial jurisdictions of cities with a population greater than 5,000 (raised, in 1999, to 10,000) and in which the municipality has enacted or proposed at least three ordinances to regulate water quality within their extraterritorial jurisdictions in the five years prior to June 17, 1995, or enacts or attempts to enforce three or more ordinances or amendments attempting to regulate water quality or control or abate water pollution in the area in any five-year period. This law does not apply to areas within the extraterritorial jurisdiction

of a city with a population greater than 900,000 that has extended an ordinance to prevent the pollution of an aquifer which is the sole or principal drinking water source for the municipality.

ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission determined that the reasons for the rules in Chapter 216, Subchapter A no longer exist because TWC, §26.179 on which the subchapter is based was invalidated by the Texas Supreme Court in the case of *FM Properties Operating Co. v. City of Austin*, 22 S.W. 3d 868 (Tex. 2000). In that case, the court held that the pre-1999 version of TWC, §26.179 is an unconstitutional delegation of legislative power to private landowners. The court did not address the 1999 amendments to TWC, §26.179 since they were enacted after the case began and apply prospectively. However, the Texas Attorney General in Opinion No. JC-0402 (August 2, 2001) concluded consistent with the Supreme Court's decision that the current version of the statute is unconstitutional. Accordingly, the repeal of Chapter 216, Subchapter A, is appropriate. The commission also terminated a rulemaking it authorized to be commenced in 1998 in response to petitions by the City of Austin to revise Chapter 216, Subchapter A.

PUBLIC COMMENT

The public comment period closed November 26, 2001, and no comments were received. A public hearing was not held.

TRD-200200250
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: January 17, 2002

TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is 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 Chapter 290--Preamble

Public Water System Violation	Current Rules	Proposed Rules
Violations of MCLs that pose an acute risk to human health	Provide a copy of violation notice to radio and TV stations within 72 hours, or by posting or hand delivery within 72 hours. Posting must continue as long as violation persists. Additional notices by newspaper within 14 days or posting or hand delivery if no newspaper is available; by mail within 45 days; and repeat notice every three months thereafter.	Revised to require notice within 24 hours; must use at a minimum electronic media, posting, hand deliver, or other method approved by the agency, plus any additional methods necessary to reach all persons served. Additional notice not required for same violation. The agency may require additional requirements on a case-by-case basis.
MCL, treatment technique, and variance or exemption schedule violations	Provide a copy of notice by newspaper within 14 days or by posting or hand delivery if no newspaper is available. Additional notice by mail within 45 days, and repeat notice every three months thereafter by mail or hand delivery.	Violation notice is required within 30 days unless the agency allows an extension of up to three months. Requires the Public water system to consult with the agency with 24 hours of learning of an exceedance of maximum turbidity limits. Initial notice does not require multiple methods of delivery unless needed to reach persons served. Repeat notice required every three months where violation persists, unless the agency determines less frequent repeat notice is warranted.
Monitoring and testing procedure violations, and operations under a variance or exemption	Notice required via newspaper within three months of the violation or the granting of variance or exemption, or by hand delivery or posting if no newspaper is available.	Notice required within one year unless the agency directs otherwise. Public water system must use mail or direct delivery, and other methods reasonably calculated to reach persons served.

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 record keeping 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 TNRCC regulations and is certified to be operating within acceptable parameters.

TYPE OF ASSEMBLY

Reduced Pressure Principle	Reduced Pressure Principle-Detector
Double Check Valve	Double Check-Detector
Pressure Vacuum Breaker	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?

Figure: 30 TAC §290.47(f)

	Reduced Pressure Principle Assembly			Pressure Vacuum Breaker	
	Double Check Valve Assembly			Air Inlet	Check Valve
	1st Check	2nd Check	Relief Valve		
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:_____ Calibration Date:_____

Remarks:_____

The above is certified to be true at the time of testing.

Firm Name _____ Certified Tester _____

Firm Address _____ Cert. Tester No. _____ Date_____

Firm Phone #_____

* TEST RECORDS MUST BE KEPT FOR AT LEAST THREE YEARS

** USE ONLY MANUFACTURER'S REPLACEMENT PARTS

Figure: 30 TAC §290.47(g)

Section 290.46(p)(2), Data on water system ownership and management, requires the owner of a public water system to annually provide the executive director with a list of all the water works operators and operating companies that the public water system employs. The following form may be used to facilitate compliance with this requirement. This notice should be submitted to the Texas Natural Resource Conservation Commission, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087 or provided to the executive director during on-site inspections.

Operator and/or Employment Notice Form

Name of Operator or Operating Company	For Operators		For Companies
	License No.	Class of License	Registration No.
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

Signature of Water System Owner or Responsible Official

Date

Name of Water System Owner or Responsible Official

Title of Owner or Responsible Official

Figure: 30 TAC §290.47(i)

The following table lists many common hazards. It is not an all-inclusive list of the hazards which may be found connected to public water systems.

Premises Isolation - Description of Premises	Assessment of Hazard	Required Assembly
Aircraft and missile plants	Health	RPBA or AG
Animal feedlots	Health	RPBA or AG
Automotive plants	Health	RPBA or AG
Breweries	Health	RPBA or AG
Canneries, packing houses and rendering plants	Health	RPBA or AG
Commercial car wash facilities	Health	RPBA or AG
Commercial laundries	Health	RPBA or AG
Cold storage facilities	Health	RPBA or AG
Connection to sewer pipe	Health	AG
Dairies	Health	RPBA or AG
Docks and dockside facilities	Health	RPBA or AG
Dye works	Health	RPBA or AG
Food and beverage processing plants	Health	RPBA or AG
Hospitals, morgues, mortuaries, medical clinics, dental clinics, autopsy facilities, sanitariums, and medical labs	Health	RPBA or AG
Metal manufacturing, cleaning, processing, and fabrication plants	Health	RPBA or AG
Microchip fabrication facilities	Health	RPBA or AG
Paper and paper products plants	Health	RPBA or AG
Petroleum processing or storage facilities	Health	RPBA or AG
Photo and film processing labs	Health	RPBA or AG
Plants using radioactive material	Health	RPBA or AG
Plating or chemical plants	Health	RPBA or AG
Pleasure-boat marinas	Health	RPBA or AG
Reclaimed water systems	Health	RPBA or AG

Figure: 30 TAC §290.47(i)

Premises Isolation - Description of Premises	Assessment of Hazard	Required Assembly
Restricted, classified or other closed facilities	Health	RPBA or AG
Rubber plants	Health	RPBA or AG
Sewage lift stations	Health	RPBA or AG
Sewage treatment plants	Health	RPBA or AG
Slaughter houses	Health	RPBA or AG
Steam plants	Health	RPBA or AG
Tall buildings or elevation differences where the highest outlet is 80 feet or more above the meter	Nonhealth	DCVA

Internal Protection - Description of Cross Connection	Assessment of Hazard	Required Assembly
Aspirators	Nonhealth†	AVB
Aspirator (medical)	Health	AVB or PVB
Autoclaves	Health	RPBA
Autopsy and mortuary equipment	Health	AVB or PVB
Bedpan washers	Health	AVB or PVB
Connection to industrial fluid systems	Health	RPBA
Connection to plating tanks	Health	RPBA
Connection to salt-water cooling systems	Health	RPBA
Connection to sewer pipe	Health	AG
Cooling towers with chemical additives	Health	AG
Cuspidors	Health	AVB or PVB
Degreasing equipment	Nonhealth†	DCVA
Domestic space-heating boiler	Nonhealth†	RPBA
Dye vats or machines	Health	RPBA
Fire-fighting system (toxic liquid foam concentrates)	Health	RPBA
Flexible shower heads	Nonhealth†	AVB or PVB
Heating equipment		
Commercial	Nonhealth†	RPBA
Domestic	Nonhealth†	DCVA

Figure: 30 TAC §290.47(i)

Internal Protection - Description of Cross Connection	Assessment of Hazard	Required Assembly
Hose bibbs	Nonhealth†	AVB
Irrigation systems		
with chemical additives	Health	RPBA
without chemical additives	Nonhealth†	DCVA, AVB,or PVB
Kitchen equipment - Commercial	Nonhealth†	AVB
Lab bench equipment	Health or Nonhealth†	AVB or PVB
Ornamental fountains	Health	AVB or PVB
Swimming pools		
Private	Nonhealth†	PVB or AG
Public	Nonhealth†	RPBA or AG
Sewage pump	Health	AG
Sewage ejectors	Health	AG
Shampoo basins	Nonhealth†	AVB
Specimen tanks	Health	AVB or PVB
Steam generators	Nonhealth†	RPBA
Steam tables	Nonhealth†	AVB
Sterilizers	Health	RPBA
Tank vats or other vessels containing toxic		
substances	Health	RPBA
Trap primers	Health	AG
Vending machines	Nonhealth†	RPBA or PVB
Watering troughs	Health	AG or PVB

NOTE: **AG** = air gap; **AVB** = atmospheric vacuum breaker; **DCVA** = double check valve backflow prevention assembly; **PVB** = pressure vacuum breaker; **RPBA** = reduced-pressure principle backflow prevention assembly.

*AVBs and PVBs may be used to isolate health hazards under certain conditions, that is, backsiphonage situations. Additional area of premises isolation may be required.

†Where a greater hazards exists (due to toxicity or other potential health impact) additional area protection with RPBAs is required.

Figure: 30 TAC §290.104(b)

Contaminant	MCL (mg/L)
Antimony	0.006
Arsenic	0.05
Asbestos	7 million fibers/liter (longer than 10Fm)
Barium	2.0
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Cyanide	0.2 (as free Cyanide)
Fluoride	4.0
Mercury	0.002
Nitrate	10 (as Nitrogen)
Nitrite	1 (as Nitrogen)
Nitrate & Nitrite (Total)	10 (as Nitrogen)
Selenium	0.05
Thallium	0.002

Figure: 30 TAC §290.106(b)

Contaminant	MCL (mg/L)
Antimony	0.006
Arsenic	0.05
Asbestos	7 million fibers/liter (longer than 10Fm)
Barium	2.0
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Cyanide	0.2 (as free Cyanide)
Fluoride	4.0
Mercury	0.002
Nitrate	10 (as Nitrogen)
Nitrite	1 (as Nitrogen)
Nitrate & Nitrite (Total)	10 (as Nitrogen)
Selenium	0.05
Thallium	0.002

Figure: 30 TAC §290.117(h)(1)(D)

Table No. 2

SYSTEM SIZE (# of people served)	INITIAL WQP DISTRIBUTION SITES	REDUCED WQP DISTRIBUTION SITES	NO. OF SITES FOR WQP MONITORING
> 100,000	25	10	25
10,001 - 100,000	10	7	10
3,301 - 10,000	3	3	3
501 - 3,300	2	2	2
101 - 500	1	1	1
< 101	1	1	1

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, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas State Affordable Housing Corporation

Notice of Public Hearing

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on February 26, 2002 at Noon, at the Thousand Oaks El Sendero Library, 4618 Thousand Oaks, San Antonio, Texas, 78233, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in an aggregate principal amount not to exceed $14,000,000, the proceeds of which will be loaned to San Antonio Low Income Housing LLC, (or a related person or affiliate thereof) (the "Borrower"), a Texas limited liability company, whose sole member is a Texas non-profit corporation exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code, to finance the acquisition and rehabilitation of a multifamily housing property (the "Property") located in the city of San Antonio, Texas. The public hearing, which is the subject of this notice, will concern the Worthing Oaks Apartments, containing 346 units, located in Bexar County, at 3270 Nacogdoches, San Antonio, Texas. The Property will be owned by Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Property and the issuance of the Bonds. Questions or requests for additional information may be directed to Daniel C. Owen at the Texas State Affordable Housing Corporation, 1715 West 35th Street, Austin, Texas 78703; 1-888-638-3555 ext. 404.

Persons who intend to appear at the hearing and express their views are invited to contact Daniel C. Owen in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Daniel C. Owen prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Glenda David, ADA Responsible Employee, at 1-888-638-3555, ext. 417 through Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals who require child care to be provided at this meeting should contact Glenda David at 1-888-638-3555, ext. 417, at least five days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to Daniel C. Owen at dowen@tsahc.org.

TRD-200200344
Barbara Jantz
Vice President
Texas State Affordable Housing Corporation
Filed: January 23, 2002

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Ark-Tex Council of Governments

Request for Vendor Proposal for Procurement of Computer Equipment and Peripherals

The Ark-Tex Council of Governments (ATCOG) is soliciting proposals for the procurement of computer equipment, and printers.

The project is seeking eight (8) Pentium IV 1.6GHz or better desktop computers, eight (8) Hewlett Packard 940C DeskJet printers with USB cables, and twelve (12) months of dial-up unlimited Internet access for each computer. The proposal solicited will be for equipment, delivery, and three (3) years warranty service on all parts and labor, and three (3) years on-site service and lifetime technical support.

Potential respondents may obtain a copy of the request for proposal by contacting Bill Moss or Brenda Stone, Ark-Tex Council of Governments, P.O. Box 5307, Texarkana, Texas 75505-5307, or call (903) 832-8636. The deadline for proposal submission is Thursday, February 14, 2002, at 5:00 p.m.

TRD-200200331
L. D. Williamson
Executive Director
Ark-Tex Council of Governments
Filed: January 23, 2002

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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. 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 for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were received for the following projects(s) during the period of January 11, 2002, through January 17, 2002. The public comment period for these projects will close at 5:00 p.m. on February 22, 2002.

FEDERAL AGENCY ACTIONS:

Applicant: Panaco Production Company; Location: The project is located in State Tract 88 in Galveston Bay. Approximate UTM Coordinates: Zone: 15; Easting: 321404; Northing: 3278941. The proposed well Number 14 would be located at coordinates X=3,319,812; Y=676,384. The proposed platform would be located 200 feet from the well, and the pipeline would terminate at coordinates X=3,322,452; Y=675,918, in Chambers County, Texas. The site can be located on the U.S.G.S. quadrangle map entitled: Umbrella Point. Texas. CCC Project No.: 02-0014-F1; Description of Proposed Action: The applicant proposes to drill State Tract 88 Well Number 14. If it becomes necessary to stabilize the drilling barge, the applicant requests authorization to install a 250- by 100-foot shell pad. If the well is successful, a well protection structure, a 40- by 30- foot production platform, and two 6-inch pipelines, approximately 2,680-feet long will be installed. The pipelines will be installed by jetting to a minimum depth of 3-feet below the bay bottom. Approximately 1,389 cubic yards of shell will be required for the shell pad and jetting pipelines would temporarily disturb approximately 893 cubic yards of water bottom. Type of Application: U.S.A.C.E. permit application #09219(16)/022 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403). NOTE: The CMP consistency review for this project may be conducted by the Railroad Commission of Texas as part of its certification under §401 of the Clean Water Act.

Applicant: BNP Petroleum Corporation; Location: The project is located in State Tracts 145 and 146 in the Laguna Madre off the Pure Oil Channel, approximately 5 miles south of Corpus Christi, in Kleberg County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Pita Island, Texas. Approximate UTM Coordinates: Zone 14; Easting: 667000; Northing: 3046000. CCC Project No.: 02-0015-F1; Description of Proposed Action: The applicant proposes to directionally drill a well from a surface location in State Tract 146 to a bottom location in State Tract 145. The applicant will need 4 to 7 barges during drilling operations for storage and removal of drill cuttings, work decks, material storage, and other general purposes. To provide equipment access to the drill site, the applicant proposes to dredge the existing Pure Oil Channel (60 feet wide by 7,000 feet long) and the trapezoid-shaped work basin (160 feet wide by 345 feet long) at its terminus to -5.0 feet MLT. Approximately 30,000 cubic yards of material will be mechanically excavated from the channel and basin. Silt screen fences will be placed along the north and south edges of the channel as well as around the basin area during dredging operations. The fences will be 6 feet tall and will extend from the bay bottom to the water surface. They will be held in place by 2-inch wooden stakes placed 10 feet apart and placed on the channel-ward side at the edge of seagrass areas in 500-foot-long sections. The sections will be moved along the channel as the dredging operation progresses. Excavated material will be placed into barges with 24-inch fenders and lined with plastic filter cloth and filled to no more than half of their total capacity. Four 3-pile mooring clusters will be placed at the entrance of Pure Oil Channel to provide temporary docking for standby tugboats and barges. Loaded material will be transported via the Gulf Intracoastal Waterway to the Texas Crude dock in Flour Bluff and placed into leveed areas at the dock facility for primary dewatering. The leveed areas will have at least a 500-foot-buffer area separating them from any residential or heavily occupied commercial area. Effluent discharge will be controlled with the use of a hay bale perimeter. After initial drying is completed, excavated material will be transferred by truck to an upland location for secondary drying and disposal. The location for secondary dewatering and disposal of the excavated material will be on the Clower property off Laguna Shore Road. The secondary dewatering facility will have a leveed containment area along with an effluent control system and a 500-foot buffer area from houses to protect against odor nuisance from the excavated material. Should commercial production occur, a 40- by 40-foot overwater production platform will be constructed at the well site and two 3-pile mooring clusters, 50 feet apart, will be placed on the north side of the Pure Oil Channel west of the platform. Either a 3- or 4-inch diameter pipeline, approximately 5,500 feet long, will be constructed along the base of the toe of the north side slope of the Pure Oil Channel to convey natural gas from the platform to existing gas transmission lines on the King Ranch. Produced water and condensate will be transferred from the platform via pipeline to a liquid storage facility in an existing channel that intersects the Pure Oil Channel approximately 1 mile southeast of the proposed drill site. The pipeline will be a 4-inch diameter line, approximately 5,250 feet long, placed along the north side of the channel at the base of the toe of the side slope. Transferred liquid will be held in storage tanks on a WASKEY-type concrete production deck and transported from the facility using barges and tugs as needed. Seagrasses will be monitored by pre-and post-construction surveys, as described in the plans. If damage to seagrasses occurs, the applicant will provide mitigation at a 3:1 ratio. If required, mitigation will commence within 60 days of approval of a suitable site and completed within 180 days of initiation of the proposed project. The applicant proposes to begin operations in Spring 2002, if authorized. Type of Application: U.S.A.C.E. permit application #22518 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. §§125-1387). NOTE: The CMP consistency review for this project may be conducted by the Railroad Commission of Texas as part of its certification under §401 of the Clean Water Act.

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 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 for the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at 512/475-0680.

TRD-200200336
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: January 23, 2002

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, and Sections 403.011 and 403.020, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #137a) from qualified, independent firms to provide consulting services to Comptroller. The successful respondent will assist Comptroller in conducting a management and performance review of the North Forest Independent School District (North Forest ISD). Comptroller reserves the right, in its sole discretion, to award one or more contracts for a review of the North Forest ISD included in this RFP. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about March 15, 2002.

Contact: Parties interested in submitting a proposal should contact Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, February 1, 2002, between 2 p.m. and 5 p.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also made the complete RFP available electronically on the Texas Marketplace at: http://esbd.tbpc.state.tx.us after 2 p.m. (CZT) on Friday, February 1, 2002.

Mandatory Letters of Intent and Questions: All Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 475-0973, not later than 2:00 p.m. (CZT), on Friday, February 15, 2002. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace no later than February 19, 2002, or as soon thereafter as practical. Mandatory Letters of Intent received after the 2:00 p.m., February 15th deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Mandatory Letters of Intent to propose.

Closing Date: Proposals must be received in Assistant General Counsel's Office at the address specified above (ROOM G-24) no later than 2 p.m. (CZT), on Tuesday, February 26, 2002. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit mandatory letters of intent by the February 15, 2002, deadline. Respondents shall be solely responsible for confirming the timely receipt of proposals.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision regarding the award of a contract or contracts. Comptroller reserves the right to award one or more contracts under this RFP.

Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - February 1, 2002, 2 p.m. CZT; All Mandatory Letters of Intent and Questions Due - February 15, 2002, 2 p.m. CZT; Official Responses to Questions Posted - February 19, 2002, or as soon thereafter as practical; Proposals Due - February 26, 2002, 2 p.m. CZT; Contract Execution - March 14, 2002, or as soon thereafter as practical; Commencement of Project Activities - March 15, 2002.

TRD-200200318

William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: January 23, 2002

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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 Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 01/28/02 - 02/03/02 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.09 for the period of 01/28/02 - 02/03/02 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-200200333
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 23, 2002

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Texas Education Agency

Notice of Correction: Request for Applications (RFA) Concerning State Engineering and Science Recruitment (SENSR) Fund, 2001-2002

The Texas Education Agency (TEA) published Request for Proposals (RFP) #701-02-013 concerning the State Engineering and Science Recruitment (SENSR) Fund, 2001-2002, in the January 4, 2002, issue of the *Texas Register* (27 TexReg 312) and a correction to this notice was published in the January 18, 2002, issue of the *Texas Register* (27 TexReg 499).

The TEA is amending the Dates of Project paragraph in the Texas Register Notice to read, "The State Engineering and Science Recruitment (SENSR) Fund project will be implemented during the 2001-2002 school year. Applicants should plan for a starting date of no earlier than February 22, 2002, and an ending date of August 31, 2002. Project funding in the second year will be based on satisfactory progress of the first-year objectives and activities and on general budget approval by the State Board of Education, the commissioner of education, and the state legislature." This correction reflects a change from the previous implementation dates of the 2001-2002 and 2002-2003 school years and the previous project ending date of August 31, 2003.

Further Information. For clarifying information about the RFA, contact Walter Tillman, Division of Continuing Education and School Improvement, TEA, (512) 475-0228.

TRD-200200337
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Filed: January 23, 2002

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State Employee Charitable Campaign

Public Notice

The State Policy Committee of the State Employee Charitable Campaign is seeking applications from statewide federations and funds meeting charity eligibility requirements found in Texas Government Code Annotated, Section 659.131 et seq. (Vernon 1994 & Supp. 1998). Applications are available from, and questions may be referred to, the current state campaign manager, 512/478-6601. Completed applications must be received in the office at 3724 Executive Center Drive, Suite 210, Austin, Texas, 78731, no later than 3:00 p.m. on Friday, February 22, 2002.

TRD-200200338
Janelle Williams
Vice President, Development
State Employee Charitable Campaign
Filed: January 23, 2002

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Office of the Governor

Request for Grant Applications (Discretionary Projects) for Juvenile Accountability Incentive Block Grant (JAIBG) Fund Programs

The Criminal Justice Division of the Governor's Office is soliciting applications for projects to develop programs to assist in enforcing underage drinking laws; thereby, addressing the following JAIBG Purpose Areas: (1) Purpose Area # 2 - Developing and administering accountability-based sanctions for juvenile offenders. (2) Purpose Area # 11 - Establishing and maintaining accountability-based programs that work with juvenile offenders who are referred by law enforcement agencies, or that are designed, in cooperation with law enforcement officials, to protect students and school personnel from drug, gang, and youth violence.

Purpose: Projects must use an interdisciplinary approach to review research on the problem of underage drinking and develop appropriate initiatives for their community, including strict law enforcement of liquor laws specifically for youth under the age of 21, and public education/awareness. For example, within a given community grant funds could be used to create or expand a task force of state and local enforcement and prosecution agencies to target establishments suspected of a pattern of violations of state laws. Other grant activities could include sharing of records among agencies; informing both establishments and minors of the consequences of illegal sales and purchases; and prosecuting those who illegally sell and purchase alcoholic beverages. The ultimate goal is to create a community climate of zero tolerance toward underage drinking.

Available Funding: Available funding is authorized under the Juvenile Accountability Incentive Block Grant funds made available by the 25% retained by the state from the full allocation; thereby, falling under the state's Juvenile Crime Enforcement Plan. Approximately $250,000 will be made available for local projects. Applicants must be able to provide a 10% cash match of total project costs.

Standards: Grantees must comply with the applicable grant management standards adopted under the Texas Administrative Code Section 3.19, which are hereby adopted by reference unless otherwise noted.

Prohibitions: None-There are no further requirements to have a Juvenile Crime Enforcement Plan, a Juvenile Crime Enforcement Coalition, nor specific JAIBG purpose areas to be addressed other than purpose areas # 2 and # 11. The Governor's Juvenile Justice Advisory Board serves as the Juvenile Crime Enforcement Coalition, which creates a plan that addresses the purposes areas named above.

Eligible Applicants: Cities, counties, local law enforcement agencies, state agencies, colleges/universities, and school districts.

Project Period: Projects to begin no later than May 1, 2002.

Application Process: Eligible applicants can access the Juvenile Accountability Incentive Block Grant for Discretionary Projects application kit through the Office of the Governor's web site address located at http://www.governor.state.tx.us.

Preferences: Preference will be given to those applicants that can demonstrate need utilizing verifiable data; establishing an overall goal; implementation of research based or promising approaches/activities; establish obtainable outcome measures with an evaluation plan; and can demonstrate a collaborative effort towards enhancing underage drinking laws. Also, weighted value will be given to those projects that target younger children and high school youth.

Closing Date for Receipt of Applications: All original applications, plus an additional copy, must be submitted directly to the Governor's Criminal Justice Division postmarked on or before March 31, 2002.

Selection Process: Completed applications will be reviewed for eligibility and cost effectiveness CJD and by a peer group consisting of alcohol and substance abuse enforcement, prevention, and treatment agencies and organizations. The Executive Director of CJD will make all final funding decisions.

Contact Person: If additional information is needed contact Louri O'Leary at (512) 463-1919.

TRD-200200330
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: January 23, 2002

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Request for Grant Applications for Juvenile Justice and Delinquency Prevention Act (JJDP), Part E Challenge Programs

The Criminal Justice Division of the Governor's Office is soliciting applications for projects to develop programs to address the need for increasing aftercare services for juveniles involved in the justice system and developing and adopting policies to prohibit gender bias in placement and treatment and establishing programs to ensure that female youth have full access to social services under the federal fiscal year 2001 for JJDP-Challenge Program.

Purpose: The purpose of the program is to provide funds to develop programs to address the need for increasing aftercare services for juveniles involved in the justice system and developing and adopting policies to prohibit gender bias in placement and treatment and establishing programs to ensure that female youth have full access to social services; thereby, addressing the following Challenge Activities: (1) Activity I - Increasing aftercare services for juveniles involved in the justice system by establishing programs and developing and adopting policies to provide comprehensive health, mental health, education, and vocational services and services that preserve and strengthen the families of such juveniles. (2) Activity E - Developing and adopting policies to prohibit gender bias in placement and treatment and establishing programs to ensure that female youth have full access to the full range of health and mental health services, treatment for physical or sexual assault and abuse, self-defense, instruction, education in parenting, education in

general, and other training and vocational services. Projects must use an interdisciplinary approach to review research on the need for after-care for juvenile offenders and gender-specific programming.

Available Funding: Available funding is authorized under the Juvenile Justice and Delinquency Prevention and Grant Funds made available to states to address at least one of the ten Challenge Activities specified in the Act. Approximately $650,000 will be made available for local or statewide projects. CJD will use 60% of the available funds for Activity I and 40% of available funds for Activity E as noted above. Applicants may select to address at least one activity or combine both activities while giving emphasis on Activity I.

Standards: Grantees must comply with the applicable grant management standards adopted under the Texas Administrative Code Section 3.19, which are hereby adopted by reference unless otherwise noted.

Prohibitions: None.

Eligible Applicants: State agencies, nonprofit organizations, local units of government, faith-based organizations, crime-control prevention districts, Native American tribal governments, councils of governments, universities, independent school districts, and juvenile boards.

Project Period: Projects to begin no later than May 1, 2002.

Application Process: Eligible applicants can access the Youth-Related, Juvenile Justice, and Criminal Justice Projects application kit for State Fiscal Year 2003 through the Office of the Governor's web site address located at http://www.governor.state.tx.us.

Preferences: Preference will be given to those applicants that can demonstrate need utilizing verifiable data; establishing an overall goal; implementation of research based or promising approaches/activities; establish obtainable outcome measures with an evaluation plan; and can demonstrate a collaborative effort addressing the challenge activities. Priority will be given to those applicants that encompass both activities while giving greater emphasis to Activity I.

Closing Date for Receipt of Applications: All original applications, plus an additional copy, must be submitted directly to the Governor's Criminal Justice Division postmarked on or before March 31, 2002.

Selection Process: Completed applications will be reviewed for eligibility and cost effectiveness CJD and by a peer review group selected by the Executive Director. The Executive Director of CJD will make all final funding decisions.

Contact Person: If additional information is needed contact Louri O'Leary at (512) 463-1919.

TRD-200200329
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: January 23, 2002

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Texas Department of Health

Licensing Actions for Radioactive Materials

The Texas Department of Health 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 Texas" 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
Denton	Antich Medical Imaging Inc	L05435	Denton	00	12/31/01
Lubbock	Radiation Oncology of the South Plains PA	L05484	Lubbock	00	1/4/02
Odessa	Environmental Lab of Texas Inc	L05499	Odessa	00	1/10/02
San Antonio	Methodist Healthcare System of San Antonio LTD	L05440	San Antonio	00	10/17/01

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Arlington	Columbia Medical Center of Arlington	L02228	Arlington	54	1/10/02
Austin	Columbia/St Davids Healthcare System LP	L04910	Austin	25	12/21/01
Austin	Heart Hospital IV LP	L05215	Austin	07	12/31/01
Austin	Pet Imaging LTD	L05365	Austin	06	1/11/02
Austin	The University of Texas at Austin	L00485	Austin	59	1/9/02
Austin	Austin Heart PA	L04623	Austin	16	1/14/02
Baytown	Chevron Phillips Chemical Company LP	L00962	Baytown	32	1/9/02
Beaumont	ExxonMobil Chemical Company	L02316	Beaumont	27	1/10/02
Beaumont	ExxonMobil Chemical Company	L02316	Beaumont	28	1/14/02
Borger	Hutchinson County Hospital District	L04369	Borger	08	1/3/02
Buda	Industrial Asphalt Inc	L05453	Buda	01	1/11/02
Canyon	West Texas State University	L00583	Canyon	26	1/14/02
Carrollton	Philips Lighting Company	L03823	Carrollton	12	1/9/02
College Station	Texas A&M University	L00448	College Station	109	1/3/02
Corpus Christi	Clinical Nuclear Services Inc	L05368	Corpus Christi	04	12/31/01
Corpus Christi	Clinical Nuclear Services Inc	L05368	Corpus Christi	05	1/14/02
Cuero	Cuero Community Hospital	L02448	Cuero	20	12/3/01
Dallas	Texas Oncology PA	L04878	Dallas	20	1/4/02
Dallas	Columbia Hospital at Medical City Dallas	L01976	Dallas	135	1/9/02
DeSoto	Vishu Lammata MD PA	L05311	DeSoto	04	1/14/02
Dimmitt	Castro County Hospital District	L05043	Dimmitt	02	1/4/02
Ft Worth	Harris Methodist Ft Worth	L01837	Ft Worth	80	1/4/02
Ft Worth	Computalog Wireline Products Inc	L00747	Ft Worth	63	1/9/02
Ft Worth	TIDC Inc	L05247	Ft Worth	08	1/15/02
Georgetown	Southwestern University at Georgetown	L00372	Georgetown	18	1/4/02
Harlingen	Heart Clinic PA	L04514	Harlingen	13	1/11/02
Houston	Memorial Hermann Hospital System	L00439	Houston	76	1/3/02
Houston	Houston Diagnostic and Treatment Center	L05423	Houston	01	1/3/02
Houston	Sisters of Charity of the Incarnate Word	L02279	Houston	47	1/8/02
Houston	Memorial Hermann Hospital System Inc	L00650	Houston	58	1/10/02
Houston	CHCA East Houston LP	L03306	Houston	23	1/15/02
Houston	Memorial Hermann Hospital	L00439	Houston	77	1/14/02

(CONT) AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Houston	H & G Inspection Company Inc	L02181	Houston	143	1/14/02
Kingwood	KPH Consolidation Inc	L04482	Kingwood	18	1/9/02
La Grange	Fayette Memorial Hospital	L03572	La Grange	12	1/4/02
LaPorte	Sunoco Inc (R&M)	L02778	LaPorte	14	1/9/02
Lewisville	Columbia Medical Center of Lewisville	L02739	Lewisville	32	1/3/02
Longview	Longview Regional Hospital Inc	L02882	Longview	31	12/31/01
Lubbock	M Fawwaz Shoukfeh MD PA TX Cardiac CTR	L05276	Lubbock	07	1/10/02
Paris	Texas Oncology PA	L05489	Paris	01	1/8/02
Pasadena	Sunoco Inc (R&M)	L03421	Pasadena	11	1/11/02
San Angelo	Shannon Clinic	L04216	San Angelo	20	1/8/02
San Angelo	Hirschfeld Steel Company	L04361	San Angelo	08	1/14/02
San Antonio	South Texas Radiology Imaging Centers	L03518	San Antonio	32	12/31/01
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	115	12/31/01
San Antonio	Baptist Imaging Center	L04506	San Antonio	31	1/4/02
San Antonio	SW Diagnostic Center PA	L03763	San Antonio	07	1/9/02
San Antonio	Southwest General Hospital LLP	L02689	San Antonio	22	1/11/02
San Antonio	NIX Medical Center	L03531	San Antonio	20	1/11/02
San Antonio	Methodist Healthcare System of San Antonio	L02232	San Antonio	44	1/15/02
Temple	Specialty Pharmacy Services Inc	L04883	Temple	14	1/9/02
Temple	Wilsonart International	L02857	Temple	17	1/15/02
Texarkana	Red River Pharmacy Services	L05077	Texarkana	08	1/10/02
Texarkana	Red River Pharmacy Services	L05077	Texarkana	09	1/14/02
Texas City	Amoco Chemicals Corporation	L00354	Texas City	29	1/4/02
Throughout TX	ExxonMobil Chemical Company	L01135	Baytown	61	1/4/02
Throughout TX	Phillips Petroleum Company	L02480	Borger	35	1/14/02
Throughout TX	Fugro South Inc	L04322	Channelview	52	1/7/02
Throughout TX	Trinity Engineering Testing	L01351	Corpus Christi	39	1/10/02
Throughout TX	Catch A Fault	L02725	Denton	17	1/9/02
Throughout TX	Stork Southwestern Laboratories Inc	L00299	Houston	113	1/7/02
Throughout TX	Shaw Fabricators	L05169	Houston	05	1/10/02
Throughout TX	High Tech Testing Service Inc	L05021	Longview	37	1/15/02
Throughout TX	Peachtree Construction Company	L05401	N Richland Hills	01	1/4/02
Throughout TX	Dean Word Company LTD	L04588	New Braunfels	05	1/11/02
Throughout TX	Allen Inspection Service	L03003	Odessa	07	1/9/02
Throughout TX	Mundy Maintenance & Service LLC	L04360	Pampa	21	1/14/02
Throughout TX	Conam Inspection	L05010	Pasadena	43	1/7/02
Throughout TX	Technical Welding Laboratory Inc	L02187	Pasadena	144	1/11/02
Throughout TX	Matrix Metals LLC DBA Richmond Foundry	L00312	Richmond	39	1/11/02
Throughout TX	Pipe Reclamation Inc	L04684	Robstown	07	12/31/01
Throughout TX	Applied Industrial Materials Corporation	L04051	Texas City	07	12/31/01
Tyler	East Texas Medical Center	L00977	Tyler	88	1/10/02
Tyler	Tyler Pet Imaging Institute LP	L05476	Tyler	01	1/11/02
Victoria	Radiation Oncology Association of S Texas LLP	L04327	Victoria	07	1/2/02
Wichita Falls	Howmet Corporation	L05106	Wichita Falls	05	1/11/02
Wichita Falls	Howmet Corporation	L05106	Wichita Falls	06	1/14/02

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Victoria	Citizens Medical Center	L00283	Victoria	65	12/31/01
Throughout TX	Lone Star Testing Laboratories	L04013	Houston	10	1/11/02
Harlingen	Valley Eye Center PA	L02639	Harlingen	09	1/15/02

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Coppell	Healthsouth DBA Healthsouth Diagnostic Coppell	L05354	Coppell	01	1/7/02
Dallas	Quest Diagnostics Clinical Laboratories Inc	L00900	Dallas	24	1/7/02
Denton	International Isotopes Inc	L05159	Denton	26	12/31/01
Ft Worth	Trans America International Inc	L04634	Ft Worth	24	1/7/02
Webster	HIH Laboratory Incorporated	L04638	Webster	05	1/9/02

In issuing new licenses, amending and renewing existing licenses, or approving exemptions to Title 25 Texas Administrative Code (TAC) Chapter 289, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with 25 TAC Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the new, amended, or renewed license (s) or the issuance of the exemption (s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or 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 licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200200317
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: January 23, 2002

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Texas Health and Human Services Commission

Notice of Rate Hearing

A rate hearing on Reimbursement for Institutions for Mental Diseases (IMD) will be held on February 11, 2002 at 10:30 a.m. in Room 2-328 of the Texas Department of Mental Health and Mental Retardation main Central Office Building located at 909 West 45th Street, Austin, Texas 78751.

Written comments may be submitted to Health and Human Services Commission Medicaid Rate Setting Section, c/o Medicaid Administration, Texas Department of Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, or faxed to (512) 206-5693. Hand deliveries will be accepted at 909 West 45th Street, Austin, Texas 78751. Comments must be received by noon on February 11, 2002. Interested parties may obtain a copy of the reimbursement-briefing package by calling the Reimbursement and Analysis Section at (512) 206-5753.

Persons requiring Americans with Disabilities Act (ADA) accommodation should contact Tom Wooldridge by calling (512) 206-5753, at least 72 hours prior to the hearing. Persons requiring an interpreter for the deaf or hearing impaired should contact Tom Woolridge through the Texas Relay Operator by calling 1-800-735-2988, at least 72 hours prior to the hearing.

Reimbursement for Institutions for Mental Diseases (IMD)

The commission proposes that the following reimbursement amount will be effective September 1, 2001 through August 31, 2002: $406.34 per day.

The proposed rate was determined to be in compliance with the rate setting methodology codified at 1 T.A.C. ch. 355, subch. F. 355.761.

TRD-200200335
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: January 23, 2002

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Request for Proposals

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces this Request for Proposals (RFP) for provision of consulting services to

HHSC. This RFP is issued to invite potential contractors to submit proposals to perform independent cost savings evaluations of the Texas Medicaid Vendor Drug Program. HHSC is interested in obtaining consulting services and analysis, along with a data management software system, that will assist with the reduction of Program costs. Respondents must be Qualified Information System Vendors certified by the Texas Building and Procurement Commission.

The RFP will be available on the Texas Marketplace: http://www.marketplace.state.tx.us on or about January 22, 2002. The RFP also will be available on the HHSC website: http://www.hhsc.state.tx.us on or about January 22, 2002.

The successful respondent will be expected to begin performance of the Contract on or about March 1, 2002.

Parties interested in submitting a proposal should contact Melissa Rowan, Health and Human Services Commission, 4900 North Lamar, 4th Floor, Austin, Texas, 78751, telephone number: (512) 424-6556, regarding the request. HHSC will provide further information only to those specifically requesting it. All questions must be sent in writing to Melissa Rowan.

To be considered, all proposals must be received at the foregoing address in the issuing office on or before 5:00 p.m. Central Time on February 22, 2002. Proposals received after this time and date will not be considered.

Evaluation and Award Procedure: All proposals will be subject to evaluation based on the evaluation criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC shall pay for no costs incurred by any entity in responding to this RFP.

The anticipated schedule of events is as follows: Issuance of RFP - January 22, 2002; Deadline for Proposals - 5:00 p.m., February 22, 2002; Contract Execution - February 28, 2002, or as soon thereafter as practical; Commencement of Project Activities - March 1, 2002.

TRD-200200316
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: January 22, 2002

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Texas Department of Housing and Community Affairs

Multifamily Housing Revenue Bonds (Mountain Creek Apartments) Series 2002

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department") at the Duncanville Public Library Community Center, 201 James Collins, Duncanville, Texas 75116 at 6 p.m. on February 19, 2002 with respect to an issue of tax-exempt multifamily residential rental project revenue bonds in the aggregate principal amount not to exceed $15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Texas Department of Housing and Community Affairs (the "Issuer"). The proceeds of the Bonds will be loaned to Mountain Creek Apartments L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing project (the "Project") described as follows: 280-unit multifamily residential rental development to be constructed on approximately 26.3496 acres of land located on the northwest corner of the intersection of Camp Wisdom Road and Clark Road, a part of Block 8680 and Block 8721 of Camp Wisdom Road in Dallas, Dallas County, Texas 75236. The project will be initially owned and operated by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or requests for additional information may be directed to Robert Onion at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-3872 and/or ronion@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robert Onion in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robert Onion prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at 1 (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200200340
Ruth Cedillo
Acting Executive Director
Texas Department of Housing and Community Affairs
Filed: January 23, 2002

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Request for Proposals from Asset Managers to Provide Asset Oversight Services

SUMMARY. The Texas Department of Housing and Community Affairs (the "Department" or "TDHCA") hereby requests proposals from qualified asset management firms to provide services and reports relating to various multifamily rental properties in Texas financed through TDHCA. TDHCA intends to select one or more firms who would serve in the capacity of an Asset Oversight Agent who would be assigned to oversee and report on specific properties within the Department's portfolio. Firms wishing to respond may request a copy of the Request for Proposals from the Department. The asset oversight function in general entails reviewing the physical condition and management practices of multifamily properties, and providing annual reports of the findings and recommendations to TDHCA and the property owners.

DEADLINE FOR SUBMISSION The deadline for submission in response to the Request for Proposals is 5:00 p.m. Central Standard Time, March 1, 2002. No proposal received the after deadline will be considered.

Firms interested in submitting a proposal should contact Stephen Apple, Multifamily Finance Division of TDHCA, at (512) 475-3357, 507 Sabine, Suite 800, P. O. Box 13941, Austin, Texas 78711-3941 for a complete copy of the RFP, or send their request via email to: sapple@tdhca.state.tx.us. Communication with any member of the board of directors concerning any matter related to this request for proposals is grounds for immediate disqualification.

TRD-200200228
Ruth Cedillo
Acting Executive Director
Texas Department of Housing and Community Affairs
Filed: January 17, 2002

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Houston-Galveston Area Council

Request for Proposal

AGENCY:

The Houston-Galveston Area Council (H-GAC)

CONTACT:

ILyas H.Choudry

Senior Transportation Engineer

3555 Timmons Lane, Suite 500

Houston, Texas, 77027

(713) 993-4564

DESCRIPTION:

The Houston-Galveston Area Council (H-GAC) as the Metropolitan Planning Organization (MPO) is requesting written proposals to perform data collection for its annual TCM monitoring activity and its Transportation Safety and Hazardous Elimination Program Pilot Study. The Request for Proposal (RFP) can be reviewed on H-GAC's web page at http://www.hgac.cog.tx.us/transportation/. Also, a copy of the RFP can be obtained at the H-GAC offices at 3555 Timmons Lane, Suite 500, Houston, Texas, 77027, or by contacting Mr. ILyas Choudry at (713) 993-4564.

A pre-proposal meeting is scheduled for Thursday, February 07, 2002 at 2:00 p.m. at H-GAC's Conference Room "C" (Second Floor of 3555 Timmons Lane, Houston, Texas 77027). Questions from consultants concerning any aspect of the RFP will be addressed during this meeting. Please RSVP to Mr. ILyas Choudry at (713) 993-4564, if you plan to attend. The deadline for the submission of this proposal is Wednesday, February 20, 2002 no later than 4:00PM CST.

TRD-200200301
Alan Clark
MPO Director
Houston-Galveston Area Council
Filed: January 22, 2002

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Texas Department of Insurance

Amended Notice of Public Hearing

Notice of hearing for the docket 2514 was previously published in the January 25, 2002 issue of the *Texas Register* (27 TexReg 646). The following is a corrected version of the notice of hearing.

The Commissioner of Insurance will hold a public hearing under Docket No. 2514 on February 12, 2002 at 9:30 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, in Austin, Texas, to consider a petition by the Texas Windstorm Insurance Association (TWIA) requesting approval of (i) reinsurers to provide per risk reinsurance coverage to TWIA policyholders and (ii) the payment to the TWIA that may be included in the total premium charged by the TWIA for per risk reinsured excess coverage as authorized in Article 21.49, §8E of the Insurance Code. Section 8E of Article 21.49 of the Insurance Code authorizes the TWIA to issue a policy of windstorm and hail insurance that includes coverage for an amount in excess of the maximum limit of liability approved by the Commissioner pursuant to Article 21.49 §8D of the Insurance Code. The proposed reinsurance program will enable TWIA policyholders who need limits of liability in excess of the maximum limits of liability currently available through the TWIA to purchase additional windstorm and hail insurance coverage from the TWIA up to the amount of reinsured excess coverage available to the individual risk under the reinsured excess coverage program.

Under Article 21.49, §8E(a), the TWIA must obtain such reinsured excess coverage from a reinsurer approved by the Commissioner. Article 21.49, §8E(b), provides that the premium charged by TWIA for the excess coverage shall be equal to the amount of the reinsurance premium charged to the TWIA by the reinsurer, plus any payment to the TWIA that is approved by the Commissioner.

The current reinsurance program, which was approved by the Commissioner in Commissioner's Order No 01-0054 (January 22, 2001), expires on December 31, 2001. The new program is proposed to be effective on January 1, 2002.

The hearing is held pursuant to the Insurance Code, Article 21.49, §5A which provides that the Commissioner, after notice and hearing, may issue any orders considered necessary to carry out the purposes of Article 21.49 (Texas Windstorm Insurance Association Act), including, but not limited to, maximum rates, competitive rates, and policy forms. Any person may appear to testify for or against the approval of the proposed reinsurance program.

Copies of the TWIA petition and proposed reinsurance agreement are available for review in the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. To request copies of the petition and the proposed reinsurance agreement, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Reference No. P-0901-24).

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

TRD-200200313
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: January 22, 2002

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Company Licensing

Application to change the name of WESTERN FAMILY INSURANCE COMPANY to ANCHOR GENERAL INSURANCE COMPANY, a foreign Fire and Casualty company. The home office is in San Diego, California.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200200334
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: January 23, 2002

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Pennsylvania General Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting the following flex percentages of +40% for Class 2, +39% for Class 6,

and +37% for Classes 1, 3, 7, 8 under all Coverages by Territory. This overall rate change is +5.3%.

Copies of the filing may be obtained by contacting Judy Deaver, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 322-3478.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by February 19, 2002.

TRD-200200314
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: January 22, 2002

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Worldwide Casualty Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting the following flex percent of +60% for Bodily Injury and Comprehensive, +30% for Property Damage, Personal Injury Protection, and Medical Payments, +41.1% for Uninsured Motorists, and +47.8% for Collision coverages. This overall rate change is +11.9%.

Copies of the filing may be obtained by contacting Judy Deaver, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 322-3478.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by February 21, 2002.

TRD-200200341
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: January 23, 2002

♦ ♦ ♦

Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Worldwide Direct Auto Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting the following flex percent of +60% for Bodily Injury and Comprehensive, +30% for Property Damage and Personal Injury Protection, +32% for Medical Payments, +38% for Uninsured Motorists, and +50% for Collision coverages. This overall rate change is +12.1%.

Copies of the filing may be obtained by contacting Judy Deaver, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 322-3478.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by February 21, 2002.

TRD-200200342
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: January 23, 2002

♦ ♦ ♦

Texas Lottery Commission

Instant Game 275 "Double Lucky Number"

1.0 Name and Style of Game.

A. The name of Instant Game No. 275 is "DOUBLE LUCKY NUMBER". The play style is a "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 275 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 275.

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 - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $200, $2,000, $25,000, and STAR SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each 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:

Table 1 of this section Figure 1:16 TAC GAME NO. 275 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$200	TWO HUND
$2,000	TWO THOU
$25,000	25 THOU
STAR SYMBOL	DBL

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Table 2 of this section. Figure 2:16 TAC GAME NO. 275 - 1.2E

CODE	PRIZE
$2.00	TWO
$4.00	FOR
$5.00	FIV
$10.00	TEN
$12.00	TWL
$20.00	TWN

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) 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 format will be : 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00, $12.00, or $20.00.

H. Mid-Tier Prize - A prize of $25.00, $50.00, or $200.

I. High-Tier Prize - A prize of 2,000 or $25,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A twenty-two (22) digit number consisting of the three (3) digit game number (275), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 275-0000001-000.

L. Pack - A pack of "DOUBLE LUCKY NUMBER" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 000-001 will be on the top page. Tickets 002-003 will be on the next page and so forth and tickets 248-249 will be on the last page.

M. 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.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "DOUBLE LUCKY NUMBER" Instant Game No. 275 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 "DOUBLE LUCKY NUMBER" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty two) play symbols. If the player matches any of the player's YOUR NUMBERS to either LUCKY NUMBER, the player will win the prize shown for that number. If the player gets a lucky star symbol, the player will win double the amount for that prize. 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 22 (twenty two) 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, 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;

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 22 (twenty two) 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 22 (twenty two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 22 (twenty two) 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 will not have identical play data, spot for spot.

B. No duplicate non-winning Your Numbers play symbols on a ticket.

C. No duplicate Lucky Numbers play symbols on a ticket.

D. No more that one pair of duplicate non-winning prize symbols on a ticket.

E. No 3 or more like non-winning prize symbols on a ticket.

F. The Star play symbol will never appear more than once on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "DOUBLE LUCKY NUMBER" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $12.00, $20.00, $25.00, $50.00 or $200, 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, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00 or $200 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 2.3.C of these Game Procedures.

B. To claim a "DOUBLE LUCKY NUMBER" Instant Game prize of $2,000 or $25,000, 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 "DOUBLE LUCKY NUMBER" 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; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource 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 "DOUBLE LUCKY NUMBER" 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 "DOUBLE LUCKY NUMBER" 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. 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.

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 therefor, 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 therefor, 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 therefor. 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 12,188,000 tickets in the Instant Game No. 275. The approximate number and value of prizes in the game are as follows:

Table 3 of this section Figure 3:16 TAC GAME NO. 275- 4.0

Prize Amount	Approximate Number of Prizes*	Approximate Odds are 1 in **
$2.00	1,852,804	6.58
$4.00	1,218,444	10.00
$5.00	73,184	166.54
$10.00	85,348	142.80
$12.00	60,974	199.89
$20.00	24,374	500.04
$25.00	24,339	500.76
$50.00	26,457	460.67
$200	12,623	965.54
$2,000	35	348,228.57
$25,000	12	1,015,666.67

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.61. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

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. 275 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. 275, 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-200200217

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 16, 2002

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Instant Game 276 "Wizard of Odds"

1.0 Name and Style of Game.

A. The name of Instant Game No. 276 is "WIZARD OF ODDS". The play style is a "match 3 of 9 with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 276 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 276.

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 - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: $1.00, $2.00, $3.00, $5.00, $10.00, $15.00, $30.00, $100, $300, $1,000, $3,000, and MAGIC SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each 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:

Table 1 of this section Figure 1:16 TAC GAME NO. 276 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$30.00	THIRTY
$100	ONE HUND
$300	THR HUND
$1,000	ONE THOU
$3,000	THR THOU
MAGIC SYMBOL	AUTO

Table 2 of this section. Figure 2:16 TAC GAME NO. 276 - 1.2E

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

CODE	PRIZE
$1.00	ONE
$2.00	TWO
$3.00	THR
$5.00	FIV
$10.00	TEN
$15.00	FTN

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) 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 format will be : 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $5.00, $10.00, or $15.00.

H. Mid-Tier Prize - A prize of $30.00, $100, or $300.

I. High-Tier Prize - A prize of $1,000 or $3,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A twenty-two (22) digit number consisting of the three (3) digit game number (276), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 276-0000001-000.

L. Pack - A pack of "WIZARD OF ODDS" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000-004 will be on the top page. Tickets 005 to 009 will be on the next page, and so forth, and tickets 245 to 249 will be on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

M. 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.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WIZARD OF ODDS" Instant Game No. 276 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 "WIZARD OF ODDS" Instant Game is determined once the latex on the ticket is scratched off to expose nine (9) play symbols. If the player gets three (3) like amounts, the player will win that amount. If the player gets two (2) like amounts plus a magic symbol, the player will win that prize automatically. 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 nine (9) 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, 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;

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 nine (9) 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 nine (9) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the nine (9) 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 will not have identical play data, spot for spot.

B. No four or more like play symbols on a ticket.

C. No more than two (2) pairs of like play symbols on a ticket.

D. The magic symbol may appear only once on a ticket.

E. There will be no more than two (2) like play symbols when the magic symbol appears on a winning ticket.

F. There will be no like play symbols on a ticket when the magic symbol appears on a non-winning ticket

2.3 Procedure for Claiming Prizes.

A. To claim a "WIZARD OF ODDS" Instant Game prize of $1.00, $2.00, $3.00, $5.00, $10.00, $15.00, $30.00, $100, or $300, 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, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $100 or $300 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 2.3.C of these Game Procedures.

B. To claim a "WIZARD OF ODDS" Instant Game prize of $1,000 or $3,000, 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 "WIZARD OF ODDS" 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; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource 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 "WIZARD OF ODDS" 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 "WIZARD OF ODDS" 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. 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.

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 therefor, 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 therefor, 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 therefor. 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 11,774,750 tickets in the Instant Game No. 276. The approximate number and value of prizes in the game are as follows:

Table 3 of this section Figure 3:16 TAC GAME NO. 276- 4.0

Prize Amount	Approximate Number of Prizes*	Approximate Odds are 1 in **
$1.00	1,083,277	10.87
$2.00	612,352	19.23
$3.00	565,253	20.83
$5.00	94,198	125.00
$10.00	23,517	500.69
$15.00	47,099	250.00
$30.00	27,479	428.50
$100	3,642	3,233.05
$300	1,139	10,337.80
$1,000	20	588,737.50
$3,000	34	346,316.18

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.79. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

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. 276 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. 276, 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-200200218
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 16, 2002

♦ ♦ ♦

Instant Game 702 "Cold Hard Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 702 is "COLD HARD CASH". The play style in Game 1 is "beat score". The play style in Game 2 is "match 3". The play style in Game 3 is "quick $20".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 702 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 702.

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 - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: $1.00, $2.00, $4.00, $5.00, $10.00, $40.00, $100, $300, $20,000, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, MONEY BAG SYMBOL, CLOVER SYMBOL, POT OF GOLD SYMBOL, GOLD BAR SYMBOLS, DOLLAR BILL SYMBOL, and COIN SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each 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:

Table 1 of this section Figure 1:16 TAC GAME NO. 702 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$40.00	FORTY
$100	ONE HUND
$300	THR HUND
$20,000	20 THOU
MONEY BAG SYMBOL	MBAG
CLOVER SYMBOL	CLVR
POT OF GOLD SYMBOL	POTGLD
GOLD BAR SYMBOL	GOLD
DOLLAR BILL SYMBOL	DOLLAR
COIN SYMBOL	MONEY

Table 2 of this section. Figure 2:16 TAC GAME NO. 702 - 1.2E

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

CODE	PRIZE
$2.00	TWO
$4.00	FOR
$5.00	FIV
$10.00	TEN
$20.00	TWN

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) 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 format will be : 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $40.00, or $300.

I. High-Tier Prize - A prize of $20,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A twenty-two (22) digit number consisting of the three (3) digit game number (702), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 702-0000001-000.

L. Pack - A pack of "COLD HARD CASH" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 000 and 001 will be shown on the front of the pack; the backs of tickets 248 and 249 will show. Every other book will be opposite.

M. 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.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "COLD HARD CASH" Instant Game No. 702 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 "COLD HARD CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 15 (fifteen) play symbols. In Game 1, if the player's YOUR NUMBERS beats THEIR NUMBER in any one row across, the player will win the prize for that row. In Game 2, if the player matches three (3) like prize amounts the player will win that prize. In Game 3, if the player matches two (2) out of three (3) symbols, the player will win $20 instantly. 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 15 (fifteen) 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, 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;

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 15 (fifteen) 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 15 (fifteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 15 (fifteen) 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 book will not have identical patterns.

B. No three or more like non-winning prize symbols on a ticket.

C. Non-winning prize symbols will not match a winning prize symbol on a ticket.

D. Game 1: There will be no ties between Your number and Their Number on a row.

E. Game 1: No duplicate games on a ticket.

F. Game 1: No duplicate non-winning prize symbols on a ticket.

G. Game 2: There will not be four (4) or more like prize symbols.

H. Game 3: There will never be three (3) like play symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "COLD HARD CASH" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, or $300, 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, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $300 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 2.3.C of these Game Procedures.

B. To claim a "COLD HARD CASH" Instant Game prize of $20,000, 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 "COLD HARD CASH" 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; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource 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 "COLD HARD CASH" 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 "COLD HARD CASH" 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. 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.

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 therefor, 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 therefor, 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 therefor. 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 5,136,250 tickets in the Instant Game No. 702. The approximate number and value of prizes in the game are as follows:

Table 3 of this section Figure 3:16 TAC GAME NO. 702- 4.0

Prize Amount	Approximate Number of Prizes*	Approximate Odds are 1 in **
$2.00	534,174	9.62
$4.00	421,073	12.20
$5.00	20,545	250.00
$10.00	71,913	71.42
$20.00	46,243	111.07
$40.00	30,847	166.51
$300	1,883	2,727.70
$20,000	18	285,347.22

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.56. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

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. 702 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. 702, 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-200200219
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 16, 2002

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Instant Game 706 "Star of Texas"

1.0 Name and Style of Game.

A. The name of Instant Game No. 706 is "STAR OF TEXAS". The play style in Game 1 is "key number match". The play style in Game 2 is "beat score". The play style in Game 3 is "key number match with auto win". The play style in Game 4 is "row, column, diagonal". The play style in Game 5 is "key symbol match". The play style in Game 6 is "add up".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 706 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 706.

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 - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, $5.00, $10.00, $25.00, $50.00, $100, $500, $1,000, $40,000, BOOT SYMBOL, HAT SYMBOL, HORSESHOE SYMBOL, STACK OF BILLS SYMBOL, DOLLAR SIGN SYMBOL, STAR SYMBOL, DIAMOND SYMBOL, GOLD BAR SYMBOL, POT OF GOLD SYMBOL, BEEF SYMBOL, STEER SYMBOL, BRAND SYMBOL, and SADDLE SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each 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:

Table 1 of this section Figure 1:16 TAC GAME NO. 706 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
$5.00	FIVE$
$10.00	TEN$
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$40,000	40 THOU
BOOT SYMBOL	BOOT
STACK OF BILLS SYMBOL	BILLS
DOLLAR SIGN SYMBOL	MONEY
STAR SYMBOL	STAR
DIAMOND SYMBOL	DIAMD
GOLD BAR SYMBOL	GOLD
POT OF GOLD SYMBOL	POTGLD
BEEF SYMBOL	BEEF
STEER SYMBOL	STEER
BRAND SYMBOL	BRAND
SADDLE SYMBOL	SADDLE
HAT SYMBOL	
HORSESHOE SYMBOL	

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Table 2 of this section. Figure 2:16 TAC GAME NO. 706 - 1.2E

CODE	PRIZE
$5.00	FIV
$10.00	TEN
$15.00	FTN
$20.00	TWY

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) 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 format will be : 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00, $15.00, or $20.00.

H. Mid-Tier Prize - A prize of $25.00, $50.00, $100, $200, or $500.

I. High-Tier Prize - A prize of $1,000, $5,000, or $40,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A twenty-two (22) digit number consisting of the three (3) digit game number (706), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 074 within each pack. The format will be: 706-0000001-000.

L. Pack - A pack of "STAR OF TEXAS" Instant Game tickets contain 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 000 and back of 074, while the other fold will show the back of ticket 000 and front of 074.

M. 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.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "STAR OF TEXAS" Instant Game No. 706 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 "STAR OF TEXAS" Instant Game is determined once the latex on the ticket is scratched off to expose 36 (thirty-six) play symbols. In the Game 1, if the player matches three (3) like amounts, the player will win that amount. In Game 2, if the player's YOUR SCORE beats THEIR SCORE in any one row across, the player will win the prize for that row. In Game 3, if the player matches any of the YOUR NUMBERS to the LUCKY NUMBER, the player will win the prize shown. If the player gets a boot symbol, the player will win that prize automatically. In Game 4, if the player gets three (3) hat symbols in the same row, column or diagonal, the player will win the prize shown. In Game 5, if the player gets three (3) like symbols, the player will win the prize shown. In Game 6, if the two (2) numbers shown add up to exactly 10, the player will win $10. 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 36 (thirty-six) 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, 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;

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 36 (thirty-six) 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 36 (thirty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 36 (thirty-six) 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 will not have identical play data, spot for spot.

B. Game 1: No four or more of a kind.

C. Game 2: No duplicate non-winning Your Score play symbols

D. Game 2: No duplicate non-winning Their Score play symbols.

E. Game 2: No duplicate non-winning prize symbols.

F. Game 2: No ties within a row.

G. Game 3: Non-winning prize symbols will never be the same as the winning prize symbol.

H. Game 3: No duplicate non-winning prize symbols

I. Game 3: No duplicate non-winning Your Number on a ticket

J. Game 3: No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

K. Game 4: No more than one occurrence of three (3) hat symbols in a row, column or diagonal on a ticket.

L. Game 4: Games will contain four (4) boots and five (5) horseshoes or five (5) boots and four (4) horseshoes.

M. Game 4: There will never be three (3) horseshoes in the same row, column, or diagonal straight line.

N. Game 5: This game may only win once.

O. Game 6: The sum of the two (2) numbers will never total less than 4 or more than 15.

2.3 Procedure for Claiming Prizes.

A. To claim a "STAR OF TEXAS" Instant Game prize $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100, $200, and $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, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $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 2.3.C of these Game Procedures.

B. To claim a "STAR OF TEXAS" Instant Game prize of $1,000, $5,000 or $40,000, 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 "STAR OF TEXAS" 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; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource 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 "STAR OF TEXAS" 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 "STAR OF TEXAS" 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. 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.

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 therefor, 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 therefor, 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 therefor. 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 3,021,075 tickets in the Instant Game No. 706. The approximate number and value of prizes in the game are as follows:

Table 3 of this section Figure 3:16 TAC GAME NO. 706- 4.0

Prize Amount	Approximate Number of Prizes*	Approximate Odds are 1 in **
$5.00	503,517	6.00
$10.00	191,329	15.79
$15.00	120,818	25.01
$20.00	60,442	49.98
$25.00	30,562	98.85
$50.00	15,413	196.01
$100	4,044	747.05
$200	105	28,772.14
$500	106	28,500.71
$1,000	100	30,210.75
$5,000	10	302,107.50
$40,000	5	604,215.00

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.26. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

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. 706 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. 706, 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-200200220
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 16, 2002

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Manufactured Housing Division

Notice of Administrative Hearing

Wednesday, February 13, 2002, 1:00 p.m.

State Office of Administrative Hearings, Stephen F. Austin Building, 1700 N Congress, 11th Floor, Suite 1100

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. Barbara Berg dba Barbara's Berry Best Buy aka Longhorn Manufactured Homes to hear alleged violations of Sections 7(b)-(d), 7(d), 7(j)(6), and 8(d) of the Act and Sections 80.119(f)(1), 80.123(b)(c), and 80.123(e) of the Rules regarding the selling of more than one manufactured home within a consecutive twelve (12) month period without obtaining, maintaining or possessing a valid retailer's license, the installation of a manufactured home without obtaining, maintaining or possessing a valid installer's license, the selling of a used manufactured home without the appropriate, timely transfer of a good and marketable title, and not submitting the Form T/Installation Report. SOAH 332-02-1262. Department MHD2001001140-V and MHD2001001927-T.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-2894, jschroed@tdhca.state.tx.us

TRD-200200319
Bobbie Hill
Executive Director
Manufactured Housing Division
Filed: January 23, 2002

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Texas Natural Resource Conservation Commission

Notice of District Petition

Notices mailed during the period January 14, 2002 through January 22, 2002.

TNRCC Internal Control No. 04242001-D01 Walker County Rural Water Supply Corporation (Petitioner) has filed a petition with the Texas Natural Resource Conservation Commission (TNRCC) to convert Walker County Rural Water Supply Corporation to Walker County Special Utility District (District) and to transfer Certificate of Convenience and Necessity (CCN) No. 11304 from Walker County Rural Water Supply Corporation to Walker County Special Utility District. Walker County Special Utility District's business address will be: P.O. Box 704; Huntsville, Texas 77342-0704. The petition was filed pursuant to Chapters 13 and 65 of the Texas Water Code; 30 Texas Administrative Code Chapters 291 and 293; and the procedural rules of the TNRCC. The proposed District is located in Walker County and will contain approximately 179,969 acres. The territory to be included within the proposed District includes all of the singly certified service area covered by CCN No. 11304. CCN No. 11304 will be transferred after a positive confirmation election. The TNRCC may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice.

TNRCC Internal Control No. 11212001-D02 Champions Glen, L.P., (Petitioner) filed a petition for creation of Harris County Municipal Utility District Number 383 (District) with the Texas Natural Resource Conservation Commission (TNRCC). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TNRCC. The petition states that: (1) the petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) the petition states that there is one lienholder on the property to be included in the proposed district; (3) the proposed District will contain approximately 401.7031 acres located within Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and is not within such jurisdiction of any other city. By City of Houston, Texas, Ordinance No. 2001-1159, the City of Houston, Texas, effective December 19, 2001, passed, approved and gave its consent to create District, and has given its authorization to initiate proceedings to create such political subdivision within its jurisdiction. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioners, from the information available at this time, that the cost of said project will be approximately $35,580,000. The TNRCC may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice.

The TNRCC may grant a contested case hearing on these petitions if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TNRCC Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve the petitions unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the

Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-200200311
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: January 22, 2002

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to 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 **March 4, 2002**. 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 the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's orders and permits issued pursuant to the TNRCC'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 of the proposed AOs is available for public inspection at both the TNRCC'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. Comments about the AOs should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 4, 2002**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys 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 should be submitted to the TNRCC in **writing**.

(1) COMPANY: Madanco Corporation dba Shopper's Mart #10 dba Chevron's Food Mart; DOCKET NUMBER: 2000-1395-PST-E; TNRCC ID NUMBERS: 0035090 & 0069345; LOCATION: Shopper's Mart #10, 2903 Palmer Highway, Texas City, Galveston County, Texas; Chevron's Food Mart, 8115 Haborside, Galveston, Galveston County, Texas; TYPE OF FACILITY: retail gasoline (facility); RULES VIOLATED: 30 TAC §115.246(3), and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain records of trained facility representative, monthly inspections, the pressure decay testing, and applicable California Air Resources Board order; 30 TAC §115.242(3)(J), and THSC, §382.085(b), by failing to provide operative Pressure Vacuum Relief Valve(s) or Dry Breaks; 30 TAC §115.246(3) and THSC, § 382.085(b), by failing to maintain at the station a record of maintenance activities performed on the Stage II vapor recovery system; 30 TAC §115.248(1) and §115.246(3), and THSC, §382.085(b), by failing to complete a TNRCC approved Stage II training course in the maintenance and operation of the Stage II system, and training of all employees by the facility representative; PENALTY: $12,900; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

(2) COMPANY: Shukran Inc., dba Amigo Mart; DOCKET NUMBER: 2000-0965-PST-E; TNRCC ID NUMBER: 0011954; LOCATION: 14325 Highway 6, Santa Fe, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(4), and THSC, §382.085(b), by failing to maintain records of proof of attendance and completion of Stage II training, of all employees, by a store representative; 30 TAC §115.242(3), and THSC, §382.085(b), by failing to successfully perform annual volume to liquid testing; 30 TAC §115.246(5), and THSC, §382.085(b), by failing to maintain a record of the five year testing requirement to verify proper operation of the Stage II system and failure to maintain records of daily inspections of the vapor recovery system; 30 TAC §115.242(3)(B), §115.242(5), and THSC, §382.085(b), by failing to repair crimped vapor hoses and make necessary repair, replacement, or adjustment of faulty equipment; 30 TAC §290.51, by failing to pay the Public Health Fee; 30 TAC §115.246(1), and §115.246(3), by failing to maintain a copy of the California Air Resources Board Executive Order, a record of any maintenance conducted on the Stage II vapor recovery equipment, and documentation of the completion of the Stage II training for facility representative; 30 TAC §115.245(2), by failing to perform the annual pressure decay testing; 30 TAC §115.245(3), by failing to perform the five year test to verify the proper operation of the Stage II equipment; 30 TAC §115.244(1), and §115.244(3), by failing to conduct the daily and monthly inspections of Stage II equipment; 30 TAC §334.21, and §334.128(a), by failing to pay the underground storage fees and above ground storage fees; 30 TAC §11.242(3)(J), and THSC, §382.085(b), by failing to replace or repair an inoperative dry break cap; PENALTY: $20,750; STAFF ATTORNEY: Robert Hernandez, Litigation Division, MC 175, (210) 403-4016; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200200302
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: January 22, 2002

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Notice of Public Hearings (Chapter 331)

In accordance with the requirements of Texas Government Code, Chapter 2001, Subchapter B, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct public hearings to receive testimony concerning amendments of 30 TAC Chapter 331, Subchapters A, G, and J.

The proposed amendments would implement legislation requiring the commission, by rule, to prohibit the storage, processing, or disposal of hazardous waste in a solution-mined salt dome cavern or a sulphur mine (House Bill 2912, §9.02, 77th Legislature, 2001); amend and clarify the information required to establish the geologic suitability of a proposed location for a salt cavern disposal well; and reinstate technical requirements administratively omitted in 1992.

Public hearings on these proposed revisions will be held at the following times and locations: February 19, 2002, in Wharton at 7:00 p.m. at the Wharton Community Civic Center, in the Main Hall, 1924 North Fulton; February 26, 2002, in Mont Belvieu at 7:00 p.m. at the Barbers Hill High School, in the CTJ Conference Center, 9600 Eagle Drive; and

February 28, 2002, in Austin at 2:00 p.m. in Building E, Room 201S at the commission's central office located at 12100 Park 35 Circle. The hearings will be 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 discussions will not occur during the hearings; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearings and will answer questions before and after the hearings.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

Comments may be submitted to Lola Brown, MC 205, Texas Natural Resource Conservation Commission, Office of Environmental Policy, Analysis, and Assessment, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Log Number 2001-080-331-WT. Comments must be received by 5:00 p.m., March 4, 2002. For further information, please contact Ray Henry Austin, Policy and Regulations Division, (512) 239-6814.

TRD-200200245
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: January 17, 2002

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Notice of Public Hearing by the Texas Natural Resource Conservation Commission on Proposed Revisions to 30 TAC Chapter 290

In accordance with the requirements of Texas Government Code, Chapter 2001, Subchapter B, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning the proposed amendments to 30 TAC Chapter 290, Public Drinking Water.

The commission proposes primarily technical and grammatical corrections to Chapter 290, Subchapters D and F. In addition to these corrections, the commission proposes amendments to incorporate the federal Public Notification Rule (40 Code of Federal Regulations (CFR), Parts 9, 141, 142, and 143; 65 Federal Register (FR) 25981-26049, May 4, 2000); incorporate the federal Lead/Copper Minor Revisions Rule (40 CFR Parts 9, 141, and 142; 65 FR 1949-2015, January 12, 2000); implement House Bill (HB) 217, 77th Legislature, 2001, deleting the exemption for small municipalities to have plumbing inspections performed by a licensed plumber; update references to lab related terminology prompted by HB 2912, §18.02, transferring certification of drinking water laboratories from the Texas Department of Health to TNRCC; and propose language from the Safety Drinking Water Act, 42 United States Code, §300g-1(b)(10), allowing two-year extensions to the effective dates for new regulations for maximum contaminant levels and treatment technique requirements when capital improvements are necessary to comply with the new requirements.

A public hearing on this proposal will be held in Austin on February 19, 2002 at 10:00 a.m., in Building F, Room 2210 at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., March 4, 2002, and should reference Rule Log Number 2001-008-290-WT. This proposal is available on the commission's web site at *http://www.tnrcc.state.tx.us/oprd/rules/propadopt.html*. For further information, please contact Melissa Estes, Policy and Regulations Division at (512) 239-3937.

TRD-200200255
Stephanie Bergeron
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: January 17, 2002

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Notice of Water Quality Applications

The following notices were issued during the period of December 21, 2001 through January 17, 2002.

The following require the applicants to publish notice in the newspaper. The public comment period, 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 THIS NOTICE.

CBI & I CONSTRUCTORS INC has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0075736 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 11389-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 45,000 gallons per day. The plant site is located in the northeast corner of the property at 8900 Fairbanks North Houston Road and approximately 3 miles north of the intersection of Fairbanks North Houston Road and U.S. Highway 290 in Harris County, Texas.

CITY OF FRITCH has applied for a major amendment to Permit No. 10566-001, requesting to move the location of the treatment plant boundaries, to authorize an interim phase with a daily average flow of 260,000 gallons per day, a final phase with a daily average flow of 400,000 gallons per day and to increase the application rate in the interim phase from 3.0 acre feet/acre/year to 3.88 acre feet/acre/year. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day via surface irrigation of 150 acres which will remain the same. This permit will not authorize a discharge of pollutants into waters in the State. This application was submitted to the TNRCC on July 25, 2000. The facility and disposal site are located at the north end of Cornell Street in the City of Fritch in Hutchinson County, Texas. The facility and disposal site are located in the drainage basin of Lake Meredith in Segment No. 0102 of the Canadian River Basin.

CITY OF GARLAND which operates the Ray Olinger Power Plant, a steam electric station, has applied for a renewal of TPDES Permit No. 01923, which authorizes the discharge of once through cooling water commingled with steam condensate and storm water at a daily average flow not to exceed 404,000,000 gallons per day via Outfall 001, the discharge of low volume waste and metal cleaning waste on a flow variable basis via evaporation, and includes a once- through cooling water exemption for total aluminum at Outfall 001. The facility is located four

miles west of State Highway 78 at 13835 County Road 489 on the east shore of Lavon Lake, at Little Ridge Park, two and three eighths miles southwest of the City of Copeville, Collin County, Texas.

GREATER WHITEHOUSE UTILITY COMPANY, INC. has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0095419 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 12910-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 41,300 gallons per day. The plant site is located at 100 Quail Lane, at the intersection of Quail Lane and Bobwhite Lane, approximately 1 3/8 miles southwest of the intersection of State Highway 110 and Farm- to-Market Road 346 in Smith County, Texas.

MARTIN REALTY & LAND, INC. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14081-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The plant site is located 1.2 miles east-northeast of the intersection of Portland Road and Farm-to- Market Road 1314 and 2.5 miles northwest of the intersection of Farm-to-Market Road 1314 and U.S. Highway 59 in Montgomery County, Texas

METAL BUILDING COMPONENTS, L.P. has applied for a new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located at 14031 West Hardy Road, approximately one mile south of the intersection of West Hardy Road and Aldine Bender Road (State Highway 525) in Harris County, Texas.

TRD-200200310
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: January 22, 2002

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Notice of Water Rights Application

Notices mailed during the period January 5, 2002 through January 22, 2002.

APPLICATION NO. 3612A (PERMIT NO. 3345A); Nancy Elizabeth Hruska Becker, 20784 Private Road 1775, Paint Rock, Texas 78666-3019, applicant, seeks to amend Water Use Permit No 3345 (Application No. 3612) pursuant to Texas Water Code 11.122 and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Applicant owns a portion of Water Use Permit No. 3345 (Application No. 3612 which authorizes the owner to divert and use not to exceed 169 acre-feet of water per annum from the perimeter of Chandler Lake, on Dry Hollow, tributary of the Concho River, tributary of Colorado River, in the Colorado River Basin at a rate of 1.1 cfs (495 gpm) to irrigate 169 acres of land out of a 229.938 acre portion out of a 685.567 acre tract of land in Surveys, 126, 127, 128, 129, & 130 and D. E. Sims Survey 1 in Concho County, Texas. Applicant also owns undivided interest in Chandler Lake. Chandler Lake impounds not to exceed 185 acre-feet of water. The time priority is June 14, 1976. Pursuant to Lease of Water Rights with the City of Paint Rock, applicant the seeks to amend their portion of Water Use Permit 3345 (Application No. 3612 by changing the use of 35 acre-feet per annum from irrigation use to municipal use and add a diversion point downstream of Chandler Lake which is the City of Paint Rock's diversion point authorized in Certificate of Adjudication No. 14-1388. The applicant requests this change be in affect for the duration of the lease agreement (5 year lease with the option to extend an additional 5 years) made with the City of Paint Rock. The additional diversion point is approximately 6 miles downstream at the same diversion point authorized in Paint Rock's Certificate of Adjudication No. 14-1388. The diversion point authorized in this Certificate is located at a point on the south, right bank of the Concho River which is N 50 degrees W, 170 feet from the northeast corner of the Johann J. Froehlich Survey 266, Abstract 145, Concho County, also being 31.5 degrees N Latitude, 99.9 degrees W Longitude. The application was received on July 14, 2000. Additional information was received September 12, 2000, November 20, 2000, and July 12, 2001. The Executive Director reviewed the application and determined it to be administratively complete on September 28, 2001. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by January 30, 2002. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed by January 30, 2002. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by January 30, 2002.

APPLICATION NO. 5121A. Guadalupe Ski-Plex Homeowners Association, Inc., C/O Glenn Pressler, President, 13511 Dutch Myrtle, San Antonio, Texas 78232, applicant, seeks an amendment to Water Use Permit No. 5121, pursuant to Texas Water Code (TWC) 11.122, and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Water Use Permit No. 5121 authorizes permittee to divert 83 acre-feet of water per annum from York Creek, tributary of the San Marcos River, Guadalupe River Basin, Guadalupe County, and to impound the diverted water in an off-channel reservoir with a capacity of 187 acre-feet for recreational purposes. The applicant seeks authorization to change the maximum diversion rate from 1200 gpm to 2200 gpm. No new appropriations are requested. The application was received on September 19, 2001. The Executive Director reviewed the application and determined it to be administratively complete on December 27, 2001. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk at the address provided in the information section below within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment and is not a contested case hearing. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

APPLICATION NO. 5756 Fred B. Shelton, Jr., 3501 Gillon Ave, Dallas, Texas, 75208- 3219, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a Water Use Permit pursuant to 11.121, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. The Executive Director recommends that public notice of the application be given pursuant to 30 TAC 295.152. Applicant seeks authorization to construct and maintain a dam and reservoir and to impound therein not to exceed 354 acre-feet of water with a surface area of 34 acres on Allread Creek, tributary of the Sabine River, Sabine River Basin, Rains County, Texas, for in-place recreation use. Station 13 + 00 on the centerline of proposed dam is located N 66 degrees W (bearing), 2,400 feet from the southeast corner of J. F. Phillips, Abstract No. A-182, in Rains County, Texas, at Latitude 32.789 degrees N, Longitude 95.754 degrees W, located 6.6 miles in a south southeast direction from Emory, Rains County, Texas. The application was received on October 05, 2001 and accepted for filing on December 07, 2001. The Executive Director of the TNRCC has reviewed the application and has declared it to be administratively complete on December 07, 2001. Written public comments and requests for a public meeting should be received in the Office of Chief

Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days of the date of newspaper publication of the notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed.

APPLICATION NO. 18-2018B Lee Anthony Mosty, 1500 Park Grove Road, Irving, Texas 78006, seeks an amendment to a Certificate of Adjudication pursuant to 11.122 Texas Water Code, Texas Natural Resource Conservation Commission Rules 30 TAC 295.1, et seq. Applicant is currently authorized to divert and use not to exceed 154 acre-feet of water per annum from the Guadalupe River, Guadalupe River Basin, Kerr County to irrigate 94 acres of land in Kerr County. Pursuant to a lease agreement, Grant of Right to Divert, Pump, and Use Water Pursuant to Certificate of Adjudication to Appropriate State Water dated February 24, 2000 with Buckhorn Golf II, Ltd., Applicant is also authorized to divert and use 80 acre-feet of water per annum from the 154 acre-feet of water authorized by Certificate of Adjudication No. 18-2018 from a second diversion point located approximately 11.5 miles downstream on the Guadalupe River, Kendall County, bearing S 41.2 degrees E, 8217.92 feet from the USGS published Benchmark/ Triangulation Station known as Comfort 2", also being 29.97 degrees N Latitude and 98.88 degrees W Longitude, for irrigation of 110 acres of land out of 187.276 acres consisting of three tracts totaling 88.126 acres, 2.15 acres, and a 97 acre-tract of land in the Justa Esqueda Survey No. 25, Abstract No. 157, Kendall County. Applicant is also authorized to store the 80 acre-feet of water in an off-channel reservoir on land owned by Buckhorn Golf II, Ltd. The combined maximum diversion rate for all diversion points is 2.22 cfs (1000gpm.) Pursuant to a lease agreement First Amendment to February 24, 2000 Grant of Right to Divert , Pump, and Use Water Pursuant to Certificate of Adjudication to Appropriate State Water, dated September 21, 2001 with Buckhorn Golf II, Ltd., Applicant seeks to divert and use an additional 70 acre-feet at the downstream diversion point on the Guadalupe River, Guadalupe River Basin, in Kendall County, Texas resulting in 150 acre-feet of water per annum from the 154 acre-feet of water authorized by Certificate of Adjudication No. 18-2018 for irrigation of the same tracts of land specifically identified in Certificate of Adjudication No. 18-2018, as amended. Applicant is also seeking to increase the amount of water that can be stored and used from the off channel reservoir from 80 to 150 acre-feet per annum. No new appropriations of water are requested and no changes will be made to the currently authorized maximum combined diversion rate of 2.22 cfs (1000gpm.) Notice is being mailed to the 22 interjacent water right holders. Pursuant to TAC 297.45 and TWC 11.122 granting an application for an amendment to a water right shall not cause an adverse impact to an existing water right. The application was received on October 23, The Executive Director of the TNRCC has reviewed the application and has declared it to be administratively complete on December 19, 2001. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below by February 8, 2002. A public meeting is intended for the taking of public comment, and is not a contested case hearing. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed by February 8, 2002. The Executive Director may approve the application unless a written request for a contested case hearing is filed.

Information Section

A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in an application.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TNRCC Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-200200312
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: January 22, 2002

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Permian Basin Workforce Development Board

Public Notice for Workforce Network Service Provider

The Permian Basin Workforce Development Board (Board), in Midland, Texas, is soliciting proposals for Workforce Network Service Provider. The Provider is responsible for the management and operation of services delivered under the Workforce Investment Act (WIA), Temporary Assistance for Needy Families (TANF)/Choices and Food Stamp and Employment (FSE&T). The Board is committed to providing comprehensive services to employers and job-seekers alike in the Workforce Development Area of Andrews, Borden, Crane, Dawson, Ector, Gaines, Glasscock, Howard, Loving, Martin, Midland, Pecos, Reeves, Terrell, Upton, Ward and Winkler counties.

The Board is accountable the planning, administration, oversight and evaluation of a consolidated workforce network for the Permian Basin. In this role the Boards procures and contracts with organizations to provide workforce programs to employers, employees and job seekers through several different federal and state programs. The Board is the administrative entity and grant recipient for the following programs: WIA, FSE&T, TANF/Choices, School-to-Career and Child Care.

The Board will be conducting a Bidder's Conference on February 15, 2002. A copy of the Request for Proposal (RFP) may be obtained beginning February 1, 2002 by contacting the Board office at (915) 563-5239. All questions regarding the RFP must be submitted in writing either electronically to gail.dickenson@twc.state.tx.us, by fax at (915) 561-8785, or by mail to P.O. Box 61947, Midland, Texas 79711

attention Willie Taylor or Gail Dickenson. No verbal questions will be accepted.

The Board reserves the right to accept or reject any or all proposals received as a result of this request, or to negotiate with all qualified vendors, or to cancel in part or in its entirety this Request for Proposal, if it is in the best interest of the Board.

TRD-200200281
Angelica Chavez
Receptionist
Permian Basin Workforce Development Board
Filed: January 18, 2002

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Texas Department of Protective and Regulatory Services

Request for Proposal

The Texas Department of Protective and Regulatory Services (PRS), Division of Prevention and Early Intervention, is soliciting proposals to provide Healthy Texas Families services. PRS anticipates funding 19 contracts as a result of this solicitation. The Request for Proposal (RFP) will be released on or about January 31, 2002. The RFP will be posted on the State Internet Site at http://esbd.tbpc.state.tx.us on the date of its release.

Brief Description of Services: The goal of the Healthy Texas Families home visitation program is to provide resources to communities to address and meet the needs of identified families. The program is a model of primary prevention services designed to prevent infant mortality and pre-maturity, disease, developmental delay, child abuse and neglect, school failure, emergency room visits, teen pregnancy, poor parent-child relationships and interaction, and other negative outcomes for children and families. The vision of the Healthy Texas Families program is to provide support and education to all new parents who are deemed to be at risk prior to or at the time of their baby's birth, with services continuing in the months and years after, in order to strengthen and stabilize these families and ensure that the children get off to a good start in life. The contracts will be funded and managed by PRS.

Eligible Applicants: Eligible offerors include private nonprofit and for-profit corporations, cities, counties, state agencies/entities, partnerships, and individuals. Historically Underutilized Businesses (HUBs), Minority Business and Women's Enterprises, and Small Businesses are encouraged to apply.

Limitations: Total anticipated funding for the 12-month contract is a maximum award of $125,000 for September 1, 2002, through August 31, 2003. The funding allocated for the contract resulting from this RFP is dependent on Legislative appropriation. Funding is not guaranteed at the maximum level, or at any level. PRS reserves the right to reject any and all offers received in response to this RFP and to cancel this RFP if it is deemed in the best interest of PRS. PRS also reserves the right to re-procure this service.

If no acceptable responses are received, or no contract is entered into as a result of this procurement, PRS intends to procure by non-competitive means in accordance with the law but without further notice to potential vendors.

Deadline for Proposals, Term of Contract, and Amount of Award: Proposals will be due March 20, 2002, at 3:00 p.m. The effective dates of contracts awarded under this RFP will be September 1, 2002, through August 31, 2003.

Contact Person: Potential offerors may obtain a copy of the RFP on or about January 31, 2002. It is preferred that requests for the RFP be submitted in writing (by mail or fax) to: Jacqueline Gomez, Mail Code E-541; c/o Vicki Logan; Texas Department of Protective and Regulatory Services; P.O. Box 149030; Austin, Texas 78714-9030; Fax: 512-438-2031.

TRD-200200307
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Filed: January 22, 2002

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Public Utility Commission of Texas

Amended Notice of Application for a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on January 14, 2002, for a certificate of convenience and necessity for a proposed transmission line in Galveston County, Texas.

Docket Style and Number: Application of Texas-New Mexico Power Company (TNMP) for a Certificate of Convenience and Necessity for a Proposed Transmission Line in Galveston County, Texas. Docket Number 25287.

The Application: TNMP proposes to construct a new double-circuit 69 kV transmission line from a tap point at the existing Carbide Docks Substation to a planned substation (Mega Port) on Shoal Point. An existing single-circuit, 69 kV transmission line from the existing Amoco Switching Station to the tap point will be rebuilt to accommodate two 69 kV circuits. The proposed transmission line will be approximately 3.60 miles long and will be constructed spun concrete, single-pole structures within an approximately 20-foot wide right-of-way depending on structure type and location.

Pursuant to P.U.C. Substantive Rule §25.101(c)(4), the commission must render a decision approving or denying an application for a certificate within one year of the date of filing of a complete application for such certificate.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 or (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.

TRD-200200286
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 18, 2002

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Amended Notice of Application for a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on January 14, 2002, for a certificate of convenience and necessity for a proposed transmission line in Wise County, Texas.

Docket Style and Number: Application of Brazos Electric Power Company (Brazos) for a Certificate of Convenience and Necessity for a Proposed Transmission Line in Wise County, Texas. Docket Number 25288.

The Application: Brazos stated the proposed Bridgeport-Crafton re-route transmission line project is being constructed to address reliability and maintenance concerns in areas served by Brazos' existing Bridgeport and Crafton substations located in Wise County, Texas. The existing 69 kV transmission line crosses several gravel-mining operations. According to the application, this mining activity has resulted in extremely rough terrain with some areas excavated around Brazos' structures and some areas being permanently flooded. As a result of this condition, large portions of the line are not accessible for maintenance purposes. The proposed project entails constructing a combination single and double circuit transmission line, while removing from service a portion of the North Texas to Bowie 69 kV line subjected to mining operations (approximately from Bridgeport to Crafton). A new single circuit 69 kV will be constructed for the northern and southern aspects of this project. While the middle section, containing TXU's existing H-frame 138 kV transmission line, would be a rebuilt single pole double circuit carrying TXU's 138 kV conductors and Brazos' re-routed 69 kV conductors. Brazos asserts the recommended transmission line reroute project is being proposed to maintain service reliability in the service territory of Wise Electric Cooperative. The preferred option maximizes the criteria set forth by the Public Utility Regulatory Act, §37.056.

Pursuant to P.U.C. Substantive Rule §25.101(c)(4), the commission must render a decision approving or denying an application for a certificate within one year of the date of filing of a complete application for such certificate.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 or (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.

TRD-200200289
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 18, 2002

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Notice of Amended Application for Waiver to Requirements in P.U.C. Substantive Rule §26.54(b)(3)

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an amended application on December 14, 2001, for waiver of the requirements of P.U.C. Substantive Rule §26.54(b)(3), One-Party Line Service and Voice Band Data.

Docket Title and Number: Application of Valor Telecommunications of Texas, LP for Waiver of Requirements in P.U.C. Substantive Rule §26.54(b)(3). Docket Number 23733.

The Application: Valor Telecommunications of Texas, LP. (Valor) amended its application to include customers in the Vega exchange for waiver of the requirement that by the end of 2002 it shall provide all subscribers a minimum transmission speed of at least 14,400 bits of data per second (14.4 kbps) on all switched voice circuits when connected through an industry standard modem or facsimile machine. Valor amended its application to specify that it can upgrade the Centerville, Fort Hancock, Detroit, and Pecos exchanges, and is removing these from the waiver request. However, Valor indicated that it must add the Vega exchange to those exchanges requiring a waiver. The requested waiver will affect a total of 169 subscribers in the Vega, Aspermont, and Sun Ray exchanges, all of which are served through equipment that does not meet the data speed required under P.U.C. Substantive Rule §26.54(b).

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by March 3, 2002. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas, 78711-3326, or call the 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. The deadline for comment is February 14, 2002, all comments should reference Docket Number 23733.

TRD-200200326
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 23, 2002

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On November 7, 2000, JATO Operating Corporation filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60203. Applicant intends to relinquish its certificate.

The Application: Application of JATO Operating Corporation for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 23168.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 no later than February 6, 2002. You may contact the commission's Customer Protection Division at (512) 936-7120. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23168.

TRD-200200308
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 22, 2002

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Notice of Application Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on January 3, 2002, pursuant to P.U.C. Substantive Rule §26.171 for approval to introduce a new service.

Tariff Title and Number: Application of Santa Rosa Telephone Cooperative, Inc. (Santa Rosa) to Offer a New Service, Santa Rosa Centrex Service, Pursuant to P.U.C. Substantive Rule §26.171. Tariff Control Number 25242.

The Application: Santa Rosa seeks approval to offer a new service: Santa Rosa Centrex (SRC) Service. SRC Service provides multi-line business customers with access to central office equipment based features which performs the same functions as much of the terminal

premises equipment available in the marketplace today. Santa Rosa estimates that the offering of the new service will increase the annual regulated intrastate gross annual revenues of the cooperative by $15,215 or 1.0%. The company proposes an effective date of May 1, 2002.

Subscribers of Santa Rosa have a right to petition the commission for review of this proposed new service offering by filing a protest with the commission. The protest must be signed by a minimum of 5.0%, or 1,500 of the affected local service customers, and must be received by the commission no later than March 31, 2002. As of December 2001, the 5.0% limitation equals 114 customers.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by March 31, 2002. Requests for further information should be mailed to Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephone (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. The deadline for comment is March 31, 2002. All comments should reference Tariff Control Number 25242.

TRD-200200327
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 23, 2002

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Public Notice of Amendment to Interconnection Agreement

On January 11, 2002, Southwestern Bell Telephone Company and Birch Telecom of Texas, Ltd., LLP, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 25284. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 25284. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by February 13, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25284.

TRD-200200225
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 16, 2002

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Public Notice of Amendment to Interconnection Agreement

On January 14, 2002, Southwestern Bell Telephone Company and Focal Communications Corporation of Texas, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 25294. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 25294. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by February 13, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25294.

TRD-200200226
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 16, 2002

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Public Notice of Amendment to Interconnection Agreement

On January 14, 2002, Southwestern Bell Telephone Company and Go-Comm, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 25295. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 25295. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by February 13, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25295.

TRD-200200227
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 16, 2002

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Public Notice of Amendment to Interconnection Agreement

On January 15, 2002, Southwestern Bell Telephone Company and SBC Advanced Solutions, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 25298. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the

applicants. The comments should specifically refer to Docket Number 25298. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by February 13, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25298.

TRD-200200229
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 17, 2002

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Public Notice of Amendment to Interconnection Agreement

On January 15, 2002, Southwestern Bell Telephone Company and KMC Telecom, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supp. 2002) (PURA). The joint application has been designated Docket Number 25299. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 10 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 25299. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by February 13, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25299.

TRD-200200230
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 17, 2002

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Public Notice of Amendment to Interconnection Agreement

On January 16, 2002, Southwestern Bell Telephone Company and Preferred Carrier Services, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 25302. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 25302. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by February 15, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25302.

TRD-200200241
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 17, 2002

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Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215.

Docket Title and Number. Southwestern Bell Telephone Company's Application for Approval of LRIC Study for Emergency Warning Call Database Pursuant to P.U.C. Substantive Rule §26.215 on or about January 28, 2002, Docket Number 25305.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 25305. Written comments or recommendations should be filed no later than 45 days after the date of sufficiency and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200200290
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 18, 2002

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Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215.

Docket Title and Number. Southwestern Bell Telephone Company's Application for Approval of LRIC Study for Digital Customer Alerting Feature--Integrated Services Tariff Pursuant to P.U.C. Substantive Rule §26.215 on or about January 28, 2002, Docket Number 25306.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 25306. Written comments or recommendations should be filed no later than 45 days after the date of sufficiency and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200200292
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 18, 2002

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Public Notice of Interconnection Agreement

On January 11, 2002, Southwestern Bell Telephone Company and Metro Teleconnect Companies, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002 (PURA). The joint application has been designated Docket Number 25283. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 25283. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by February 13, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25283.

TRD-200200224
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 16, 2002

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Public Notice of PUC Proceeding to Develop Forms Pertaining to Retail Electric Providers and Aggregators and Request for Comments

The staff of the Public Utility Commission of Texas (commission) is developing forms for retail electric providers (REPs) and aggregators to use in filing the annual reports required by P.U.C. Substantive Rule §25.107(i)(4) and §25.111(i)(6), respectively. In addition, this proceeding will address any other forms determined prudent for processing amendments to, relinquishment of, or other processes pertaining to REP certification or aggregator registration. Project Number 25317, *PUC Proceeding to Develop Forms Pertaining to Retail Electric Providers and Aggregators*, has been established for this proceeding.

Commission staff will develop an annual report form for REPs first. Dates for development of an annual report form for Aggregators will be announced at a later date.

The commission will make available for comment copies of a Draft REP Annual Report Form in Central Records and on the commission's website for Project Number 25317 on February 1, 2002 (www.puc.state.tx.us/electric). Parties are requested to provide comment on the draft forms by Monday, February 11, 2002. Reply comments are due Tuesday, February 19, 2002.

Sixteen copies of comments may be filed with the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711- 3326. All comments should reference Project Number 25317.

Questions concerning Project Number 25317 may be referred to Jan Bargen, Policy Development Division, (512) 936-7243. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200200315
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 22, 2002

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Texas Racing Commission

Request for Public Comment

The Texas Racing Commission is accepting written comment from the public on a pending application for a Class 3 racetrack license for Webb County (Laredo). The applicant is El Primero Fair Association, Inc., whose principal shareholders are Marilyn Asmussen, Cheryl Asmussen, and Julie Asmussen. The proposed racetrack is located on Mines Road, approximately 10 miles west of Laredo. The racetrack facility will be leased from El Primero Downs, Ltd., whose principal partners are John Weninger and MRK Investment Corp., L.P.

The applicant proposes to use Sam Houston Race Park, Ltd. as a management consultant to assist in operating the racetrack. The applicant proposes to conduct approximately 15 live race days per year, and offer approximately 15 simulcast signals per day, 364 days per year.

The application is available for review at the Texas Racing Commission headquarters, 8505 Cross Park Drive, Suite 110, Austin, Texas, Monday-Friday, 8:00 a.m. - 5:00 p.m. To schedule a review of the application or for more information, please contact Gloria Giberson, Texas Racing Commission, P.O. Box 12080, Austin, TX 78711-2080, (512) 833-6699, fax (512) 833-6907. Written comment must be received by the Commission at its headquarters not later than March 1, 2002. Issued January 17, 2002

TRD-200200240
Judith L. Kennison
General Counsel
Texas Racing Commission
Filed: January 17, 2002

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Texas Department of Transportation

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 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.dot.state.tx.us

Click on Aviation, click on Aviation Public Hearing. Or, contact Karon Wiedemann, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4520 or 800 68 PILOT.

TRD-200200231
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: January 17, 2002

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University of Houston

Consultant Contract Award Notice

In compliance with the provision of Chapter 2254, Subchapter B, Texas Government Code, The University of Houston furnishes this notice of consultant contract award. The consultant will provide services in assisting and advising in the formation of a Center on Vital and Productive Aging. Requests for proposals were filed in the November 23, 2001 issue of the *Texas Register*.

The contract was awarded to John Tropman, 3568 River Pines Drive, Suite 100, Ann Arbor, Michigan 48103, for a total amount of $40,000.

The beginning date of the contract is December 24, 2001 and the ending date is May 31, 2002.

For further information, please call (713) 743-8085 or (713) 743-2992.

TRD-200200263
Dennis P. Duffy
General Counsel
University of Houston
Filed: January 17, 2002

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The University of Texas System

Consulting RFP for Selection of Natural Gas Supplier

The University of Texas at Austin requests, pursuant to the provisions of the Government Code, Chapter 2254.029, the submission of proposals leading to the award of a contract for Consulting Services. The University's objective is to contract for Consulting Services to assist the University in development of an RFP for solicitation of a natural gas supplier and the subsequent management of the resulting contract.

An award for the services specified herein will be made following a procedure using competitive sealed proposals.

Proposals will be opened publicly to identify the names of the RESPONDENTS, but will be afforded security sufficient to preclude disclosure of the contents of the proposal, including prices or other information, prior to award. After opening, an award may be made on the basis of the proposals initially submitted, without discussion, clarification, or modification, or on the basis of negotiation with any of the RESPONDENTS or, at UNIVERSITY'S sole option and discretion, UNIVERSITY may discuss or negotiate all elements of the proposal with selected RESPONDENTS which represent a competitive range of proposals. For purposes of negotiation, a competitive range of acceptable or potentially acceptable proposals may be established comprising the highest rated proposal(s). After the submission of a proposal but before making an award, UNIVERSITY may permit the offeror to revise the proposal in order to obtain the best final offer. UNIVERSITY may not disclose any information derived from the proposals submitted from competing offers in conducting such discussions. UNIVERSITY will provide each offeror with an equal opportunity for discussion and revision of proposals. Further action on proposals not included in the competitive range will be deferred pending an award, but UNIVERSITY reserves the right to include additional proposals in the competitive range if deemed in the best interest of UNIVERSITY. UNIVERSITY reserves the right to award a Contract for all or any portion of the requirements proposed by reason of this request, award multiple Contracts, or to reject any and all proposals if deemed to be in the best interests of UNIVERSITY and to re-solicit for proposals, or to reject any and all proposals if deemed to be in the best interests of UNIVERSITY and to temporarily or permanently abandon the procurement. If UNIVERSITY awards a contract, it will award the contract to the offeror whose proposal is the most advantageous to UNIVERSITY, considering price and the evaluation factors set forth in this RFP. The contract file must state in writing the basis upon which the award is made.

Interested parties may contact Rae Lender at The University of Texas at Austin Purchasing Office for a copy of the RFP document by calling (512) 471-4266 or by email at: lender@mail.utexas.edu .

An original and five (5) copies of the proposal must be submitted by the Proposal submission deadline of February 18, 2002 at 2:30 P.M., Central Standard Time.

TRD-200200238
Francie Frederick
Counsel and Secretary to the Board
The University of Texas System
Filed: January 17, 2002

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Notice of Intent for Consulting Services

The University of Texas Southwestern Medical Center at Dallas (UT Southwestern) will be seeking competitive sealed proposals to hire a consultant to assist the university in preparation of a strategic plan for Information Resources.

The award for the services will be made by a review of competitive sealed proposals that will result in the best value to the UT Southwestern.

The RFP is available at: http://outside.utsouthwestern.edu/rfp/rfp2003stratplan.doc, along with a link to related HUB documents at http://outside.utsouthwestern.edu/frp/hubappendixb.pdf.

Parties interested in more information should contact:

Valerie D. Meyer

Special Projects Coordinator

Information Resources

UT Southwestern Medical Center

5323 Harry Hines Blvd

Dallas, TX 75390-8595

Voice: (214) 648-1718

Email: valerie.meyer@utsouthwestern.edu

A bidder conference will be held February 8, 2002 at 10:30 a.m. in room DC1.200 at UT Southwestern. Interested parties must attend the bidder conference to be considered for this engagement.

The proposal submission deadline will be February 22, 2002 at 3:00 p.m. Central Time.

TRD-200200232
Francie Frederick
Counsel and Secretary to the Board
The University of Texas System
Filed: January 17, 2002

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Veterans Land Board

Request for Proposals for Donations of Suitable Land for One or More Texas State Veterans' Cemeteries

State Veterans' Cemeteries Committee of the State of Texas

On November 6, 2001, the citizens of the State of Texas passed a constitutional amendment to authorize the creation of Texas State Veterans' Cemeteries. The 77th Texas State Legislature amended State law to authorize the Veterans' Land Board of the State of Texas (VLB) to operate and maintain up to seven (7) veterans' cemeteries throughout the State. The Legislature established the Texas State Veterans' Cemeteries Committee (Committee) which is required to establish the guidelines for the location and size of the cemeteries, including site selection, and eligibility requirements for burial in the cemeteries.

The VLB will apply to the United States Department of Veterans Affairs for a grant under the State Cemetery Grants Program to construct Texas State Veterans' Cemeteries. The VLB anticipates that Texas may receive grant funding to construct only one cemetery annually. The Program provides federal funds for the cost of building the infrastructure to create a state cemetery program. Program grant money can also be used to acquire equipment needed for cemetery operations. However, federal and state law prohibit expenditure of public funds for site acquisition.

Through the Request for Proposals (RFP), the Committee is seeking the donation of suitable land from interested communities or entities throughout the State for the location and establishment of one or more Texas State Veterans' Cemeteries. The RFP is open to state agencies, counties, cities, veterans' service organizations, individuals, other entities, or any combination of individuals and entities.

The RFP contains pertinent information concerning the preparation and submission of proposals and the criteria that will be used to evaluate submitted proposals. Applicants must have the legal ability to convey title of a donated site to the State of Texas.

A complete copy of the RFP can be obtained by contacting Diane Smith by phone (512) 475-422, by fax (512) 305-9273, via email at diane.smith@glo.state.tx.us or on the VLB website at http://www.glo.state.tx.us/vlb/cemetery/index.html.

PROPOSALS MUST BE RECEIVED NO LATER THAN 3:00 P.M. CENTRAL DAYLIGHT TIME ON WEDNESDAY, MAY 1, 2002 TO BE ELIGIBLE FOR CONSIDERATION. Proposals received after the specified date and time will not be accepted. Copies of the proposal sent by fax or e-mail will not be accepted.

Please submit ten copies of proposals to: By Mail: State Veterans' Cemeteries Committee, c/o Texas Veterans' Land Board, Attn: Larry R. Soward, P.O. Box 12873, Austin, Texas 78711. Or, in person: State Veterans' Cemeteries Committee, c/o Texas Veteran's Land Board, Attn: Larry R. Soward, Stephen F. Austin State Office Building, Room B-15, 1700 N. Congress, Austin, Texas 78701.

A proposal conference for Applicants will be held at 1:00 P.M. on Wednesday March 6, 2002, in Room 118 of the Stephen F. Austin State Office Building located at 1700 North Congress, Austin, Texas. Applicants who plan to attend should notify Larry Soward, Chief Clerk, GLO/VLB by fax (512) 463-5248 or email at larry.soward@glo.state.tx.us.

All inquiries regarding requirements of the RFP should be received no later than 5:00 P.M. on Friday, April 26, 2002 by phone (800) 252-VETS or e-mail at tsvc@glo.state.tx.us. Written responses to inquiries and any revisions or supplements to the RFP issued prior to the due date will be posted on the VLB website at http://www.glo.state.tx.us/vlb/cemetery/index.html.

After the review of all proposals, the Committee will rank up to seven sites for priority consideration to submit for potential future construction of a Texas State Veterans' Cemetery.

TRD-200200332
Larry R. Soward
Chief Clerk, General Land Office
Veterans Land Board
Filed: January 23, 2002

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How to Use the Texas Register

Information Available: The 13 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 a 30-day 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.

Open Meetings - notices of open meetings.

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 26 (2001) is cited as follows: 26 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 "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 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 through the Internet. The address is: 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 subscription information, see the back cover or call the Texas Register at (800) 226-7199.

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 (using Arabic numerals) and Parts (using Roman 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 (1-800-356-6548), and West Publishing Company (1-800-328-9352).

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).

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

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