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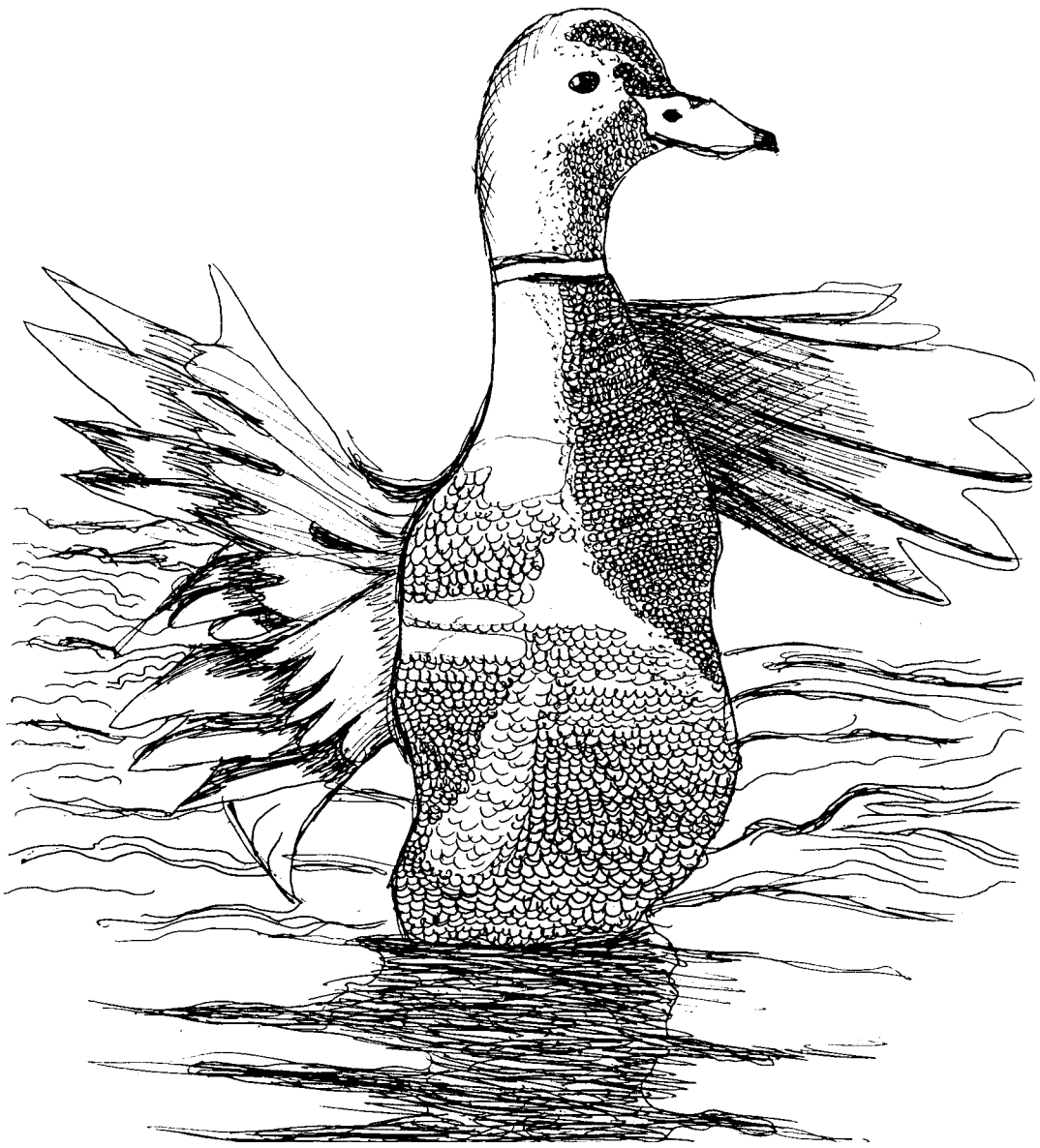

This month's front cover artwork:

Artist: *Terriney Bennett*
5th grade
French 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.

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(800) 22607199
(512) 463-5561
FAX (512) 463-5569

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Director- Dan Procter

Texas Administrative Code
Dana Blanton
Roberta Knight

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ATTORNEY GENERAL

PROPOSED RULES

GENERAL SERVICES COMMISSION

CENTRAL PURCHASING DIVISION

DEPARTMENT OF INFORMATION RESOURCES

PLANNING AND MANAGEMENT OF INFORMATION RESOURCES TECHNOLOGIES

PUBLIC UTILITY COMMISSION OF TEXAS

SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

TEXAS DEPARTMENT OF INSURANCE

SURPLUS LINES INSURANCE

SURPLUS LINES INSURANCE

TEXAS DEPARTMENT OF HUMAN SERVICES

TEXAS WORKS

FAMILY VIOLENCE PROGRAM

TEXAS COMMISSION ON HUMAN RIGHTS

COMMISSION

TEXAS WORKFORCE COMMISSION

CHILD CARE AND DEVELOPMENT

ADOPTED RULES

OFFICE OF THE SECRETARY OF STATE

ELECTIONS

GENERAL SERVICES COMMISSION

CENTRAL PURCHASING DIVISION

CENTRAL PURCHASING DIVISION

DEPARTMENT OF INFORMATION RESOURCES

PLANNING AND MANAGEMENT OF INFORMATION RESOURCES TECHNOLOGIES

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

FINANCIAL ASSURANCE

PUBLIC NOTICE

ACTION ON APPLICATIONS AND OTHER AUTHORIZATIONS

GENERAL PERMITS FOR WASTE DISCHARGES

APPLICATIONS PROCESSING

PUBLIC DRINKING WATER

IN ADDITION

Office of the Attorney General

Coastal Coordination Council

Comptroller of Public Accounts

Office of Consumer Credit Commissioner

Court Reporters Certification Board

Texas Education Agency

General Land Office

General Services Commission

Texas Department of Health

Texas Health and Human Services Commission

Texas Department of Insurance

Texas Lottery Commission

Texas Natural Resource Conservation Commission

Texas Department of Protective and Regulatory Services

Public Utility Commission of Texas

Texas Council on Purchasing from People with Disabilities

Texas Department of Transportation

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.

Opinions

Opinion No. JC-0272. Ms. Daisy A. Stiner, Executive Director, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, regarding whether section 6A of article 5221f, Revised Civil Statutes, authorizes the Texas Department of Housing and Community Affairs to regulate unlicensed real estate brokers (RQ-0208-JC)

S U M M A R Y. Section 6A of article 5221f, Texas Revised Civil Statutes, added to the statute by House Bill 1193, 76th Legislature, does not grant to the Texas Department of Housing and Community Affairs new regulatory authority over unlicensed real estate brokers.

Opinion No. JC-0273. The Honorable Chris D. Prentice, Hale County Attorney, 500 Broadway, Suite No. 80, Plainview, Texas 79072, regarding whether a county tax assessor-collector who collects the motor vehicle inventory tax must register with the Texas Board of Tax Professional Examiners, and related questions (RQ-0210-JC)

S U M M A R Y. An interlocal contract between an assessor-collector and an appraisal district or other taxing unit pursuant to Tax Code section 6.24(b) requires the taxing unit or appraisal district to collect all taxes the county is required to assess and collect. The motor vehicle inventory tax is a tax the county must assess and collect. As such, the tax must be included in an interlocal contract under section 6.24(b). The collection of such taxes by an assessor-collector, rather than pursuant to the section 6.24(b) interlocal contract, precludes application of article 8885, section 11B of the Revised Civil Statutes exempting assessor-collectors from regulation by the Texas Board of Tax Professional Examiners.

Opinion No. JC-0274. Mr. Allen M. Hymans, Executive Director, Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, Texas 78711, regarding authority of the Texas State Board of Podiatric Medical Examiners to conduct warrantless on-site compliance inspections of its licensees and their premises (RQ-0211-JC)

S U M M A R Y. The Texas State Board of Podiatric Medical Examiners is not authorized to conduct warrantless on-site compliance inspections of its licensees or their premises.

Opinion No. JC-0275. The Honorable Robert Turner, Chair, Public Safety Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding adoption of a fire code by the Travis County Emergency Services District No. 6 (RQ-0209-JC)

S U M M A R Y. The board of an emergency services district organized pursuant to chapter 775 of the Health and Safety Code may adopt a fire code that does not conflict with a fire code adopted by another political subdivision that contains within its boundaries any portion of the land contained in the district. The fire code of an emergency services district may not conflict with the code of a municipality with overlapping territory, even though the district may not enforce its fire code in municipalities. If the district adopts a fire code, and a city or county later adopts or amends its fire code to be in conflict with the district's fire code, the district's fire code is thereafter unenforceable to the extent of such conflicts. An emergency services district lacks authority to regulate fire alarms and false alarms.

For further information, please call (512) 463-2110

TRD-200006072
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: August 29, 2000

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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 5. GENERAL SERVICES COMMISSION

CHAPTER 113. CENTRAL PURCHASING DIVISION

SUBCHAPTER G. BUYING UNDER CONTRACT ESTABLISHED BY AN AGENCY OTHER THAN THE GENERAL SERVICES COMMISSION

1 TAC §113.126

The General Services Commission proposes new Title 1, TAC §113.126 concerning purchasing from interstate compacts and cooperative agreements. The new rules are proposed in order to establish procedures that are in compliance with the requirements of the Texas Government Code, §2156.181 concerning interstate compact procedures.

Paul E. Schlimper, Director of Central Procurement Services, has determined that for the first five-year period the new rule is in effect there will be no fiscal implication for the state or local governments as a result of enforcing or administering these new rules.

Paul E. Schlimper, further determines that for each year of the first five-year period the new rule is in effect, the public benefit anticipated as a result of enforcing these rules will be that it will be streamlining the contract process. There will be no effect on large, small or micro-businesses. There is no anticipated economic costs to persons who are required to comply with these rules and there is no impact on local employment.

Comments on the proposals may be submitted to Ann Dillon, General Counsel, General Services Commission, P.O. Box 13047, Austin, TX 78711-3047. Comments must be received no later than thirty days from the date of publication of the proposal to the Texas Register.

The new rule is proposed under the authority of the Texas Government Code, Title 10, Subtitle D, Chapter 2156, §2156.181 which provides the General Services Commission with the authority to promulgate rules necessary to implement the sections.

The following code is affected by these rules: Government Code, Title 10, Subtitle D, Chapter 2156, §2156.181.

§113.126. Purchasing from Interstate Compacts and Cooperative Agreements.

(a) Pursuant to Government Code, Section 2156.181, the commission may enter into compacts or cooperative purchasing agreements with one or more state governments, agencies of other states, or other governmental entities for the purchase of goods or services if the commission determines that entering into an agreement would be in the best interest of the state.

(b) Before entering into such compacts or cooperative purchasing agreements, the Director of Central Procurement Services shall present the proposal to the commission for approval. The proposal must state why it is advantageous for the commission to authorize a compact or cooperative purchasing agreement with other states.

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 August 23, 2000.

TRD-200005939
Ann Dillon
General Counsel
General Services Commission
Earliest possible date of adoption: October 8, 2000
For further information, please call: (512) 463-3960

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PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 201. PLANNING AND MANAGEMENT OF INFORMATION RESOURCES TECHNOLOGIES

1 TAC §201.13

The Department of Information Resources proposes the amendment of existing §201.13 concerning information resource standards. The purpose of the amendment is to delete from §201.13 subsection (c), relating to use of the TEX-AN network by state agencies, and to delete subsection (e), relating to date standard. The proposed elimination of subsection (c) of §201.13 is a result of the department's review of subsections (c) and (d) of §201.13 in accordance with the notice of intention to review and consider for readoption, revision, or repeal, Title 1, Texas Administrative Code, Chapter 201, §201.13, subsections (c) and (d). The notice of intention to review was published in the June 23, 2000, issue of the *Texas Register*.

Subsection (c) of §201.13 is no longer necessary, because Article IX, §9-10.05, General Appropriations Act, of the 76th Legislature, gives waiver request evaluation to the Telecommunications Planning Group, rather than to the department. The Telecommunications Planning Group is created by Subchapter H, Chapter 2054, Texas Government Code. The Telecommunications Planning Group has established "TEX-AN Waiver Criteria and Waiver Evaluation Information" which is accessible on the Telecommunications Planning Group site at http://www.state.tx.us/TPG.

Subsection (e) of §201.13 is proposed for deletion because the Year 2000 has been weathered without significant impact to the state's technology infrastructure, and the date standard rule contained in subsection (e) is no longer necessary. The department does not intend to adopt the proposed amendment to § 201.13 before mid-January, 2001 to be certain that December 31, 2000 is passed without Year 2000 incident.

The proposed amendment is proposed in accordance with Texas Government Code §2054.052(a), which provides the department may adopt rules as necessary to implement its responsibilities. The remaining amendments to §201.13 are not substantive. They merely renumber existing subsections (d) and (f) as subsections (c) and (d), respectively.

Mr. Eddie Esquivel, director of the Enterprise Operations Division, has determined that for each year of the first five years the amended rule will be in effect, there will be no fiscal implications for state government as a result of enforcing or administering the proposed amendment to delete subsection (c) of §201.13. There may be reduced staff time spent in negotiating computer hardware contracts and software license agreements as a result of the proposed deletion of subsection (e) of §201.13. This is because many computer hardware and software vendors have been reluctant to agree to include the provisions of subsection (e) in their contracts with state government. The vendors' reluctance to agree to include the provisions of subsection (e) in their contracts with state agencies has sometimes lengthened contract negotiations between the vendors and state agencies. There will be no foreseeable fiscal implications for local government as a result of enforcing or administering the proposed rule.

Mr. Esquivel has determined that for each year of the first five years the amended rule will be in effect, the benefit to the public will be the elimination of essentially duplicative requirements for obtaining waivers from use of the TEX-AN system and the elimination of an unnecessary rule on date standard. There will be no effect on small businesses. Mr. Esquivel believes that there is no additional anticipated economic cost to persons who are required to comply with the amended rule.

Comments on the proposed amendment to §201.13 may be submitted to Renee Mauzy, General Counsel, Department of Information Resources, via mail to P.O. Box 13564, Austin, Texas 78711, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m., within 30 days after publication.

The amendment is proposed under Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to carry out its responsibility under the Information Resources Management.

Subchapter H of Chapter 2054, Texas Government Code is affected by the proposed amendment.

§201.13. Information Resource Standards.

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

~~[(c) Use of TEX-AN Network.]~~

~~[(1) Applicability.]~~

~~[(A) All state agencies are to use the Texas Agency Network (TEX-AN) to the fullest extent possible.]~~

~~[(B) Funds appropriated to state agencies as defined in Texas Civil Statutes, Article 601b, §1.02(2), shall not be expended for the acquisition of intercity telecommunications facilities or services until a determination has been made by the Telecommunications Services Division of the General Services Commission and the department (DIR) that the agency requirement for intercity telecommunications cannot be met by the TEX-AN network.]~~

~~[(C) State agencies shall not enter into or renew contracts with carriers or other providers of intercity telecommunication facilities or services without obtaining waivers from the Telecommunications Services Division and the DIR certifying that the requested intercity telecommunications requirements cannot be provided at reasonable costs on TEX-AN network.]~~

~~[(2) Waivers.]~~

~~[(A) A waiver shall be granted to any state agency upon receipt of a written request and determination of the Telecommunications Services Division of the General Services Commission and the DIR that the action is most cost effective to the entire State of Texas.]~~

~~[(B) Waivers will be granted for periods not to exceed one fiscal year from the effective date of the waiver.]~~

~~[(C) Waivers will automatically expire upon the expiration date unless an extension is approved by the Telecommunications Services Division and the DIR.]~~

~~[(D) Contracts for services obtained under waiver shall not extend beyond the expiration date of the waiver.]~~

~~[(3) Review procedures.]~~

~~[(A) The department and the Telecommunications Services Division of the General Services Commission will evaluate waiver requests for consistency with the General Appropriations Act, other legislation, and the priorities as described in the State Strategic Plan for Information Resources Management, and for cost-effectiveness to the entire State of Texas.]~~

~~[(B) The department will grant or deny waiver requests in writing no later than 30 working days after receipt of the request.]~~

(c) [~~(d)~~] Standard for data transport networks for computers.

(1) Definitions.

(A) For purposes of this section the word "network" will refer to all data transport networks used primarily to interconnect computers and networks of computers for the purpose of transporting data, allowing interoperation of computer applications on more than one computer system, and providing access to data.

(B) For purposes of this section the phrase "substantial change" is defined to mean any change that requires the replacement of physical transport media, replacement of data transport protocol, or any change in the major computer systems on the network.

(C) For purposes of this section "non-adjacent buildings" are defined as those that are physically separated by property not owned by the state and where there is no state owned right-of-way connecting the buildings.

(2) Standard. All networks that span more than one non-adjacent building, or interconnect more than one agency must adhere to the following.

(A) If the network is in existence at the time this rule is adopted, the network must become compliant with subparagraph (B) of this paragraph by August 31, 2001.

(B) All new networks, all extensions to existing networks and all networks undergoing substantial change must adhere to the TCP/IP standards as listed in the most recent Request for Comments (RFC) as international standards promulgated by the Internet Society.

(C) Agencies may not install new networks or extensions to existing networks where such installation or extension duplicates existing state owned network routing that complies with subparagraph (B) of this paragraph. Agencies must cooperate to share existing facilities; expanding them if necessary. Where this paragraph conflicts with current or future rules concerning telecommunications from the General Services Commission, the General Services Commission rule will prevail.

~~[(e) Date Standard. Because the Year 2000 could have an impact on virtually all computer systems due to the use of only the last two digits of a date field, all state agencies and institutions of higher education will adhere to the following standard, and will observe the Year 2000 readiness criteria and complete the Year 2000 risk assessment described in paragraphs (1)-(4) of this subsection.]~~

~~[(1) Interchange Standard. Four-digit year elements will be used for the purposes of electronic data interchange in any recorded form among state agencies, institutions of higher education and the public. The year shall encompass a two-digit century that precedes, and is contiguous with, a two-digit year-of-century (e.g., 1999, 2000, etc.). Applications that require day and month information will be coded in the following format: CCYYMMDD. Additional representations for week, hour, minute, and second, if required, will comply with the international standard ISO 8601:1988, "Data elements and interchange formats--Information interchange--Representation of dates and times." If two or more state agencies or institutions of higher education agree to exchange month and day information based on ordinal dates, the ISO standard format of CCYYDDD will be used.]~~

~~[(2) Year 2000 Readiness Criteria. Any data-processing asset must meet the following four criteria to be century-compliant:]~~

~~[(A) General integrity: No value for current date will cause interruptions in desired operation--especially from 20th to 21st centuries.]~~

~~[(B) Date integrity: All manipulations of time-related data (dates, durations, days of week, etc.) will produce desired results for all valid date values within the application domain.]~~

~~[(C) Explicit century: Date elements in interfaces and data storage permit specifying century to eliminate date ambiguity.]~~

~~[(D) Implicit century: For any date element represented without century, the correct century is unambiguous for all manipulations involving that element.]~~

~~[(3) Implementation. State agencies and universities shall complete a Year 2000 risk assessment of all computer based systems, telecommunications equipment and data networks in 1996. Specific dates for completing conversion and reprogramming fixes will depend on each organization's risk assessment. All new systems acquired shall use four-digit year elements. Contracts for software and/or hardware shall include Year 2000 protection and warranty language.]~~

~~[(4) As of January 1, 1997, all products and services purchased by state agencies shall meet the requirements of paragraphs (1) and (2) of this subsection.]~~

(d) [~~(f)~~]Communications Wiring Standards for State Facilities.

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

(A) ANSI--The American National Standards Institute.

(B) EIA--The Electronics Industry Association.

(C) TIA--The Telecommunications Industry Association.

(2) All state agencies will adhere to the following standards when wiring or re-wiring state-owned or state-leased space:

(A) ANSI/EIA/TIA-568-1995, Commercial Building Telecommunications Wiring Standard or its most recent successor document. This applies to the telecommunications wiring for buildings that are office-oriented and when ANSI/EIA/TIA-570-1991 is not selected. The term "commercial enterprises" is used in ANSI/EIA/TIA-568-1991 to differentiate between office buildings and buildings designed for industrial enterprises. ST-type fiber connectors shall be used for fiber optic terminations.

(B) ANSI/EIA/TIA-570-1991, Residential and Light Commercial Building Telecommunications Wiring Standard or its most recent successor document, when planning and designing premises-wiring systems intended for connecting one to four exchange access lines to various types of customer-premises equipment when ANSI/EIA/TIA-568-1991 is not selected.

(C) ANSI/EIA/TIA-569-1990, Commercial Building Telecommunications Pathways and Spaces or its most recent successor document, when planning and designing state-owned and state-leased space to accommodate telecommunications system wiring.

(D) ANSI/EIA/TIA-606-1993, Administration Standard for the Telecommunications Infrastructure of Commercial Buildings or its most recent successor document, when documenting and administering telecommunications infrastructures in state-owned and state-leased space.

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 August 28, 2000.

TRD-200006029

Renee Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 8, 2000
For further information, please call: (512) 475-2153

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1 TAC §201.19

The Department of Information Resources proposes to adopt new §201.19 establishing model guidelines for state agencies to use in developing their own internal quality assurance guidelines. The model guidelines, which are entitled "Quality Assurance Guidelines for Projects in Texas State Agencies," are published at www.dir.state.tx.us/eod/qa. The model guidelines, which are not themselves proposed as rules, may be modified by the department from time to time. Modifications will be posted to www.dir.state.tx.us/eod/qa. The new rule is proposed in accordance with Texas Government Code §2054.153, which requires the department to develop model guidelines for state agencies to use in developing their own internal quality assurance procedures, and Texas Government Code §2054.052(a), which provides the department may adopt rules as necessary to implement its responsibilities. The model guidelines address planning project development; determining the projected benefits of a project; developing and implementing management control processes; projecting the budget for a project; analyzing the risks of a project; establishing standards by which the effectiveness and efficiency of a project can be evaluated; and evaluating and reporting on the project after implementation.

Mr. Eddie Esquivel, director of the Enterprise Operations Division, has determined that for each year of the first five years the proposed rule will be in effect, there will be no fiscal implications for state government as a result of enforcing or administering the proposed rule. There will be no foreseeable fiscal implications for local government as a result of enforcing or administering the proposed rule.

Mr. Esquivel has determined that for each year of the first five years the proposed rule will be in effect, there will be a benefit to the public in that state agency information resources technologies projects are more likely to be successfully completed on time and within budget. There will be no effect on small businesses. Mr. Esquivel believes that generally there is no anticipated economic cost to persons who are required to comply with the proposed rule. However, costs related to staff time and resources may be incurred by a state agency that implements the model guidelines if the state agency previously lacked substantive internal quality assurance procedures.

Comments on the proposed rule may be submitted to Renee Mauzy, General Counsel, Department of Information Resources, via mail at P.O. Box 13564, Austin, Texas 78711, or electronically at renee.mauzy@dir.state.tx.us no later than 5:00 p.m., within 30 days after publication.

The new rule is proposed under Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to carry out its responsibility under the Information Resources Management Act and Texas Government Code §2054.153, which requires the department to establish model guidelines for state agencies to use in developing their own internal quality assurance procedures.

Texas Government Code §2054.153 is affected by the proposed rule.

§201.19. Establishment of Quality Assurance Guidelines for Projects in Texas State Agencies.

(a) General. Model Quality Assurance Guidelines for Information Resource Projects in Texas State Agencies have been developed by the department. The Model Guidelines, which are located at www.dir.state.tx.us/eod/qa/, are available for state agencies to use in developing their own internal quality assurance procedures.

(b) Contents of Model Guidelines. The Model Guidelines contain processes for analyzing and managing information resource project risk, for determining the benefits and costs of information resources projects, for information resource monitoring and control, for post information resource project reviews and for evaluating the effectiveness and efficiency of information resource projects. The Model Guidelines may also include lists of additional resources available about the process, templates for artifacts produced in the process and checklists for evaluating artifacts produced in the process, or used as tools within the process.

(c) Modifications to Model Guidelines. The department may modify the Model Guidelines from time to time. Modifications will be located at www.dir.state.tx.us/eod/qa.

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 August 28, 2000.

TRD-200006028
Renee Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 8, 2000
For further information, please call: (512) 475-2153

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER E. CERTIFICATION, LICENSING, AND REGISTRATION

16 TAC §26.103

The Public Utility Commission of Texas (commission) proposes new §26.103, relating to Affiliate Guidelines for Certificates of Convenience and Necessity Holders. The proposed new rule will implement §54.102 of the Public Utility Regulatory Act (Vernon 1998, Supplement 2000) (PURA) and address requirements for a holder of a certificate of convenience and necessity (CCN) and its affiliated telecommunications services providers applying for a certificate of operating authority (COA) or service provider certificate of operating authority (SPCOA). Project Number 21164, *Rulemaking to Address Affiliate Issues for Telecommunications Services Providers Pursuant to PURA §§54.102, 60.164, and 60.165,* has been assigned to this proceeding.

Project Number 21164 was originally limited to the requirements in PURA §54.102 concerning a CCN holder and its affiliated COA or SPCOA holders. Interested parties filed comments to questions proposed by staff concerning PURA §54.102 on January 18, 2000, and a public workshop was held on February 23, 2000. After reviewing post-workshop comments wherein the parties made extensive reference to other PURA provisions, the commission expanded this rulemaking to also address joint marketing of a local exchange company and its affiliates pursuant to PURA §60.164 and general affiliate issues as discussed in PURA §60.165. Interested parties filed comments to questions proposed by staff concerning PURA §60.164 and §60.165 on July 13, 2000. A second public workshop was held on July 27, 2000, and the parties generally agreed that no commission rule is necessary to clarify the purpose, intent, or requirements of PURA §60.164 and §60.165.

In proposing this rule relating to affiliate activities, the commission seeks to present the statutory requirements of PURA §54.102 in a straightforward manner and enhance the comprehensiveness of its substantive rules by including the statutory requirements for CCN holders and affiliated COA and SPCOA holders. The broad safeguards in this rule seek to promote competition for participants in the telecommunications market consistent with the legislative mandate set forth in PURA §54.102.

The commission seeks comments on the proposed rule that interested parties believe are appropriate. Parties should organize their comments in a manner consistent with the organization of the proposed rule.

Bridget L. Rabel, Senior Policy Analyst, Policy Development Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Rabel has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be greater protection of the public interest and an increase in compliance by telecommunications utilities with the certification requirements of PURA. There will be no effect on small businesses or micro- businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Rabel has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 if a public hearing is requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Comments on the proposed new rule (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt this section.

This new rule is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998, Supplement 2000) (PURA), §§14.002, 15.023, 54.102, 54.105, 60.164, and 60.165. Section 14.002 provides the commission authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. Section 15.023 grants the commission authority to impose an administrative penalty against an entity for violation of a rule adopted under PURA. Section 54.102 provides the commission authority to enforce structural separation and pricing guidelines for CCN and affiliated COA and SPCOA holders. Section 54.105 grants the commission authority to impose a penalty against a COA holder for violation of a PURA requirement. Section 60.164 limits the commission's authority to adopt any rule or order that would prohibit a local exchange company from jointly marketing or selling its products and services with the products and services of any of its affiliates in any manner permitted by federal law or applicable rules or orders of the Federal Communications Commission. Section 60.165 limits the commission's authority to adopt any rule or order that would prescribe for any local exchange company any affiliate rule, that is more burdensome than federal law or applicable rules or orders of the Federal Communications Commission.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 15.023, 54.102, 54.105, 60.164, and 60.165.

§26.103. Affiliate Guidelines for Certificates of Convenience and Necessity Holders.

(a) Application. This section applies to persons and entities holding a certificate of convenience and necessity (CCN) and their affiliates that either hold or are applying for a certificate of operating authority (COA) or a service provider certificate of operating authority (SPCOA) under the Public Utility Regulatory Act (PURA) Chapter 54.

(b) Multiple certificates in single service area. An affiliate of a CCN holder may hold a COA or SPCOA for all or any portion of a service area of the CCN holder.

(c) Structural separation. An affiliate of a CCN holder may hold a COA if the holder of the CCN is in compliance with federal law and Federal Communications Commission (FCC) rules governing affiliates and structural separation.

(d) Service limitation. An affiliate of a CCN holder that serves more than five million access lines in this state must abide by the service restrictions and limitations set forth in PURA §54.102(e).

(e) Price for services. An affiliate of a CCN holder may not directly or indirectly sell to a non- affiliate any regulated product or service purchased from the CCN holder at any rate or price less than the price paid to the CCN holder.

(f) Enforcement. If the CCN holder is not in compliance with federal law and FCC rules governing affiliates and structural separation, the commission shall not grant a COA to the affiliate. If the holder of a CCN, COA, or SPCOA fails to comply with the requirement of this section, the commission may assess penalties as set forth in PURA §54.105.

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 August 25, 2000

TRD-200005999

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 8, 2000
For further information, please call: (512) 936-7308

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 15. SURPLUS LINES INSURANCE

The Texas Department of Insurance proposes the repeal of §§15.1-15.13, 15.16-15.23, 15.27, 15.29, and 15.101 concerning surplus lines agents, surplus lines insurance, and the Surplus Lines Stamping Office of Texas. The repeal is necessary so the department can make extensive changes and additions, and propose new §§15.1 - 15.25 and 15.101 which are being simultaneously proposed with this repeal proposal and are published elsewhere in this issue of the Texas Register. New §§15.1 - 15.25 and 15.101 will replace all of the repealed sections. The repeal of these sections is necessary to provide consistency in the regulations applicable to surplus lines insurance and to update the sections in regards to the stamping office, surplus lines insurance and surplus lines agents.

Betty Patterson, CPA, AFE, Senior Associate Commissioner of the Financial Program has determined that, for the first five-year period the repeal of the sections will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal, and there will be no effect on local employment or local economy.

Ms. Patterson also has determined that, for each year of the first five years the repeal of the sections will be in effect, the public benefit anticipated as a result of the repeal of the sections will be more efficient and standardized operations for the surplus lines market, including agents. There is no economic cost to persons who are required to comply with the repeal as proposed.

To be considered, all comments must be in writing and received no later than 5:00 p.m. on October 9, 2000 by Lynda H. Nesenholtz, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted simultaneously to Betty Patterson, CPA, AFE, Senior Associate Commissioner, Financial Program, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

SUBCHAPTER A. GENERAL REGULATION OF SURPLUS LINES INSURANCE

28 TAC §§15.1-15.13, 15.16-15.23, 15.27, 15.29

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

The repeal of the sections is proposed under the Insurance Code Article 1.14-2 and §36.001. Article 1.14-2 authorizes the Commissioner of Insurance to adopt regulations and provide forms for surplus lines insurance, the stamping office and surplus lines agents, and §36.001 authorizes the Commissioner of Insurance to adopt rules for the conduct and execution of the duties and functions of the department as authorized by statute.

Insurance Code Article 1.14-2 is affected by the repeal of the sections.

§15.1. Effective Date of Rules and Regulations and Partial Repeal of Board Orders.
§15.2. Qualifications Required of Surplus Lines License Applicant.
§15.3. Licensing of Surplus Lines Agents.
§15.4. Proof of Agent's Financial Solvency.
§15.5. Suspension or Refusal of Surplus Lines Agent's License.
§15.6. Conduct of Agent's Business.
§15.7. Eligibility Requirements for Surplus Lines Insurance.
§15.8. Eligibility Requirements of Surplus Lines Insurers.
§15.9. Duty of Reasonable Effort by Surplus Lines Agents to Ascertain Financial Condition and Other Practices of Unauthorized Insurers.
§15.10. Definitions.
§15.11. Surplus Lines Stamping Fee.
§15.12. Uniformity of Reporting Forms.
§15.13. Surplus Lines Insurance Requests for Information, Examination, and Complaints.
§15.16. Correct Execution Required for Filing.
§15.17. General.
§15.18. Control Number.
§15.19. Contract File.
§15.20. Agency Accounting Records.
§15.21. Minimum Content of Contracts.
§15.22. Furnishing Evidence of Insurance.
§15.23. Policy Forms Filings and Stamping Office Fees.
§15.27. Exemption from Minimum Capital and Surplus Requirements.
§15.29. Purchase of Insurance by Purchasing Groups through Surplus Lines Agents.

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 August 28, 2000.

TRD-200006025
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: October 8, 2000
For further information, please call: (512) 463-6327

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SUBCHAPTER B. SURPLUS LINES STAMPING OFFICE OF TEXAS

28 TAC §15.101

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

The repeal of the sections is proposed under the Insurance Code Article 1.14-2 and §36.001. Article 1.14-2 authorizes the Commissioner of Insurance to adopt regulations and provide forms

for surplus lines insurance, the stamping office and surplus lines agents, and §36.001 authorizes the Commissioner of Insurance to adopt rules for the conduct and execution of the duties and functions of the department as authorized by statute.

Insurance Code Article 1.14-2 is affected by the repeal of the sections.

§15.101. Plan of Operation of the Surplus Lines Stamping Office of Texas.

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 August 28, 2000.

TRD-200006024
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 27, 2000
For further information, please call: (512) 463-6327

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CHAPTER 15. SURPLUS LINES INSURANCE

The Texas Department of Insurance proposes new §§15.1 - 15.25 and §15.101, Subchapters A and B, concerning rules regulating the surplus lines business in the State of Texas. The proposed sections are necessary to address amendments to related portions of the Texas Insurance Code; to improve the efficiency of the regulatory process, including the provision for electronic filings to the Surplus Lines Stamping Office of Texas by telecopy and other means of electronic transmission approved by the department; to comply with the requirements of the Gramm-Leach-Bliley Act; to modify references to sanctions available to the commissioner with regard to surplus lines licenses to make such sanctions consistent with those available in the case of other insurance agent licenses which must also be held by surplus lines agent license holders; and to reference the regulations of the Office of the Comptroller of Public Accounts of Texas regarding the allocation and reporting of surplus lines related premium. Currently, surplus lines agents must file with the stamping office a "true and correct copy" of each surplus lines policy issued. From the figures provided by the stamping office, neither the level of violations identified upon review of policies (presently less than 4 1/2%) nor the need for future access to a complete policy record (estimated at less than 7/10s of 1% of policies microfilmed) is sufficient to justify this requirement. The cost of compliance to both surplus lines agents and the Surplus Lines Stamping Office exceeds the regulatory benefit derived. The Texas Department of Insurance proposes the repeal of existing §§15.1-15.13, 15.16-15.23, 15.27, 15.29, and 15.101 concerning surplus lines agents, surplus lines insurance, and the Surplus Lines Stamping Office of Texas that is being simultaneously proposed with this proposal and is published elsewhere in this issue of the Texas Register. Section 15.1 provides an effective date upon final issuance of this rule. Section 15.2 clarifies some of the language used in this proposal. Section 15.3 provides for a two-year licensure period and requires the applicant to provide a surety bond of at least $50,000. A provision has been included permitting the Commissioner to waive the bond requirement, in whole or part, if necessary to conform to the requirements of the Gramm-Leach-Bliley Act. Moreover, the section provides that an applicant no longer must maintain an office in Texas to be eligible for a license. Section 15.4 sets forth the requirements for the surety bond. Section 15.5 allows for the assessment of administrative penalties against a surplus lines agent. The revocation or suspension of a license continues as an option for the department after proper notice and a hearing. The grounds for sanctions include failure to file reports, failure to allow the inspection of records, failure to maintain a general property and casualty agent's or managing general agent's license, failure to maintain the required proof of financial solvency, or the violation of any insurance law or regulation. Section 15.6 allows for the licensure of limited liability companies, and requires compliance with the rules for assumed names. In addition, this section allows for underwriting and claims services to be provided by the surplus lines agent under a written agreement. The agreements must be available for inspection by the department. Section 15.7 requires the stamping office to review the eligibility of insurers and compliance by surplus lines agents with filing requirements. In addition, the stamping office must report "major and improper" conduct to the department even if the conduct is later corrected by the responsible party. Section 15.8 describes the information and materials necessary for consideration as an eligible surplus lines insurer in Texas, including certain financial information, documents evidencing authorization from the insurer's domicillary jurisdiction, documents evidencing the existence and amount of U.S. trust funds, a certified actuarial opinion regarding the adequacy of the insurer's loss reserves, a three-year business plan, NAIC IRIS ratio reports, a copy of the last examination report for the insurer's state of domicile or a copy of the annual IID filing, and a list of Texas surplus lines agents currently used or proposed to be used in Texas. It also provides a time frame for submitting the materials and allows for additional information to be requested by the stamping office or the department, including activities of management and agents, the history and competency of reinsurers, the pattern of claims services, domestic trust agreements, and powers of attorney. The additional information must be provided within ten days. The proposed section also provides that all information and materials are public. The qualifications are continuous ones, and are subject to review at any time. Section 15.9 requires the surplus lines agent to reasonably inquire about the financial condition, claims practices and competency of management, and to report any problems of eligible insurers to the stamping office or the department. Section 15.10 requires the payment of stamping fees. Section 15.11 allows the department to create and require the use of forms for surplus lines purposes, and the use of copies of the forms. Section 15.12 is proposed to allow for the stamping office or the department to request additional material to evaluate eligibility or coverages. The stamping office and the surplus lines agent may mutually agree that a representative of the stamping office may review requested documentation at the agent's place of business. Section 15.13 provides that a filing submitted to the stamping office by facsimile telecopy or other electronic means pre-approved by the department is an official filing. This section also requires access to the surplus lines agent's files by the department. Section 15.14 generally describes the categories of records to be kept by the surplus lines agent, allows for inspection of the records, and requires the maintenance of those records for at least five years after the expiration of the insurance contract. The five-year period in this rule is consistent with the related comptroller tax rule. Section 15.15 provides for the chronological issuance of policies, and an explanation of unused or voided numbers. Section 15.16

describes the items and information required to be kept by the surplus lines agent, including the rate charged, addresses of the insurer and insured, and all related correspondence. Section 15.17 describes the accounting records necessary, which may include electronic records. The proposed section requires each surplus lines agent to follow GAAP and keep monthly financial calculations. Sections 15.18 through 15.20 reference the regulations of the Office of the Comptroller of Public Accounts of Texas that deal with the allocation of premium, and require the reporting of such allocation to the stamping office. Section 15.21 references Texas Insurance Code Article 1.14-2, §7, which specifies the requirements for surplus lines policies. In addition, a named person for service of process is required. Section 15.22 requires the surplus lines agent to promptly provide the insurance contract to the insured and notify him/her of any material changes. Proposed §15.23 defines a "true and correct" copy as consisting of certain key parts of the policy. Section 15.23 also requires that a true and correct copy of the policy of the executed surplus lines policy, contract, or evidence of coverage be filed with the stamping office within 60 days of issuance; provides that a surplus lines agent may elect to file the information by electronic submission; and provides that the stamping office shall provide surplus lines agents with a written procedure for such a filing. Section 15.24 provides for the information and procedures necessary for a surplus lines insurer to request exemption from the minimum requirements, including separate provisions if the insurer writes $50,000 or less in direct Texas premium. Section 15.25 references the duty of a Purchasing Group as to Texas Insurance Code Article 21.54, and the notification on the insurance contract that a Purchasing Group is involved. Section 15.101 refers to the Texas Insurance Code for qualifications of the board of the stamping office; provides that the number of missed meetings that automatically vacates a member from the board of directors is four; and allows the acceptance of resignation of a board member by the commissioner. Section 15.101 is also proposed to allow the board of directors by a 2/3 vote to take the following actions: adopt an annual budget without the review of the department; approve contracts with an obligation of $15,000 or more not contemplated within the approved annual budget; officially recommend to the commissioner an amendment to the plan of operation; allow a director to participate in a meeting by telephone, conference call, or video conference call so long as no more than two members participate by this manner and the meeting is accessible to the general public. Section 15.101 also proposes to specify that the chair, vice-chair and secretary must be elected at the annual meeting; to allow for quarterly meetings of the board of directors; to specify that the board of directors must comply with the Texas Open Meetings Act; to provide that the recommended stamping fee to be charged on all surplus lines filings is measured by premium; to provide that a payment of fees is considered delinquent by the stamping office if overdue by 90 days, which will be reported to the department; and to provide that the commissioner consider the stamping office's recommendations against eligibility. Moreover, the plan of operation specifically defines the phrase "true and correct" copy for purposes of filing the insurance contract with the stamping office. This definition is allowed pursuant to Texas Insurance Code Article 1.14-2, §6A(a). Electronic filings are also allowed if the department has pre-approved the electronic means.

Betty Patterson, Senior Associate Commissioner for the Financial Program, has determined that for the first five-year period the sections are in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the sections. There will be no effect on local employment or local economy.

Ms. Patterson has also determined that for each year of the first five years these sections are in effect, the public benefits anticipated will be more efficient administrative regulation of the surplus lines industry. There is no anticipated adverse economic effect on large, small or micro-businesses who are required to comply with these proposed sections. Except for the $200-$300 cost of the $50,000 surety bond required of agents and the value of the collateral required by the surety company which in certain instances could be $50,000, there is no anticipated economic cost to persons or entities who are required to comply with the sections, as proposed, other than the minimal cost of completion of the appropriate forms. There is no new cost associated with this proposal, and, in fact, the cost of compliance may be reduced by the various changes proposed, including a reduction in applicable forms.

To be considered, all comments on the proposal must be submitted in writing no later than 5:00 p.m. on October 9, 2000 to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comment must be submitted simultaneously to Betty Patterson, Senior Associate Commissioner, Financial Program, Texas Department of Insurance, P. O. Box 149104, MC 305-2A, Austin, Texas 78714-9104.

SUBCHAPTER A. GENERAL REGULATION OF SURPLUS LINES INSURANCE

28 TAC §§15.1-15.25

These new rules are proposed under authority of the Texas Insurance Code Article 1.14-2 and §36.001 authorizes the commissioner to determine rules in accordance with the laws of this state for uniform application.

The following article of the Texas Insurance Code is affected by this rule: Texas Insurance Code Article 1.14-2.

§15.1. Effective Date of Rules and Regulations.

(a) These sections shall apply to all transactions and circumstances taking place on or after the effective date of this subchapter.

(b) The Texas Department of Insurance's rules which are applicable to the licensing, regulation, and supervision of surplus lines agents and surplus lines insurers and transactions which were in effect prior to the effective date of these sections shall apply in the adjudication of acts and transactions occurring prior to the effective date of these sections.

§15.2. Definitions.

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

(1) Admitted or authorized insurer -- An insurer that is doing the business of insurance in this state as defined in the Texas Insurance Code, and is licensed under the provisions of the Texas Insurance Code.

(2) Eligible surplus lines insurer -- An unlicensed insurer allowed by the commissioner to do business in Texas as a surplus lines insurer.

(3) Licensee -- A person holding a surplus lines agent's license.

(4) Person -- An individual or entity as defined by the Texas Insurance Code Article 21.21, §2(a).

(5) Properly allocated and apportioned -- The division or distribution of premium based upon the location of the various exposures afforded coverage under the insurance contract. This distribution of premium must be in accordance with the methods prescribed by the Comptroller of Public Accounts of Texas (the comptroller).

(6) Stamping Office -- The Surplus Lines Stamping Office of Texas created under the Texas Insurance Code, and operating under the plan of operation specified by §15.101 of this title (relating to the Plan of Operation of the Surplus Lines Stamping Office of Texas).

(7) Surplus lines agent or agency -- An agent or agency holding a surplus lines license issued by this department pursuant to the Texas Insurance Code Article 1.14-2.

(8) Surplus lines agent of record -- The Texas licensed surplus lines agent placing a policy with an eligible surplus lines insurer or the Texas licensed surplus lines agent transacting business directly with an unlicensed out-of-state agent to obtain coverage with an eligible surplus lines insurer. The agent or agents in these situations are the agent of record for their portion of the premium for the policy placement.

(9) Taxable surplus lines premium -- For surplus lines taxation purposes, except for exempt or federally pre-empted premiums, surplus lines premium is taxable as provided in Texas Insurance Code Article 1.14-2, §12.

(10) Unauthorized insurer -- An insurer that is conducting the business of insurance as defined in the Texas Insurance Code and is not licensed or an eligible surplus lines insurer under the Texas Insurance Code.

§15.3. Licensing of Surplus Lines Agents.

(a) Before any surplus lines agent's license shall be issued and before each renewal thereof, the following requirements must be completed by an applicant seeking a surplus lines license:

(1) An appropriate written application shall be filed by the applicant upon one of the following forms, which are available from the Texas Department of Insurance (the department):

(A) Surplus Lines License Application for Individual; or

(B) Corporate, Partnership or Limited Liability Company Application for Surplus Lines License.

(2) The fee specified by §19.802 of this title (relating to Amounts of Fees (Licensing)) shall be submitted, with the application, for each license by check or money order made payable to the department. The full license fee is required if the license is effective for any part of a calendar year and is non-refundable.

(3) The appropriate application forms shall be submitted together with a surety bond executed in the amount of not less than $50,000 on a form specified by the department unless the Commissioner of Insurance waives, in part or in whole, the amount of the bond required as necessary to comply with federal law.

(b) Each surplus lines license issued to an agent shall be valid for a term expiring two years after the date of issuance unless the department's single license renewal procedures provide otherwise. The license may be renewed by submitting a renewal application showing the existence of all original licensing requirements, evidence of financial solvency if applicable, and a non-refundable license fee to the department prior to the expiration date.

(c) If the applicant meets the requirements set forth in subsection (a) of this section and is otherwise qualified by law, then a license certificate will be issued to the applicant by the department.

§15.4. Proof of Agent's Financial Solvency.

Each licensed surplus lines agent as a condition precedent for being licensed and as a condition for continuing his/her license in force shall offer proof of financial solvency and demonstrate financial responsibility by filing with the department a surety bond in the amount of not less than $50,000 on a form specified by the department. The surety on the bond may be an eligible surplus lines insurer that is acceptable to the Commissioner of Insurance (the commissioner). The surety bond shall remain a condition for the surplus lines agent's license. The surety bond must provide that no less than 30 days written notice of bond termination will be given to the licensee and filed with the department. A binding commitment on the part of the surety to issue a bond pursuant to this section within a period of not more than 30 days shall be sufficient in connection with any application for a license. The Commissioner of Insurance may waive the amount, in part or in whole, of the bond required as necessary to comply with federal law.

§15.5. Sanctions.

(a) The commissioner may impose any sanction, including revoking, suspending or refusing to grant or renew the license of a surplus lines agent, that may be imposed under the Texas Insurance Code on a general property and casualty agent or a managing general agent, as appropriate to the license status of the surplus lines agent. Disciplinary action may be initiated against a surplus lines agent upon the occurrence of any one or more of the following:

(1) any action which would form the basis for sanctioning a general property and casualty agent or a managing general agent, as applicable to the surplus lines agent's other license(s), under the Texas Insurance Code;

(2) the failure to allow the department and the comptroller to examine the surplus lines agent's accounts and records or failure to maintain surplus lines insurance business accounts and records as required by the Texas Insurance Code and this subchapter;

(3) the failure to make and file all reports when due as required by the Texas Insurance Code and this subchapter;

(4) the failure to properly collect and pay required taxes and stamping fees on surplus lines gross premium or failure to submit tax reports as required by law or regulation;

(5) the failure to procure and maintain a surety bond, if applicable, in accordance with this subchapter;

(6) the failure to otherwise maintain the qualifications for a surplus lines license; or

(7) the violation of any insurance law or regulation of this state.

(b) The agent's surplus lines license shall be cancelled in the event the agent fails to maintain or renew the agent's license as a general property and casualty agent or managing general agent, as appropriate to the license status of the agent.

(c) No surplus lines agent whose license has been revoked shall be licensed until all fines, penalties and delinquent taxes owed by the agent have been paid. The suspension of a surplus lines agent's license shall continue in effect until all fines, penalties, restitution, delinquent taxes, and delinquent stamping office fees owed by the agent have been paid.

§15.6. Conduct of Agent's Business.

(a) A surplus lines agent doing business as an individual surplus lines agent may be licensed only in his or her name. No individual may hold more than one surplus lines agent's license. A surplus lines agent doing business under an assumed name must comply with §19.902 of this title (relating to One Agent, One License).

(b) An insurance agency doing business as a partnership, corporation, or limited liability company may have the issuance of its surplus lines license evidenced by a single certificate license, provided that such agency has the qualifications and has been issued a license pursuant to the Texas Insurance Code for either a general property and casualty agent or a managing general agent. The surplus lines agent's license shall be issued to a partnership, corporation, or limited liability company in the name of the agency as indicated on the underlying license issued under the Texas Insurance Code. No partnership, corporation, or limited liability company may receive more than one surplus lines agent's license. A partnership, corporation or limited liability company doing business under an assumed name must comply with §19.902 of this title.

(c) Every act done in placing or servicing a surplus lines insurance contract under an assumed name shall also clearly disclose the true name of the surplus lines agent or agency acting under such assumed name or the true name of the individual licensed surplus lines agent representing the surplus lines agency, partnership, corporation, or limited liability company acting under such assumed name.

(d) No surplus lines agent or agency shall shift, transfer, delegate, or assign his or her responsibility to a person or persons not licensed as a surplus lines agent.

(e) A surplus lines agent may exercise underwriting authority on behalf of an eligible surplus lines insurer if the surplus lines agent possesses a current written agreement from each such eligible surplus lines insurer granting such authority. The written agreement must set forth the identity of the insurer and the scope of the underwriting authority granted, and must reserve the duty of final underwriting review by the insurer. The underwriting agreement must be available for review by the department. The underwriting authority granted to a surplus lines agent by the insurer may include the rating and acceptance of risks, binding of coverage, issuance of formal evidence of coverage, and cancellation of coverage.

(f) A surplus lines agency may exercise claims authority on behalf of an eligible surplus lines insurer if the surplus lines agent possesses a current written agreement from each such eligible surplus lines insurer granting such authority. All claims adjustments shall be performed by a Texas licensed adjuster. The written agreement must be available for review by the department. Claims authority delegated to the surplus lines agent by the insurer may include, but is not limited to, the investigation, adjustment, supervision, and payment of claims including payment from the surplus lines agents' funds, provided the agent is promptly reimbursed by the insurer for such payments. Partial payments to claimants by the surplus lines agent made pursuant to the written agreement do not relieve the surplus lines insurer of any continuing obligations to the insured. Payment of claims may also be made by the surplus lines agent directly from funds of the eligible surplus lines insurer provided the surplus lines agent possesses a current written agreement wherein the insurer authorizes such direct payments. This written agreement must be available for review by the department.

§15.7. Eligibility Requirements for Surplus Lines Insurance.

(a) The stamping office shall evaluate surplus lines insurance policies, contracts, or other evidences of coverage for eligibility and compliance with filing requirements. The stamping office may request additional information from the surplus lines agent responsible for the filing if the information filed is not sufficient to make an evaluation in accordance with this section.

(b) The stamping office shall provide a written report to the department of any surplus lines insurance policy or contract appearing to be ineligible under the Texas Insurance Code after evaluation under this section. The stamping office shall attempt to have the surplus lines agent correct any administrative or technical errors prior to a written report to the department. If voluntary compliance cannot be obtained, the stamping office shall promptly provide a written report to the department. In any event, the stamping office shall provide a written report to the department of any policy issued by an ineligible insurer or any major and improper conduct by a surplus lines agent, whether or not such violation is later corrected.

(c) Notice by the department of intention to institute disciplinary action may be provided to the holder of the license upon receipt of the report and determination that the coverage may not be eligible for surplus lines.

§15.8. Eligibility Requirements of Surplus Lines Insurers.

(a) Surplus lines insurers seeking eligibility shall provide to the department and to the stamping office, information relating to the insurer's eligibility to write surplus lines insurance. Such information shall include:

(1) financial statements (National Association of Insurance Commissioners (NAIC)) Form 2 Annual Statements, Quarterly Statements, SEC 10K Reports, and audited financial statements of United States domiciled companies and audited financial statements expressed in U.S. dollars for companies domiciled outside the United States;

(2) documents evidencing authorization from the insurer's domicillary jurisdiction to write the same kind and class of business that it proposes to write in Texas;

(3) documents evidencing the existence and amount of United States trust funds of alien insurers;

(4) a certified actuarial opinion regarding the adequacy of the insurer's loss reserves;

(5) biographical affidavits of owners, officers, directors and management;

(6) a three-year business plan discussing the insurer's plan of operation in Texas;

(7) NAIC's Insurance Regulatory Information System (IRIS) ratio reports, accompanied by management's explanation of the insurer's IRIS ratios outside the allowed ranges and a description of any related corrective action;

(8) for foreign companies only, a copy of its latest Examination Report from the insurer's state of domicile;

(9) for alien companies listed with the NAIC's International Insurance Department (IID), a copy of its annual IID filing; and

(10) a list of currently used and proposed to be used Texas surplus lines agents.

(b) Except as specified in paragraphs (1) and (2) of this subsection, foreign surplus lines insurers shall submit annually to the department and the stamping office the material identified in subsection (a) of this section by March 31.

(1) Audited financial statements and SEC 10K Reports shall be annually submitted to the department by June 1.

(2) Quarterly financial reports shall be submitted to the department within 45 days of the end of each calendar quarter.

(c) Alien surplus lines insurers shall submit annually to the department and the stamping office the material identified in subsection (a) of this section by June 1, except the IID filing and the actuarial opinion shall be annually submitted to the department by August 1.

(d) In addition, surplus lines insurers or their representatives shall provide other information relevant to the determination of eligibility that is requested by the department or the stamping office. The surplus lines insurer, agent, or representative shall be permitted at least 10 days to respond, after receipt, to a request for additional information or documentation. Failure by the surplus lines insurer or agent to submit the information requested in a timely manner shall be grounds for a denial or termination of eligibility to write surplus lines insurance in this state. Nothing herein shall interfere with the department's rights to require additional information or documentation or to examine or inspect records. Other relevant information includes, but is not limited to, the following:

(1) activities of management and agents;

(2) history and competency of reinsurers;

(3) pattern of claims services;

(4) domestic trust agreements; and

(5) powers of attorney.

(e) Information received under this section is public.

(f) The stamping office shall report to the department whether insurers have submitted evidence that appears to be satisfactory evidence for eligibility under this section and the Texas Insurance Code.

(g) Upon receiving reports under subsection (f) of this section, the department shall determine if satisfactory evidence of eligibility has been presented and shall notify the surplus lines insurer of the department's determination.

(h) Each surplus lines insurer shall continuously maintain its eligibility.

(i) The department, stamping office, and commissioner have no duty or responsibility under the Insurance Code, this section or §15.101 of this title to determine the actual financial condition or claims practices of any surplus lines insurer.

(j) A list of surplus lines insurers that have provided satisfactory evidence of eligibility shall be maintained by the department as public information. This list shall contain sufficient information to inform the public of the limitations of the department's authority with regard to surplus lines insurers and the relevant differences between surplus lines insurers and admitted insurers.

§15.9. Duty of Reasonable Effort by Surplus Lines Agents to Ascertain Financial Condition and Other Practices of Eligible Surplus Lines Insurers.

(a) Before placing insurance with an eligible surplus lines insurer, a surplus lines agent shall make a reasonable inquiry into the financial condition and operating history of the insurer.

(b) During the course of placing coverage with an eligible surplus lines insurer, each surplus lines agent shall be under a continuous duty to stay informed of the insurer's solvency and the soundness of its financial strength, and of the insurer's ability to process claims and pay losses expeditiously.

(c) A surplus lines agent shall immediately inform the department and the stamping office whenever the agent has grounds to reasonably doubt the capacity, competence, stability, claim practices, or business practices of an eligible surplus lines insurer.

(d) A surplus lines agent shall immediately inform the department and the stamping office whenever the agent has reasonable grounds to believe that an unauthorized insurer is illegally transacting the business of insurance in this state.

(e) A surplus lines agent shall place surplus lines insurance on Texas risks only with an eligible insurer:

(1) that possesses financial solvency adequate to its business;

(2) that has a policyholder surplus which is reasonable in relation to its outstanding liabilities;

(3) that is of good repute and is competently managed;

(4) that provides reasonably prompt claim service to policyholders; and

(5) that meets any other criteria required under the Texas Insurance Code or the department's rules.

§15.10. Surplus Lines Stamping Fee.

For each surplus lines policy, contract, or other detailed evidence of coverage issued on Texas risks, including additions or deletions thereto or cancellations thereof, each surplus lines agent shall submit a stamping fee as approved by the department. The fees shall be due and payable as provided in §15.23 of this title (relating to Policy Form Filings and Stamping Office Fees).

§15.11. Uniformity of Reporting Forms.

Applications, reports, and memorandums required under the Texas Insurance Code and by this subchapter relating to surplus lines insurance shall be submitted on the forms promulgated and maintained by the department. These forms may be obtained from the department. A person may reproduce the forms obtained from the department by photocopying, electronic scanning or other electronic means. The reproductions may be used in filings so long as the reproduction is an unaltered duplicate of the original form.

§15.12. Surplus Lines Insurance Requests for Information, Examination, and Complaints.

In addition to those documents required to be filed under §15.8 (relating to Eligibility Requirements of Surplus Lines Insurers) and §15.23 of this title, a surplus lines agent may be requested by the stamping office to submit additional information necessary to evaluate the eligibility of surplus lines policies, contracts or other detailed evidence of coverage. The stamping office shall issue a written report under §15.7(b) of this title (relating to Eligibility Requirements for Surplus Lines Insurance) if the requested additional information is not timely submitted by the surplus lines agent. The stamping office and the surplus lines agent may mutually agree for a representative of the stamping office to review the requested documentation at the agent's place of business. Nothing in this section shall serve to limit the department's ability to require the surplus lines agent to submit information or reports as required by the Texas Insurance Code and this subchapter.

§15.13. Correct Execution Required for Filing.

No report required to be filed under the Texas Insurance Code or these sections relating to surplus lines insurance shall be deemed filed with the department or the stamping office unless the documents submitted are correctly completed and signed on forms complying with §15.11 (relating to Uniformity of Reporting Forms) of this title. A correct surplus lines policy filing submitted to the stamping office by facsimile telecopy or other electronic means shall be deemed filed on the date it is received by the stamping office if the specific electronic means has been pre-approved by the department in writing and otherwise complies

with all applicable laws. However, in such circumstances, the surplus lines agent responsible for the filing must maintain the subject contract file, as specified in §15.16 of this title (relating to Contract File), at the agent's place of business in accordance with §15.14 of this title (relating to Recordkeeping), and must promptly submit such contract file to the stamping office upon request. Upon mutual agreement, a representative of the stamping office may view the requested contract file at the agent's place of business. Nothing in this section shall serve to limit the department's ability to require the surplus lines agent to submit information or reports as required by the Texas Insurance Code and this subchapter.

§15.14. Recordkeeping.

(a) In order to provide for basic uniformity in recordkeeping requirements, and to make possible a complete and accurate examination of the surplus lines agent's records by the department, the following insurance and accounting records must be established and maintained by each surplus lines agent:

(1) a policy register or computer generated and complete listing of all policies;

(2) a contract file;

(3) general books of account; and

(4) such other insurance and accounting records as are necessary to properly and promptly service policyholders in this state and provide required information to the department.

(b) The surplus lines agent's records and accounts required to be kept by the Texas Insurance Code and these sections relating to surplus lines insurance are subject to examination by the department and the comptroller at all times without notice and shall be kept available and open to the department for five years following expiration or termination of the insurance contract.

§15.15. Policy Number.

(a) All surplus lines agents shall, immediately upon the procurement of insurance from an eligible surplus lines insurer, record the chronological policy number and the name of the insured. The surplus lines agent shall inscribe all records and files maintained by the surplus lines agent that are pertinent to a specific risk with the same policy number.

(b) Strict chronological sequence is required in the assignment of policy numbers. For agents having authority to issue policies on behalf of an eligible surplus lines insurer, in the instance of voided or unused policy numbers, an explanation of the disposition of the policy number is required to be recorded in the policy number register.

§15.16. Contract File.

Each surplus lines agent shall maintain a contract file which shall contain a complete and true record of each individual surplus lines contract, including a copy of the daily report or other evidence of insurance, and showing the following items as may be applicable:

(1) amount of insurance and perils insured against;

(2) brief general description of the property insured and the location of the property;

(3) gross premium paid;

(4) return premium paid, if any;

(5) rate(s) of premium charged;

(6) effective date(s) of the contract, and the terms thereof;

(7) name and mailing address of the insured;

(8) name and home office address of the insurer, underwriting syndicate or other risk bearing entity;

(9) amount collected from the insured;

(10) record of losses or claims filed and payments made;

(11) a true and correct copy of the insurance policy, contract and other detailed evidences of coverage, as issued to the insured; and

(12) all correspondence relating to the specific insurance coverage of that contract file.

§15.17. Agency Accounting Records.

(a) Each surplus lines agent shall maintain general books of accounting which shall include a general ledger, a general journal, and a cash records books, or electronic equivalent thereof, and such items necessary to reflect the financial solvency of the agent.

(b) The surplus lines agent's general books of accounting shall show a month-end summary of operations and fiscal or calendar year-to-date summary of operations, and shall be maintained in accordance with generally accepted accounting principles.

§15.18. Financed Transactions.

(a) Financed transactions include all insurance policies which provide for installment or deferred payments of the premium, and include installment payments, conditional contracts, and premium financed insurance policies.

(b) Premium tax is due on premium, interest, finance charges, and all other consideration charged to the insured for the insurance policy unless the finance charges are billed and stated separately to the insured by written documents.

§15.19. Allocation of Premium.

(a) Unless otherwise properly allocated and reported pursuant to the regulations or instructions of the comptroller, all premiums associated with a surplus lines insurance policy are considered Texas premium for reporting and taxation purposes.

(b) The method of allocation between Texas and non-Texas exposures must be maintained conspicuously in the records of the surplus lines agent of record, and the records are subject to inspection by the comptroller, the stamping office, and the department.

(c) For exposures located in another state or states, the surplus lines agent of record, and the related agency if applicable, shall be liable for the premium tax on any unallocated or unreported premium. Premiums that are properly allocated that are specifically exempt from taxation under the regulations of another state or states are not taxable in Texas.

(d) If a surplus lines insurance policy covers risks or exposures that are properly allocated to federal waters, international waters or locations under the jurisdiction of a foreign government, then the premium associated with such policies or portions of such policies shall not be taxable in Texas.

(e) All premium taxes shall be computed pursuant to the regulations or instructions of the comptroller.

§15.20. Reporting of Premium Allocation.

A surplus lines agent of record shall file with the comptroller its allocation of premium, the tax due, and other information requested in the proper form and using the instructions distributed by the comptroller for these purposes. Unless 100% of the premium:

(1) is properly allocated or apportioned to another state or states as premium subject to taxation by those states, and if required so reported to the other state or states;

(2) is preempted from taxation by federal law and is on exposures located entirely outside Texas; or

(3) is exempt from taxation under Texas law; then a surplus lines agent of record shall file with the stamping office its allocation of premium in the manner prescribed by the department and the stamping office.

§15.21. Minimum Content of Contracts.

(a) Every new or renewal insurance contract, policy, certificate, cover note, or other confirmation of insurance procured and delivered as a surplus lines coverage pursuant to the Texas Insurance Code shall contain, as a minimum, the information required by the Texas Insurance Code Article 1.14-2, §7.

(b) In addition to the requirements of subsection (a) of this section, the following items are required:

(1) a statement designating the name and address of the person to whom the Commissioner of Insurance shall mail service of process in accordance with the Texas Insurance Code, and

(2) a stamping fee.

§15.22. Furnishing Evidence of Insurance.

(a) A surplus lines agent must promptly provide the insured or his agent with written evidence of insurance containing complete terms, conditions, and exclusions pertaining to the coverage so as to protect all parties against misunderstanding. If temporary confirmation of insurance coverage is required by the insured or is given by the surplus lines agent, such temporary confirmation shall be replaced as promptly as possible with a policy or certificate stating the complete terms, conditions, and exclusions of the insurance.

(b) If, after delivery to the insured or his agent of any document evidencing insurance coverage, there is any change as to the identity of the insurers or the portion of the direct risk assumed by the insurer as stated in the previously mentioned original documents, or any other material change as to the insurance coverage, the surplus lines agent shall promptly mail to the insured or his agent a substitute certificate, cover note, confirmation, or endorsement for the original. The document(s) must accurately show the current status of the coverage and the insurers responsible thereunder.

§15.23. Policy Forms Filings and Stamping Office Fees.

(a) Unless the procedure for electronic filing is elected by the surplus lines agent in accordance with subsection (b) of this section, a true and correct copy of each executed surplus lines policy, contract, or other detailed evidence of coverage, including additions or deletions thereto or cancellation thereof, shall be filed by the procuring surplus lines agent with the stamping office within 60 days of issuance or the effective date, whichever is later. If other detailed evidence of coverage is initially filed, a copy of the policy shall be promptly filed with the stamping office when available.

(b) To the extent permitted under the Texas Insurance Code and other applicable laws, the surplus lines agent may elect to file the information required under subsection (a) of this section by electronic transmission, if the electronic method has been pre-approved by the department. The stamping office shall provide surplus lines agents with a written procedure for optional electronic filing of policies, contracts and other detailed evidence of coverage.

(c) For purposes of reporting to the stamping office the term "true and correct copy of a surplus lines insurance policy," as used in the Texas Insurance Code Article 1.14-2, §6 and this section, shall include:

(1) a declarations page;

(2) a listing of all participating insurers on the policy;

(3) all coverage parts and schedules;

(4) extended coverage exclusions;

(5) all premium-bearing documents; and

(6) any other parts as may be required by the stamping office to review and record the policy.

(d) The stamping office shall compile information from these filings on an individual surplus lines agent or agency basis within 10 days after the end of each month. Such individual reports shall be provided to the surplus lines agent or agency with a notice of the total stamping fees due. The agent or agency shall pay such fees to the stamping office by the end of the month in which the notice of stamping fees due is received.

(e) Filing of such policies, contracts, or other detailed evidence of coverage under subsection (a) or (b) of this section is made in lieu of filing an affidavit of diligent effort or other evidence of diligent effort by the surplus lines agent to place the coverage with an admitted carrier.

§15.24. Exemption from Minimum Capital and Surplus Requirement.

(a) The commissioner may exempt an eligible surplus lines insurer from the minimum capital and surplus requirements provided by the Texas Insurance Code Article 1.14-2, §8(b), if it is determined, after opportunity for a public hearing, that the exemption is warranted. An applicant for this exemption shall be required to prove that it has met the requirements of the Texas Insurance Code and this section. In determining whether such an exemption is warranted, the commissioner shall consider the information presented relating to each of the following:

(1) Completed biographical affidavits on all officers and directors of the insurer. The insurer's history of response to regulatory directives; the insurer's history of processing and paying valid claims; the management's experience in the business of insurance; the record, if any, of disciplinary actions taken against the insurer by regulatory bodies; and the criminal records, if any, of the ownership or management of the insurer.

(2) The parent's most recent financial statements consisting of:

(A) National Association of Insurance Commissioners (NAIC) annual statement, if the parent is an insurer required to file such statement;

(B) certified financial statement, if the parent is an alien insurer;

(C) an audit prepared by a certified public accountant on the parent, if not an insurer, and the amount of financial support to the insurer that would be provided by the parent in the event of impairment; or

(D) the insurer's latest NAIC's quarterly report, if filed.

(3) The profit and loss history of the insurer.

(4) The types of investments by the insurer.

(5) The insurer's gross and net premium writings to surplus to policyholders ratio.

(6) The insurer's NAIC annual statement form for the preceding year, or certified financial statement if insurer is an alien insurer.

(7) All of its ceded reinsurance is with insurers licensed in any state or the insurer provides evidence of acceptable trust funds or letters of credit pursuant to insurance laws of this state if the ceded

reinsurance is with alien reinsurers, or other evidence of adequate reinsurance satisfactory to the commissioner. True and correct copies of executed reinsurance agreements are required.

(8) The volume and types of complaints received by regulatory agencies and evidence of at least one year of experience in the business of insurance. The insurer must demonstrate that its business history reflects no adverse effect on consumers or authorized insurers.

(9) The NAIC Insurance Regulatory Information System (IRIS) report on the insurer, if any.

(10) The specific line or lines of the insurance to be written may be considered if in the public interest.

(11) Information on the kind and class of insurance business to be written by the insurer in Texas as well as documentation of the insurer's license, or other authority, from its domicillary state or country to conduct the same kind and class of business that is proposed to be written in this state. An exemption granted under this section does not authorize a surplus lines insurer to write kinds or classes of business otherwise prohibited by law.

(b) In an analysis of the NAIC annual statement form or certified financial statement, the following may be considered as qualifying assets:

(1) lawful money of the United States;

(2) bonds of this state;

(3) bonds or other evidences of indebtedness of the United States of America or any of its agencies when such obligations are guaranteed as to principal and interest by the United States of America;

(4) notes secured by first mortgages upon unencumbered real estate, the title to which is valid and the payment of which notes is insured, in whole or in part, by the United States of America or any of its agencies; provided that such investments in such notes shall not exceed one half of the minimum capital stock and minimum surplus of the investing company; and

(5) bonds or other interest-bearing evidences of indebtedness of any counties, cities, or other municipalities.

(c) The Commissioner may require that the insurer, on a per-risk basis, retain no limit of liability greater than 10% of its capital and surplus.

(d) An application for this exemption is subject to the requirements of the Texas Insurance Code Article 1.14-2, §8(c) and this section in conjunction with the Texas Insurance Code Article 1.14-2, §8(d).

(e) An application for this exemption shall be denied unless the insurer proves that it is unable to acquire sufficient funds to meet the minimum capital and surplus requirements.

(f) A surplus lines insurer shall be exempt from the minimum capital and surplus requirements of Texas Insurance Code Article 1.14-2, §8(b) so long as the insurer demonstrates to the satisfaction of the commissioner that it writes less than $50,000 of direct insurance premium in this state provided:

(1) the direct Texas premium represents less than the amount of premium written by the insurer in its domicillary jurisdiction;

(2) the direct Texas premium represents less than 10% of the insurer's total direct written premium in the United States;

(3) the direct Texas premium represents less than 5% of the insurer's total capital and surplus;

(4) the insurer's premium to surplus ratio, net of reinsurance ceded is less than 2 to 1; and

(5) the insurer meets the requirements of this section.

(g) The department shall annually review an insurer's exemption to determine if any changes require an opportunity for hearing to consider whether an exemption should be continued.

§15.25. Purchase of Insurance by Purchasing Groups through Surplus Lines Agents.

(a) A purchasing group is any group that:

(1) has as one of its purposes the purchase of liability insurance on a group basis;

(2) purchases such insurance only for its group members and only to cover their similar or related liability exposure;

(3) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, service, premise, or operation; and

(4) is domiciled in any state.

(b) Whenever a purchasing group purchases insurance through a surplus lines agent, either the purchasing group or surplus lines agent, as appropriate, shall submit all registration forms, fees, or taxes required by the Texas Insurance Code Article 21.54, directly to the Comptroller of Public Accounts of Texas or the department, as applicable.

(c) A surplus lines agent shall stamp or write the words "Purchasing Group" conspicuously on every policy, contract, or other detailed evidence of coverage issued to a purchasing group or its members through the surplus lines agent. All copies of such documents shall be marked in the same way. However, copies of such documents need not be filed with the stamping office or the department unless requested by the department in a specific case.

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

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Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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SUBCHAPTER B. SURPLUS LINES STAMPING OFFICE OF TEXAS

28 TAC §15.101

These new rules are proposed under authority of the Texas Insurance Code Article 1.14-2 and §36.001 authorizes the commissioner to determine rules in accordance with the laws of this state for uniform application.

§15.101. Plan of Operation of the Surplus Lines Stamping Office of Texas.

(a) The Plan of Operation of the Surplus Lines Stamping Office of Texas (Plan of Operation) and any amendment thereto shall become effective upon written approval of the Commissioner of Insurance (commissioner), and shall constitute the manner in which the Surplus Lines Stamping Office of Texas (stamping office) shall operate and discharge its responsibilities in accordance with the Texas Insurance Code and the rules of the Texas Department of Insurance (department).

(b) All persons licensed as surplus lines agents under the Texas Insurance Code shall be subject to the provisions of the Plan of Operation.

(c) The board and its directors are subject to the following provisions:

(1) The management of all the affairs, property, and business of the stamping office shall be vested in the board of directors, which shall consist of nine persons who serve terms as established in the Plan of Operation. Four of the members of the board of directors must represent the general public and must be qualified under the Texas Insurance Code Article 1.14-2, §6A(c).

(2) The board of directors shall be appointed by the commissioner. The commissioner may remove a director for willful misconduct or absence from three meetings of the board of directors during a calendar year. A director who is absent from four or more meetings of the board of directors during a calendar year automatically vacates his or her position on the board of directors.

(3) Directors will serve for a term of three years. Directors may not serve consecutive full terms. Directors shall serve until their successors are duly appointed except when removed from office or upon resignation accepted by the commissioner. The minutes of the stamping office board meetings shall show the names of the directors attending and the term of office for each, and the actions taken by the board of directors. Upon approval of the minutes of each meeting of the board of directors, a copy shall be provided to the department.

(4) The commissioner may appoint successors for the remaining period of a vacating director's term. A person appointed to replace a public member must be a public representative.

(5) A quorum, consisting of a majority of the board of directors, is required for the transaction of official business by the board of directors. The board of directors shall act upon majority vote of those directors present, and such actions shall be recorded in the minutes. However, an affirmative vote of two-thirds of the directors present shall be required to take the following actions:

(A) adopt an annual budget;

(B) approve contracts with an obligation of $15,000 or more, which are not contemplated within the approved annual budget;

(C) recommend for adoption by the commissioner a schedule for stamping fees and other fees;

(D) borrow money;

(E) officially recommend to the commissioner an amendment to the Plan of Operation; or

(F) authorize bank signatures.

(6) A director, upon approval of the chair, may participate in a meeting of the board of directors by telephone conference call or video conference call. However, the medium for such participation, such as a speakerphone or computer teleconference screen and speaker, must be accessible by members of the general public attending the open meetings and must be placed in a location specified in the notice of the meeting.

(7) The first regular meeting of the board of directors in the calendar year is designated as the Annual Meeting, during which the board of directors shall:

(A) elect officers, including a chair, a vice-chair and a secretary;

(B) review the Plan of Operation and proposed amendments, if any;

(C) review operating expenses, schedule of fees, and annual report for submission to the commissioner;

(D) review, consider, and act on any other matters deemed by the board of directors as necessary to the administration and purposes of the stamping office under the Texas Insurance Code Article 1.14-2 and the rules adopted thereunder by the commissioner that are applicable to the stamping office.

(8) The chair, vice-chair, and secretary shall hold office until the next Annual Meeting, or until their successors are elected and installed, unless removed pursuant to paragraph (2) of this subsection.

(A) the chair shall preside at all meetings and perform all duties customary to such office, including the appointment of committees. The chair shall be an ex officio member of all committees.

(B) the vice-chair shall perform all duties of the chair during the absence of the chair.

(C) the secretary shall keep full minutes of the proceedings of the board of directors and perform such other duties customary to such office or as may be assigned by the chair.

(9) The board of directors shall hold regular meetings at least quarterly and the Texas Department of Insurance shall be notified. The board of directors shall comply in all respects with the Texas Open Meetings Act. All board meetings shall be held in the State of Texas. Special meetings of the board of directors may be called by the chair and shall be called at the request of any three directors upon not less than five days written notice to each director and to the commissioner or the commissioner's designee of the time and place. The written notice shall state the purpose or purposes of any special meeting. Such notice for any special meeting may be waived by unanimous consent, provided the requirements of the Texas Open Meetings Act have been met.

(10) Directors shall serve without compensation, but they may be reimbursed for reasonable expenses incurred by them in carrying out their duties and responsibilities as members of the board of directors.

(d) The board of directors shall employ a general manager who will be responsible for the operation and management of the stamping office in accordance with policy established by the board of directors. The general manager shall serve at the pleasure of the board of directors.

(e) The stamping office is subject to the following provisions:

(1) The stamping office may employ such persons, or contract with such firms or corporations, individuals, attorneys, or accountants, as are necessary for the performance of its duties. Contracts shall be subject to policies adopted by the board of directors. The board of directors shall utilize appropriate competitive bidding procedures for any contract or group of related contracts of a material amount.

(2) The stamping office may open one or more bank accounts. The board of directors shall recommend for approval by the commissioner an investment and cash management policy for the stamping office. Such policy may provide for reasonable delegation of deposit and withdrawal authority to such accounts for stamping office

business as may be consistent with prudent fiscal policy. The stamping office may borrow money upon the approval of the board of directors.

(3) Prior to November 1 of each year, the board of directors shall adopt, subject to review by the commissioner, a budget for the stamping office's operating and capital expenses and contingent expenses for the following calendar year. The budget shall take into account unknown and unanticipated expenses as may reasonably occur and make provision for such expenses in accordance with prudent business practice, but reserves, excluding funds for asset replacement, shall not exceed one year's operating expenses. Based upon the anticipated volume of surplus lines premium during the upcoming calendar year, the board of directors shall recommend for adoption by the commissioner a stamping fee to be charged on all surplus lines filings, as measured by premium, submitted to the stamping office.

(4) All surplus lines agents shall submit surplus lines insurance documents to the stamping office as required by the Texas Insurance Code and the rules of the department and shall pay the fees therefor as permitted by law and as required by the stamping office. If submitted by electronic means, the electronic means used must have been approved by the department in writing and otherwise comply with all applicable laws. Pursuant to the Texas Insurance Code Article 1.14-2, §6A(a), the portions of the surplus lines insurance contract required to be filed with the stamping office are:

(A) a declarations page;

(B) a listing of all participating insurers on the policy;

(C) all coverage parts and schedules;

(D) extended coverage exclusions;

(E) all premium-bearing documents; and

(F) any other parts as may be required by the stamping office to review and record the policy.

(5) Any surplus lines agent who is delinquent in the payment of stamping fees may be reported to the commissioner; provided, however, that any delinquency of more than 90 days shall be reported to the commissioner.

(6) The stamping office shall record all surplus lines insurance filings and reports submitted to it pursuant to the Texas Insurance Code and rules of the department and shall prepare reports to the commissioner and to surplus lines agents as required. Reports shall also be prepared for such other purposes as approved by the board of directors, or as the department or the Comptroller of Public Accounts of Texas (comptroller) may reasonably request. The stamping office will furnish records and/or documents to staff of the department or the comptroller upon request, for purposes of regulation, examination, or tax collection. The following shall be submitted to the commissioner:

(A) the adopted budget;

(B) copy of the annual audit; and

(C) an annual summary of operations which contains information on transactions, conditions, operations, and investments during the preceding year, such report to contain such matters and information as prescribed by and in such form as approved by the board of directors. The commissioner may at any time require the stamping office to furnish additional information with respect to any matter connected therewith and considered to be material in evaluating the economic, efficient, fair, and nondiscriminatory operation of the stamping office.

(7) The stamping office shall prepare and distribute a procedures manual to each surplus lines agent setting forth the procedure for submitting surplus line insurance documents to the stamping office and other matters germane to the operation of the stamping office. The manual shall be prepared in cooperation with the department.

(8) The stamping office shall procure such bonds and insurance covering the stamping office, the directors, officers, employees, and agents of the stamping office, and its properties and activities, as it deems appropriate.

(9) The stamping office shall perform those functions specifically enumerated in the Texas Insurance Code Article 1.14-2, §6A(b).

(10) The stamping office shall assist the department and facilitate compliance with the insurance laws of the state and the rules promulgated thereunder by conducting the following functions:

(A) identifying technical deficiencies in policy preparation and submission, and seeking correction of such deficiencies;

(B) identifying potential non-fraudulent violations;

(C) notifying surplus lines agents of such potential non-fraudulent violations and seeking information related to the potential violations when necessary to fulfill the stamping office's duties;

(D) compiling information on the eligibility of surplus lines insurers and immediately reporting to the department all potentially fraudulent and willful violations of law or rules, including unauthorized transactions of the business of insurance; and

(E) reporting to the department, within specified and agreed upon time frames, the following information:

(i) evaluations of eligibility under §15.7 and §15.8 of this title;

(ii) summaries of stamping office activities, including actions relating to deficiencies and potential violations;

(iii) results of inquiries relating to complaints;

(iv) results of any other actions under §15.12 of this title (relating to Surplus Lines Insurance Requests for Information, Examination, and Complaints);

(v) patterns and practices of any surplus lines agent that may constitute lack of compliance with the applicable insurance laws of the state;

(vi) compilations of premiums for property coverage written under a separate policy by a surplus lines insurer affiliated with a licensed insurer, including the total policy premium, the portion of the premium that is actual extended coverage and other allied lines, if available, and where the risk is located; and

(vii) compilations of premium volume by surplus lines agent, insurer, and kinds and class of surplus lines insurance coverage;

(F) providing seminars and other educational programs relating to the Texas Insurance Code, this chapter, and the procedures of the stamping office;

(G) collecting information as provided in this chapter and the Texas Insurance Code Article 1.14-2, §6A;

(H) maintaining communications with agents, surplus lines insurers, insurance industry advisory associations, and related trade associations;

(I) maintaining communication with the commissioner, the department and the comptroller;

(J) providing information, including tax reports, to surplus lines agents; and

(K) conducting other activities required by this chapter.

(11) The stamping office is authorized by §15.12 of this title to make inquiries to effect its function under this chapter.

(12) Any information collected under this chapter that indicates potential non-fraudulent violation of the laws of this state or the rules adopted thereunder that has not been determined by inquiries for information to be nonexistent or corrected as a technical deficiency shall be reported to the department, or in the case of information relating to taxes, reported to the comptroller.

(13) Stamping office recommendations against eligibility under §15.8 of this title shall be considered by the department. The stamping office may change an eligibility recommendation based on new or corrected information.

(f) The board of directors shall, once each year, provide for an independent audit of all the books and records of the stamping office, and a copy of the audit report shall be provided to the commissioner.

(g) Each member of the board of directors, officer, or employee of the stamping office shall be indemnified by the stamping office against all expenses, judgments, decrees, fines, penalties, and amounts paid in settlement, or incurred in the defense, of any action taken or not taken by such person in the performance of such person's powers and duties under the Texas Insurance Code and the rules of the department and this plan of operation, unless such person shall be finally adjudged to have committed a breach of duty involving gross negligence, bad faith, dishonesty, willful misfeasance, malfeasance, or reckless disregard of such person's responsibilities. In the event of settlement before final adjudication, such indemnity shall be provided only if the stamping office is advised by independent counsel that such person did not, in counsel's opinion, commit such a breach of duty. The stamping office may purchase and maintain insurance on behalf of any person who is or was a director, officer, or employee of the stamping office against any liability asserted against such person and incurred by such person in such capacity or arising out of such person's status as such, whether or not the stamping office can indemnify such person against such liability under this chapter.

(h) In the event the stamping office is dissolved, the commissioner shall take charge of and transfer the remaining assets, books, and records of the stamping office to the department or to another organization established for the same or similar purpose as the stamping office and which organization shall be exempt under the Internal Revenue Code, §501(c)(3).

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

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Lynda Nesenholtz
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 3. TEXAS WORKS

The Texas Department of Human Services (DHS) proposes to amend §3.704 and §3.1003, concerning resources and deductions, in its Texas Works chapter. The purpose of the amendments is to add a new food stamp vehicle exemption for a licensed vehicle if the owner's equity value is less than fifty percent of the household's resource limit and to add an additional standard utility allowance for eligible households.

Eric M. Bost, commissioner, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections.

Mr. Bost 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 enforcing the sections will be an increase in the number of clients who remain eligible for food stamps while maintaining reliable transportation and an increase in the utility deduction used in calculations to determine eligibility for food stamps. There will be no effect on small or micro businesses as a result of enforcing or administering the sections, because these sections do not apply to businesses but to clients making the transition from welfare to work. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Melissa Saenz at (512) 438-4930 in DHS's Programs and Policy section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-298, 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 G. RESOURCES

40 TAC §3.704

The amendment is proposed under the Human Resources Code, Title 2, Chapter 31, which authorizes the department to administer financial assistance programs.

The amendment implements the Human Resources Code, §§31.001-31.0325.

§3.704. Types of Resources.

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

(d) Food stamps. Exclusions from resources for food stamps are those stipulated in the Food Stamp Act of 1977 as amended by Title VIII, Section 810 of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Additionally, a licensed vehicle is excluded if the equity is less than 50% of the household's resource limit.

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 August 25, 2000.

TRD-200006000
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: October 8, 2000
For further information, please call: (512) 438-3108

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SUBCHAPTER J. BUDGETING

40 TAC §3.1003

The amendment is proposed under the Human Resources Code, Title 2, Chapter 31, which authorizes the department to administer financial assistance programs.

The amendment implements the Human Resources Code, §§31.001-31.0325.

§3.1003. Deductions.

(a) (No change.)

(b) Food stamps. DHS allows deductions from income as stipulated in the Food Stamp Act of 1977 as amended by Title VIII, Section 809 of Public Law 104-193, Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Regarding [~~a~~] standard utility deductions [~~deduction~~], DHS allows either a Standard Utility Allowance (SUA) or a Basic Utility Allowance (BUA) [~~a single deduction~~] as specified in 7 U.S.C. §2014(7)(C). Households that have out-of-pocket heating and cooling cost qualify for the SUA. Other households can receive the BUA. Regarding a standard shelter deduction for homeless households, DHS allows the standard as computed annually as stipulated in 7 U.S.C. [~~the Food Stamp Act of 1977 as amended by title VIII, Section 809, of Public Law, 104-193, the Personal Responsibility and work Opportunity Reconciliation Act of 1996~~].

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

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: October 8, 2000
For further information, please call: (512) 438-3108

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CHAPTER 54. FAMILY VIOLENCE PROGRAM

The Texas Department of Human Services (DHS) proposes to amend §§54.204, 54.311, 54.519, 54.902, and 54.1002, concerning orientation, contractor's records, initial training, financial and oversight responsibilities, and new contractors, in its Family Violence Program chapter. The purpose of the amendments is to provide a method of obtaining a waiver from specific rule requirements and to revise the name of the provider manual.

Eric M. Bost, commissioner, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections.

Mr. Bost 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 enforcing the sections will be improved standards that hold contractors accountable for the services they provide and the public funds they receive. There will be no effect on small businesses as a result of enforcing or administering the sections, because the proposed sections only affect nonprofit organizations.

Questions about the content of this proposal may be directed to Karen Parker at (512) 438-2239 in DHS's Government Relations Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-267, 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 B. BOARD OF DIRECTORS

40 TAC §54.204

The amendment is proposed under the Human Resources Code, Title 2, Chapter 51, which provides the department with the authority to administer family violence programs.

The amendment implements the Human Resources Code, Chapter 51.

§54.204. Orientation.

New board members must:

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

(3) have access to a copy of the Texas Department of Human Services Family Violence Program Shelter Center Provider Manual [~~Family Violence Program Provider Manual~~].

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 August 28, 2000.

TRD-200006011
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3108

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SUBCHAPTER C. CONTRACT STANDARDS

40 TAC §54.311

The amendment is proposed under the Human Resources Code, Title 2, Chapter 51, which provides the department with the authority to administer family violence programs.

The amendment implements the Human Resources Code, Chapter 51.

§54.311. Contractor's Records.

(a)-(d) (No change.)

(e) The shelter center must maintain at least one copy of the DHS Family Violence Program Shelter Center Provider Manual [~~Family Violence Program Provider Manual~~] at all separate locations where contracted services are performed. Contractors must ensure:

(1) all staff and volunteers have access to the DHS Family Violence Program Shelter Center Provider Manual [~~Family Violence Program Provider Manual~~]; and

(2) (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 August 28, 2000.

TRD-200006010
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: October 8, 2000
For further information, please call: (512) 438-3108

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SUBCHAPTER E. SHELTER PERSONNEL

40 TAC §54.519

The amendment is proposed under the Human Resources Code, Title 2, Chapter 51, which provides the department with the authority to administer family violence programs.

The amendment implements the Human Resources Code, Chapter 51.

§54.519. Initial Training.

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

(c) Initial training issues for DHS-funded direct service employees or employees supervising direct service staff must include:

(1)-(12) (No change.)

(13) Texas Department of Human Services Family Violence Program Shelter Center Provider Manual [~~Family Violence Program Provider Manual~~].

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

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TRD-200006009
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3108

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SUBCHAPTER I. BOARD OF DIRECTORS

40 TAC §54.902

The amendment is proposed under the Human Resources Code, Title 2, Chapter 51, which provides the department with the authority to administer family violence programs.

The amendment implements the Human Resources Code, Chapter 51.

§54.902. Financial and Oversight Responsibilities.

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

(d) To obtain a variance or an exemption from a specific rule contained herein, the board of directors may request a waiver from DHS. This request must be made in writing to DHS on forms prescribed by the department and must document compelling reasons the rule cannot be met. DHS will respond to the request in writing to the contractor or potential contractor.

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

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TRD-200006008
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: October 8, 2000
For further information, please call: (512) 438-3108

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SUBCHAPTER J. CONTRACT AND FISCAL STANDARDS

40 TAC §54.1002

The amendment is proposed under the Human Resources Code, Title 2, Chapter 51, which provides the department with the authority to administer family violence programs.

The amendment implements the Human Resources Code, Chapter 51.

§54.1002. New Contractors.

(a) (No change.)

(b) DHS reviews all proposals and shall award a contract through a competitive procurement procedure based on the:

(1) ability of the contractors to provide core services and services specified in §54.1501 of this title (relating to Required Core Services) that [~~which~~] meet an unmet need in the community; and

(2) (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 August 28, 2000.

TRD-200006007
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: October 8, 2000
For further information, please call: (512) 438-3108

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PART 11. TEXAS COMMISSION ON HUMAN RIGHTS

CHAPTER 323. COMMISSION

40 TAC §323.6

The Commissioners of the Texas Commission on Human Rights (TCHR) propose an amendment to § 323.6 concerning civilian workforce composition. This amendment is necessary correct the rule as originally adopted which inaccurately reflected where the TCHR receives statistical information upon which it relies to report workforce composition. The original rule indicated that the statistical data came from the Equal Employment Opportunity Commission, while in actuality the data comes from the United States Department of Labor. This proposed amendment to § 323.6 identifies the proper agency from which the TCHR receives data in order to issue statewide workforce composition reports.

William M. Hale, Executive Director has determined that for each year of the first five years the proposal is in effect, there will be no fiscal impact on state and local government as a result of enforcing and administering the proposed amendment. There will be no adverse effects on local employment or the local economy.

Mr. Hale has determined that there is neither an economic cost nor adverse impact on small businesses as a result of this proposed section. The purpose of this rule amendment is simply to correctly identify the agency from which TCHR receives statistical information for the purposes of reporting civilian workforce composition. Thus, there is no adverse economic effect upon small businesses. The requirements of the rule should not be waived.

Mr. Hale has also 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 clarification of the proper agency from which the TCHR receives information in order to issue workforce composition reports.

Comments on the proposed amendment must be submitted within 30 days after the publication of the proposed section in the Texas Register to Katherine A. Antwi, General Counsel, Mail Code 344, Texas Commission on Human Rights, P.O. Box 13493, Austin, Texas, 78711. Any requests for a public hearing must be submitted separately to the Office of General Counsel.

This amendment is proposed under the Texas Labor Code, Chapter 21, Sections 21.556 and 21.003, and Texas Administrative Code Chapter 321, Section 321.4 and Chapter 323, Section 323.5. The Texas Labor Code, Section 21.556, provides that the Commission shall promulgate rules as are necessary and proper to execute its duties and functions. The Texas Labor Code, Section 21.003, and the Texas Administrative Code, Sections 321.4 and 323.5, grant the Commission authority to adopt procedural rules to carry out the purposes and policies of Texas Commission on Human Rights Act.

Texas Labor Code, Chapter 21, is affected by this proposal.

§323.6. Civilian Workforce Composition.

(a) Based upon statistics issued [~~every two years~~] by the U.S. Department of Labor, Bureau of Labor Statistics,[~~EEOC,~~] regarding public and private employers, the commission shall biennially determine:

(1) the percentage of the statewide civilian workforce composed of:

(A) Caucasian Americans;

(B) African Americans;

(C) Hispanic Americans;

(D) females; and

(E) males; and

(2) the percentage of the statewide civilian workforce of the groups listed in Subdivision (1) according to the following job categories:

(A) state agency administration;

(B) professional;

(C) technical;

(D) protective services;

(E) paraprofessional;

(F) administrative support;

(G) skilled craft; and

(H) service and maintenance.

(b) The commission shall report the percentages of the statewide civilian workforce as determined under this section to the governor and the legislature not later than the fifth day of each regular session of the legislature.

(c) The commission shall publish, either on the commission website or upon request, the percentages of the statewide civilian workforce as determined under this section within thirty (30) days of the commission's receipt of the relevant Geographic Profile of Employment and Unemployment, U.S. Department of Labor, Bureau of Labor Statistics.[~~EEOC biennial statistics.~~]

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 August 23, 2000.

TRD-200005945
William M. Hale
Executive Director
Texas Commission on Human Rights
Earliest possible date of adoption: October 8, 2000
For further information, please call: (512) 437-3457

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40 TAC §323.9

The Commissioners of the Texas Commission on Human Rights propose new §323.9 concerning minimum standards for required compliance training for state agencies. This rule is necessary to address issues concerning how a state agency, other than the Commission, may provide a comprehensive equal employment opportunity training program to appropriate supervisory and managerial employees once a state agency has received three or more complaints of employment discrimination in a fiscal year, other than complaints determined to be without merit. Proposed §323.9 clarifies the minimum content and the minimum standards of delivery required for a training program to be approved by the Commission in addition to any costs that may be associated with delivering or receiving required compliance training.

William M. Hale, Executive Director has determined that for each year of the first five years the proposal is in effect, there will be no fiscal impact on local government as a result of enforcing and administering the proposed section. However, Mr. Hale has determined that there will be a fiscal impact on state government. Specifically state agencies that choose to develop a comprehensive equal employment opportunity training program for supervisory and managerial employees will be fiscally impacted. There will be no adverse effects on local employment or the local economy.

Mr. Hale has determined that for each year the proposal is in effect there are public benefits anticipated as a result of the adoption of this proposed section. Specifically, state agencies will be able to address the specific needs of their managers and supervisors in determining what personnel decisions comply or fail to comply with laws prohibiting employment discrimination. As better decisions are made the number of complaints filed against these agencies by their employees should be reduced which in turn would reduce financial liability to the State of Texas in responding to complaints, handling internal grievances and dealing with matters involving external litigation.

The economic cost to comply with this proposed section is the result of a legislative mandate that requires adoption of rules by the Commission in order to provide minimum standards for approval of a training program provided by state agencies. This section is intended to comply with the goals of the statute. This proposed section does not mandate any action not required by the Legislature and therefore imposes no costs other than those imposed by state law. However, Mr. Hale has determined that the cost to a state agency for development, preparation, delivery, costs and trainer certification would total approximately nine hundred dollars ($900.00). Mr. Hale arrived at this figure by calculating the cost breakdown to the Commission for performing a compliance training program on equal employment opportunity law. The Commission has determined that a state agency that endeavors to craft a similar program will encounter similar cost formulas.

Mr. Hale has determined that there is neither an economic cost nor adverse impact on small businesses as a result of this proposed section. The purpose of this rule is to outline the process the Commission will utilize in determining when equal employment compliance training will be required. Thus, there is no adverse economic effect upon small businesses. The requirements of the rule should not be waived.

Comments on the proposal must be submitted within 30 days after the publication of the proposed section in the Texas Register to Katherine A. Antwi, General Counsel, Mail Code 344, Texas Commission on Human Rights, P.O. Box 13493, Austin, Texas, 78711. Any requests for a public hearing must be submitted separately to the Office of General Counsel.

This new section is proposed under the Texas Labor Code, Chapter 21, Sections 21.556 and 21.003, and Texas Administrative Code Chapter 321, Section 321.4 and Chapter 323, Section 323.5. The Texas Labor Code, Section 21.556, provides that the Commission shall promulgate rules as are necessary and proper to execute its duties and functions. The Texas Labor Code, Section 21.003, and the Texas Administrative Code, Sections 321.4 and 323.5, grant the Commission authority to adopt procedural rules to carry out the purposes and policies of Texas Commission on Human Rights Act.

Texas Labor Code, Chapter 21, is affected by this proposal.

§323.9. Compliance Training for State Agencies.

(a) The minimum content standards for the equal employment opportunity compliance training program for supervisors and managers shall include, but not be limited to:

(1) Course Objectives: These objectives shall provide an overview of the course, identify the statutory requirements for EEO compliance training, identify state personnel receiving the training, and identify the benefits and goals of such training.

(2) Introductory Exercise: This exercise should be constructed around statements describing actual personnel transactions in the context of EEO law. The personnel transactions identified shall cover diverse application of EEO laws including Title VII of the Civil Rights Act of 1964, as amended (Title VII), the Age Discrimination in Employment Act, the Equal Pay, the Americans with Disabilities Act, and the Texas Commission on Human Rights Act with respect to basis and issues. Each participant is to determine whether or not the personnel transaction as stated violates EEO law. After the exercise is completed, the Trainer shall generate interactive discussion and dialogue between the Trainer and participants in terms of the answer to each statement. The Trainer should be prepared to provide comprehensive responses to participants' questions that are accurate interpretations of EEO law.

(3) Federal and State Laws Prohibiting Employment Discrimination: This information should cover Title VII, the Age Discrimination in Employment Act, the Equal Pay Act, Americans with Disabilities Act, and the Texas Commission on Human Rights Act. The discussion of these laws shall include enforcement authority, protected classes, personnel transactions covered (with examples), complainant's rights and remedies, and statutory time limitation requirements. The Trainer should have an accurate understanding of these laws and a working knowledge of transactions and examples.

(4) Deferral Relationship Between the Texas Commission on Human Rights and the U.S. Equal Employment Opportunity Commission and Complaint Processing: The statutory basis that requires EEOC to defer federal jurisdiction over claims of employment discrimination to the Texas Commission on Human Rights should be explained in detail citing the provisions of Title VII and the Americans with Disabilities Act. Also, there should be a discussion of the procedural functions and tasks required during the processing of a complaint under the Texas Commission on Human Rights. The Trainer must be familiar with these procedures.

(5) Primary Legal Theories Established by the United States Supreme Court: The primary legal theories for determining

employment discrimination, specifically disparate treatment and disparate impact, should be identified. The discussion of these two legal theories should identify the central questions that must be considered under each theory in order to determine whether or not the personnel transaction is a violation of EEO law. One or more case examples must be discussed in plain language to illustrate the application of each theory based on actual case law. The Trainer must be prepared to answer accurately any questions by participants with respect to the application of these two theories.

(A) Investigative Stages - Disparate Treatment: The three investigative stages established by the United States Supreme Court for considering evidence under EEO law should be identified and defined. The application of each of these stages should be discussed in detail. The Trainer should have a thorough working knowledge of these three stages, including knowledge of the case law related to these three stages. The Trainer should also be able to provide examples to illustrate application of these stages and be able to respond accurately to participants' questions.

(i) Prima Facie: The discussion of this stage should identify the elements of a prima facie case of employment discrimination for a failure to hire, failure to promote, and disciplinary action up to and including discharge for disparate treatment. An exercise should be included that requires the participants to determine whether or not a complainant has met the elements of the prima facie case of employment discrimination under the theory of disparate treatment. This exercise should stimulate interactive discussion between participants and the Trainer. The Trainer must be prepared to answer accurately any questions by the participants with respect to the elements of a prima facie case of employment discrimination and the exercise.

(ii) Employer Defenses: The discussion of this stage should identify the defenses available to an employer once a complaint alleging employment discrimination has been filed. The Trainer should be able to identify these defenses and specify which defenses are created by statutory language or court interpretations. The following, although not inclusive of all the defenses, should be discussed: articulating a non-discriminatory reason for a failure to hire, failure to promote, and disciplinary action up to and including discharge; bona fide occupational qualification and business necessity; and reasonable accommodation of sincere religious beliefs and reasonable workplace accommodation for persons with disabilities, unless such an accommodation creates an undue hardship. The Trainer should identify the types of information or evidence the employer should provide for each of these defenses in order to meet the employer's burden of production. The Trainer should facilitate interactive discussions about such information or evidence using examples based on actual cases or case law.

(iii) Pretextual Stage: The discussion of this stage should identify that if the employer is able to articulate a defense, the burden of proof is on the Plaintiff to show that he or she was in fact discriminated against and that the reasons put forth by the employer are a mere pretext for accomplishing the discriminatory act. A discussion of this stage shall be provided which includes plain language examples that illustrate pretext based on court interpretations.

(B) Investigative Stages - Disparate Impact Cases: The three investigative stages established by the United States Supreme Court for considering evidence under EEO law should be identified and defined. The application of each of these stages should be discussed in detail. The Trainer should have a thorough working knowledge of these three stages, including knowledge of the case law related to these three stages. The Trainer should also be able to provide examples to illustrate application of these stages and be able to respond accurately to participants questions.

(i) Prima Facie: The discussion of this stage should identify the elements of a prima facie case of employment discrimination by disparate impact. To establish a prima facie case, Plaintiff bears the burden of demonstrating that the challenged facially neutral employment practice causes a significantly discriminatory impact on a protected group. An exercise should be included that requires the participants to determine whether or not a complainant has met the elements of a prima facie case of employment discrimination under the theory of disparate impact. This exercise should stimulate interactive discussion between participants and the Trainer. The Trainer must be prepared to answer accurately any questions by the participants with respect to the elements of a prima facie case of employment discrimination and the exercise.

(ii) Employer Defenses: The discussion of this stage should identify that the burden shifts to the Defendant employer to demonstrate that the challenged practice is job related for the position in question and consistent with a business necessity. The Trainer should identify the types of information or evidence the employer should provide for each of these defenses in order to meet the employer's burden of production. The Trainer should facilitate interactive discussions about such information or evidence using examples based on actual cases or case law.

(iii) Pretextual Stage: The discussion of this stage should identify that if the employer demonstrates a business necessity for the practice, the burden is on the Plaintiff to prove that the employer could have used some other nondiscriminatory practice to satisfy the same business necessity. A discussion of this stage shall be provided which includes plain language examples that illustrate pretext based on court interpretations.

(C) At the conclusion of the discussion of the disparate treatment and disparate impact theories, a role play exercise shall be designed and conducted that illustrates the application of these theories. Participants in these role plays shall be divided to represent complainants, employers, and investigators. The Trainer will lead a discussion after the presentation of each stage to insure accurate understanding regarding each theory.

(6) EEO Compliance Criteria: Criteria for accurately measuring compliance with EEO laws with respect to all personnel transactions shall be identified and defined. An exercise shall be included to illustrate the correct application of the compliance criteria. The exercise should include personnel transactions in which the compliance criteria are applied. Based on the personnel transactions, the participants shall determine whether or not the identified personnel transaction complies with each of the stated criteria. The Trainer should lead an interactive discussion of each of the criteria as they apply to each personnel transaction and accurately understand and explain the correct answer giving plain language examples based on actual cases or case law.

(7) Sexual Harassment: Sexual harassment should be defined in accordance with EEOC guidelines and court decisions. This discussion should identify that illegal discrimination based on sex occurs when submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual or when unwelcome sexual conduct unreasonably interferes with an individuals job performance or creates an intimidating, hostile, or offensive working environment. An exercise shall be included that gives examples of sexual harassment and explains sexual harassment in the context of EEO law. The Trainer should lead an interactive discussion of this exercise using actual case examples including court cases. The Trainer should have a thorough knowledge of sexual harassment covered under EEO law.

(b) The minimum standards for delivery of the equal employment opportunity compliance training program for supervisors and managers shall include, but not be limited to, the following requirements.

(1) This training program in its entirety should require approximately eight hours by a qualified Trainer who has a thorough knowledge of EEO law. The Trainer should have demonstrated competency in conducting face-to-face interactive training programs. Training program materials must at least include Trainee's Workbook and an Instructor's Manual.

(2) The training material must accurately cover all applicable Federal and State EEO laws and include relevant examples including, but not limited to, actual cases and court decisions. The State agency or entity must ensure materials are updated as new laws and court decisions occur.

(3) The training program must be developed so that it ensures that the delivery of the material is interactive with the maximum dialogue and discussion between Trainer and participants. Trainers shall have sufficient knowledge of EEO laws in order to provide participants with correct answers, responses, and explanations of all aspects of the training program including exercises. The training program must be developed in a manner that the material presented is user friendly and in plain language but appropriate for managerial and supervisory personnel at all levels.

(4) The number of participants in a training session should not exceed forty (40) managers and supervisors in order to maximize interactive discussion and dialogue. Managers and supervisors include any personnel that have responsibilities or authority for making personnel decisions that can affect the employment opportunities of subordinates employees.

(5) The State agency or entity must define methodology and responsibilities for:

(A) Trainee's evaluation of the effectiveness of the program;

(B) Contact person who can answer follow-up technical assistance questions;

(C) Schedule of training sessions and verification of participants; and

(D) Documentation of the dates the training was provided, names of the persons attending training, agenda for the training program, and name of entity or person providing training.

(6) The training program must be approved by the Texas Commission on Human Rights.

(7) The trainer providing the training program must be certified by the Texas Commission on Human Right through the Texas Commission on Human Rights' Training Academy.

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 August 23, 2000.

TRD-200005946

William M. Hale
Executive Director
Texas Commission on Human Rights
Earliest possible date of adoption: October 8, 2000
For further information, please call: (512) 437-3457

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 809. CHILD CARE AND DEVELOPMENT

SUBCHAPTER C. REQUIREMENTS TO PROVIDE CHILD CARE

The Texas Workforce Commission (Commission) proposes the repeal of §809.45 and §809.46, new §809.46, and amendments to §809.47, relating to assessing parents' share of cost for child care services.

Purpose: The purpose of the new and amended rules is to increase the flexibility of local workforce development boards (Boards) in setting parents' share of cost for child care services. The range of recommended fees will be determined by the Boards taking into account a parent's ability to share in the cost of child care.

Background: To better facilitate self-sufficiency, the Commission asserts that it is important that parents take responsibility for sharing the cost of care for their own children. For that reason, the new and amended rules remove the recommendation of the 9% to 15% parents' share of cost range. However, the Commission suggests that Boards set a minimum of 9% as the parents' share of cost to encourage personal responsibility. By setting policies that incorporate a progressive increase as parents' earnings increase, Boards will help support families and prepare them to pay the full cost of child care as they move toward self-sufficiency. A progressive increase in parents' share of cost will also make limited child care dollars go farther, thus allowing for services to more children who need care.

The new and amended rules no longer contain the provisions relating to the circumstances in which the Agency manages child care services. Since the Boards are now operational, the Boards manage child care services in all workforce areas. In the event that the Agency manages child care services in the future in the place of a Board, the Agency may utilize the Board's parents' share of cost policy or set a different parents' share of cost policy if the Agency determines it is necessary for the management of child care services in the workforce area. For purposes of this preamble, the term "Agency" refers to the daily operations of the Texas Workforce Commission under the direction of the executive director, and the term "Commission" refers to the three-member body of governance composed of Governor-appointed members.

The new §809.46 also no longer contain subsection (f), which required that subsidies used for child care from other funding sources were required to follow the same policy as that which applied to funds allocated by the Commission for child care services. The new rules allow the Boards to set local parents' share of cost policies relating to funds not allocated by the Commission for child care services such as Welfare-to-Work (WtW) and Workforce Investment Act (WIA) funds. The new and amended

rules will enable Boards to set integrated or service-specific parent share of cost provisions to coordinate parents' share of cost policies in a manner as determined by the Board to best meet the needs of the population being served in the workforce area.

Randy Townsend, Director of Finance, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules;

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules;

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules;

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules; and

There are anticipated economic costs to persons required to comply with the rules in that the Boards may set a parents' share of cost policy at a higher amount. A parents' share of cost is required by the Child Care and Development Fund federal regulations at 42 CFR §98.42.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rule because small businesses are not regulated or required to do anything by the rules.

Mark Hughes, 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 rules.

Barbara Cigainero, Director of Workforce and Development, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help ensure a more effective use of child care funds to assist Boards in supporting employment, training, and education.

Comments on the proposal may be submitted to Nancy Hard, Texas Workforce Commission Building, 101 East 15th Street, Room 130T, Austin, Texas, 78778, (512) 936-0474. Comments may also be submitted via fax to (512) 463-5067 or e-mailed to: Nancy.Hard@twc.state.tx.us. Comments must be received by the Agency within 30 days from the date of the publication in the *Texas Register*.

40 TAC §809.45, §809.46

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

The repeals 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 repeals affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

§809.45. Collection of Parent Fees and Subsidies.

§809.46. Assessing Parent Fees

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 August 24, 2000.

TRD-200005949
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: October 8, 2000
For further information, please call: (512) 463-8812

40 TAC §809.46, §809.47

The amendments and new section 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 affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

§809.46. Assessing and Collecting Parents' Share of Cost.

(a) For child care funds allocated by the Commission pursuant to its allocation rules (Chapter 800, General Administration, Subchapter B, Allocation and Funding, §800.58), the following shall apply.

(1) A Board shall set a parents' share of cost policy in accordance with the requirements set forth in §809.12 of this chapter (relating to Board Policies and Plans for Child Care Services) that shall assess parents' share of cost in a manner that results in the parents' share of cost:

(A) being assessed to all parents or caretakers, except in instances when an exemption under paragraph (2) of this subsection applies;

(B) being based on the family's size and gross monthly income, and may also be based on the number of children in care; and

(C) not exceeding the cost of care.

(2) Parents that are one or more of the following are exempt from paying a parents' share of cost:

(A) parents who receive TANF;

(B) parents who receive Supplemental Security Income (SSI);

(C) parents who participate in the Food Stamp Employment and Training; or

(D) parents who have children that are receiving protective services unless the Texas Department of Protective and Regulatory Services assesses a parents' share of cost.

(3) Teen parents who live with their parents and who are not covered under exceptions outlined under paragraph (2) of this subsection shall be assessed a parents' share of cost. The parents' share of cost is based solely on the teen parent's income.

(4) A parents' share of cost shall be assessed to families in which the child is the only TANF or SSI recipient.

(b) For child care services funded from sources other than those sources for funds allocated by the Commission for Child Care Services pursuant to its allocation rules, a Board shall set a parents' share of cost policy based on a sliding fee scale that may be the same as or different from the provisions contained in subsection (a) of this section.

(c) Providers shall collect assessed parents' share of cost and subsidies before child care is delivered.

(d) It is the sole responsibility of the provider to collect assessed parents' share of cost and subsidies.

(e) A Board shall establish a policy regarding reimbursement of providers to address consequences for providers in situations when parents fail to pay parents' share of cost and subsidies.

§809.47 Reduction of Assessed Parents' Share of Cost [~~Parent Fees~~].

(a) The Board or its contractor shall review the assessed parents' share of cost [~~parent fee~~] for possible reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The Board or its contractor may reduce the assessed parents' share of cost [~~parent fee~~] if warranted by these circumstances.

(b) The Board or its contractor shall not waive parents' share of cost [~~parent fees~~] under any circumstances.

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 August 24, 2000.

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J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 463-8812

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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 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation 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 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS
SUBCHAPTER C. VOTING SYSTEMS

1 TAC §§81.55 - 81.57

The Office of the Secretary of State adopts new §§81.55 - 81.57 with changes to the proposed text as published in the June 9, 2000 issue of the *Texas Register* (25 TexReg 5511).

The new sections will assist the Office of the Secretary of State, political subdivisions, and voting system vendors in the implementation and interpretation of a new state law as found in §122.0011 of the Texas Election Code.

BACKGROUND OF PROPOSED RULES

House Bill 1053, enacted by the 76th Legislature, requires that voting systems acquired after September 1, 1999, must be accessible pursuant to Title II of the federal Americans with Disabilities Act (the "ADA") and Section 504 of the federal Rehabilitation Act, and must provide a practical and effective means for voters with physical disabilities to cast a secret ballot. Texas Election Code Annotated §122.0011 (Vernon Supp. 2000). Because the new law does not outline what constitutes an accessible voting system, the Secretary of State created the Elections Accessibility Task Force (the "Task Force") to assist in developing accessibility standards. Members of the Task Force included representatives from various disability groups, county election officials, the county and district clerks' association, and a voting system vendor. Based on recommendations made by the Task Force and independent research by the Secretary of State staff, the Office of the Secretary of State proposed these rules to assist political subdivisions in the interpretation and practical application of §122.0011 of the Texas Election Code.

SECTION SUMMARY

Section 81.55 provides guidelines for political subdivisions to adopt electronic voting systems with practical and effective means of providing secret ballots to persons with physical disabilities as required under §122.0011 of the Texas Election Code. Section 81.56 authorizes alternative methods of providing secret ballots to persons with physical disabilities as required under §122.0011 of the Texas Election Code. Section 81.57 establishes criteria to assist this office in evaluating the accessibility of voting systems to enable political subdivisions to adopt electronic voting systems with practical and effective means of providing secret ballots to persons with physical disabilities, as required under §122.0011 of the Texas Election Code.

The changes to §§81.55 - 81.57 are made due to public commentary, as shown in "Public Commentary and Secretary of State Response," below.

PUBLIC COMMENTARY AND SECRETARY OF STATE RESPONSE

(All references to "the Code" refer to the Texas Election Code.)

Comment 1: Concerning §81.57, a voting system vendor, ELEX, and the Bexar County Elections Manager suggest that using the term "or any combination of the foregoing" in the introductory paragraph of §81.57 means that a voting system would have to accommodate a person who has no hearing and no vision. Vendors and disability advocates alike concede that there is no technology currently available that will accommodate such voters and allow them to vote a secret ballot; ELEX suggests removal of the phrase "or any combination of the foregoing."

Response 1: The Secretary of State agrees and will add the following language: "Although we strongly encourage voting system vendors to strive to develop systems that will provide a secret ballot for all individuals, this office recognizes that the technology available at the time of the adoption of this section will not accommodate voters who have a combination of no hearing and no vision. A voting system may be considered accessible and in compliance with state law without allowing voters with a combination of no hearing and no vision to cast a secret ballot."

Comment 2: Concerning §81.56(1), the Coalition of Texans with Disabilities states that the master ballot system does not provide a secret ballot since the ballot cannot be scrambled or rotated.

Response 2: Based on the large number of comments expressing concern over the secrecy of the master ballot system, we recommend removal of the master ballot method contained in §81.56(1).

Comment 3: Concerning §81.57(15), (16), and (17), the Coalition of Texans with Disabilities states that our state law says voting systems must comply with the ADA and the Rehabilitation Act, and must also provide a practical and effective means of providing a secret ballot to voters with physical disabilities. Adopting the ADA Accessibility Guidelines (the "ADAAG" written by the Access Board, the group formed by the Department of Justice (the "DOJ") to interpret requirements of the ADA and Rehabilitation Act) will not ensure that all disabled voters are able to cast

a secret ballot, especially voters with limited mobility, since the ADAAG allows either a side or parallel approach to a voting system, which may not allow a voter with limited reach to use the system. The commentator recommends providing the ADAAG as guidance for vendors and certifiers to use, but the final test must be made by disabled voters who must use the system successfully before it may be certified or purchased.

Response 3: The Secretary of State believes the standard of "tested and used successfully by people with disabilities" is too vague for voting system developers, vendors, and certifiers. The ADAAG are the industry standards and are accepted by disability groups nationwide. The ADAAG are written to provide the most universal access, and we accept the reach ranges outlined in the ADAAG. Under the suggested standard, the system would have to be tested by the person with the most limited reach available, since one person with limited reach may be able to use a system that another person with differently limited reach could not use. It would be extremely difficult for vendors or certifiers to attain the suggested standard, and would be burdensome, both administratively and practically (i.e., unduly burdensome).

Comment 4: The Coalition of Texans with Disabilities suggests the addition of another rule ("§81.58") that requires a political subdivision to establish an advisory committee that includes individuals with disabilities to make recommendations on which system to purchase and to allow them to test the system before being purchased by the political subdivision.

Response 4: Without specific legislative authority, the Secretary of State does not have the discretion to mandate what the political subdivisions must do prior to purchasing a voting system. Although it is advisable that political subdivisions include input and testing from disability groups when purchasing a new system, we cannot require it. We may only require that the voting system be accessible and that its accessibility has been evaluated by this office.

Comment 5: Concerning §§81.55 - 81.57, the Elderly and Disabled Services of the City of San Antonio states that disabled people should not face difficulty in getting into polling places or voting booths. Polling places, voting booths, ballots, punch card machines, and tables used for voting should all be accessible to the elderly and physically disabled.

Response 5: The Secretary of State agrees with this comment.

Comment 6: Concerning §§81.55 - 81.57, Advocacy, Incorporated echoes the comments of the Coalition of Texans with Disabilities (see Comments 2, 3 and 4, above), but additionally suggests that since some voters with limited reach will not be able to use a system with a side or parallel approach, we should add a requirement to §81.57 that if a side or parallel approach is used, other accommodations must be available to allow people with limited reach to use the system.

Response 6: Please see Responses 2, 3, and 4, above. Additionally, the Secretary of State believes that adding language to §81.57 requiring a voting system to have "other accommodations" is too broad and does not give the voting systems vendors any direction for designing their voting systems. Consequently, we do not recommend this change.

Comment 7: Concerning §§81.55 - 81.57, the Texas Civil Rights Project, the Houston and Brazoria Centers for Independent Living, the National Organization on Disability, ADAPT of Texas, the Arc of Texas, and the Texas Council for Developmental Disabilities support the comments of the Coalition of Texans with Disabilities (see Comments 2, 3, and 4, above).

Response 7: Please see Responses 2, 3, and 4, above.

Comment 8: Concerning §81.55(2), the Travis County Clerk comments that the purchase and use of a precinct ballot counter should not trigger the law since "the voter is already in an environment which calls for assistance to disabled voters" and "the method of voting and the requirements for assistance do not change." The precinct ballot counter is the same as a regular locked and sealed ballot box despite the fact that the voter audits and resolves his own ballot (i.e., adoption of the precinct ballot counter system will not affect voters' interaction with the ballot at the polling sites, and thus, purchase of such a system should not trigger the law). Given these assumptions, the Travis County Clerk and the Cameron County Elections Administrator ask whether the purchase of a precinct ballot counter system triggers the law, and if so, why?

Response 8: The purchase of a precinct ballot counter after September 1, 1999, does trigger the law. Under §81.55, a substantial change to an existing system will trigger the law. Section 121.003(1) of the Code defines a voting system as "a method of casting and processing votes that is designed to function wholly or partly by use of mechanical, electromechanical, or electronic apparatus ..." Texas Election Code Annotated §121.003(1) (Vernon Supp. 2000) (emphasis added). Although voters would still use optical scan ballots in a precinct ballot counter system, the way the voters cast their ballots changes in that the voters self-audit the ballots, and the voters are depositing their ballots into a tabulator rather than a ballot box. We believe this is a substantial change in the voting system that affects voters, and, consequently, triggers the law.

Comment 9: Concerning §81.55, the Bexar County Election Manager asks whether a political subdivision may use a precinct ballot counter at a central counting station or early voting ballot board, and if so, would a precinct ballot counter used at a central counting station or early voting ballot board trigger the law? He does not suggest changes to the wording of the section.

Response 9: No. The use of a precinct ballot counter at a central counting station or early voting ballot board would not trigger the law. Section 81.55(2) states that "any change made to a central counting station unit that does not directly affect voters does not trigger the law." However, for clarification, the Secretary of State suggests changing this to read "Any change made to a voting system used at a central counting station or early voting ballot board that does not directly affect voters does not trigger the law."

Comment 10: Concerning §81.55, the Bexar County Election Manager and the Travis County Clerk ask us to clarify whether the adoption of one of the §81.56 alternative voting methods, used in conjunction with a non-accessible system, would bring the non-accessible system into compliance with the law; neither commentator suggests changes to the wording of the section.

Response 10: The alternative voting methods only allow accessibility for voters who are visually or reading-impaired. The new state law requires a voting system purchased after September 1, 1999, to provide voters with any combination of physical disabilities access to a secret ballot (note that advocacy groups concede that no technology exists that will accommodate voters with a combination of no hearing and no vision). Thus, adoption of one of the alternative methods as defined in §81.56 will not bring an

otherwise non-compliant system into compliance. The Secretary of State does not recommend any changes in §81.55 pursuant to this comment.

Comment 11: Concerning §81.55, the Bexar County Election Manager, the Travis County Clerk, and the Cameron County Elections Administrator ask whether a voting system purchased after September 1, 1999, must be placed at every early voting and election day polling site throughout the political subdivision.

Response 11: No. The system must be accessible in each polling site it is used, but the accessible voting system does not need to be placed in every early voting and election day polling site. Section 123.004 of the Code states that the authority adopting a voting system may restrict its use to one or more polling places. This office does not have the legal authority to override this provision of the Code and require a voting system in all polling places. Similarly, §123.007 of the Code authorizes the use of different voting systems in a single election (e.g. optical scan in some polling places, direct-recording electronic system in others), again suggesting that a voting system need not be placed in every early voting or election day polling site. The Secretary of State will add new paragraph (5) to §81.55, stating as follows: "The rule does not require that a newly acquired voting system be placed in every early voting and election day polling site; however, a newly acquired voting system must be accessible in each polling site it is used."

Comment 12: Concerning §81.55, the Travis County Clerk asks us to consider adding language to the rule allowing a transition period to phase-in the use of a new voting system. She states that a gradual phase-in of a new voting system should be allowed for two main reasons: cost and public acceptance. For example, the purchase of a direct-recording electronic system for use throughout the early voting and election day polling sites is cost prohibitive. Purchasing all direct-recording electronic systems immediately is too expensive, but a decision to delay or deny the purchase of a new system will adversely affect all Travis County voters. Also, people do not like drastic change; allowing a gradual transition to computer voting will increase acceptance and trust of the system by the voters while still addressing the needs of voters with disabilities.

Response 12: This office does not have the authority to implement a phase-in period pursuant to the enabling legislation.

Comment 13: Concerning §81.56(1)(G), the Bexar County Elections Manager asks why a political subdivision may not use the master ballot system with the precinct ballot counter?

Response 13: §81.56(1)(G) currently states that a master ballot system may be used with the precinct ballot counter as long as the ballots are remade at the central counting station, rather than at the precinct level. However, as the rules are being changed to remove authorization and description of the master ballot method, this question becomes moot.

Comment 14: Concerning §81.55(4), the Bexar County Election Administrator and the Travis County Clerk comment that this section appears to allow the use of an ADA-compliant component, such as an approved direct-recording electronic system, in conjunction with a precinct ballot counter. Several questions arise from this inference. First, is this combination of two voting systems in a single polling place acceptable, given §123.005 of the Code, which states that only one kind of voting system may be used at a polling place in an election? Second, is this inference true only if a direct-recording electronic system is purchased to make accessible a precinct ballot counter system that was acquired before September 1, 1999, or does this inference operate to allow a political subdivision to acquire a precinct ballot counter and a direct-recording electronic system together after September 1, 1999?

Response 14: This office is charged with the duty to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Code and other election laws. Texas Election Code Annotated §31.003 (Vernon 1986). The Secretary of State must construe §123.005 and §122.0011 together; therefore, the Secretary of State recognizes a limited exception to §123.005 in order to ensure that political subdivisions are able to meet the legislative mandate that any voting system acquired after September 1, 1999, must be accessible and provide a practical and effective means to cast a secret ballot.

Section 81.55(4) allows the use of an ADA-compliant voting system, such as an accessible direct-recording electronic system, in the same polling place as a non-accessible precinct ballot counter that was purchased prior to September 1, 1999. A political subdivision that purchased a precinct ballot counter prior to September 1, 1999, has not triggered §122.0011 of the Code, but if the political subdivision then wishes to purchase an accessible component in order to allow voters with physical disabilities to cast a secret ballot, §81.55(4) allows them to do so. A political subdivision that purchases a precinct ballot counter system after September 1, 1999, without the addition of an ADA-compliant component would be in violation of state law; the precinct ballot counter system standing alone does not provide voters with physical disabilities with an opportunity to cast a secret ballot. A political subdivision may purchase a precinct ballot counter after September 1, 1999, but only if also purchasing an ADA-compliant component (such as an accessible direct-recording electronic unit) and only if the following conditions are met: the precinct ballot counter and the ADA-compliant component will be used simultaneously at the same polling place; and both systems must be networked together via compatible reporting software or other approved method which must be certified by the Secretary of State.

In order to provide the most appropriate integrated setting and to ensure the secrecy of the voters' choices, all voters must be allowed to use any authorized voting system in the polling place to cast their votes. The ADA-compliant component should not be reserved exclusively for use by voters with disabilities; rather, any voter with or without a disability may vote on it. If a person with a disability arrives at the polling place to vote, however, that person should be given priority in using the ADA-compliant component.

Comment 15: Concerning §81.57(12), which provides that "any spoken text shall also be presented on screen, ..." the vendor Unilect asks whether this section requires that a voting system must have a screen counterpart in order to be certified as accessible.

Response 15: No, a voting system need not have a screen counterpart in order to be certified as accessible. However, for clarification, we suggest adding language to §81.57(12) as follows: "If a non-audio approach is used in conjunction with an audio counterpart, any spoken text shall also be presented on screen, ..."

STATUTORY AUTHORITY

The new rules are adopted under Texas Election Code §31.003, which authorizes the Office of the Secretary of State to obtain

and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws.

§81.55. Adoption of Accessible Voting Systems under §122.0011 of the Texas Election Code.

Adoption of Accessible Voting System after September 1, 1999

(1) The requirement of §122.0011 of the Texas Election Code (the "Code") to implement a practical and effective means of providing a secret ballot to persons with physical disabilities is triggered when a political subdivision acquires a new voting system by lease or purchase after September 1, 1999.

(2) Only the acquisition of a new voting system (or substantial modification of an existing voting system) that will change voters' interaction with the ballot at the polling sites triggers §122.0011 of the Code. Any change made to a voting system at a central counting station or early voting ballot board that does not directly affect voters does not trigger the law.

(3) If a political subdivision acquires a new voting system, the system must be accessible to persons with physical disabilities and provide the voter with a practical and effective means to cast a secret ballot.

(4) A political subdivision may use more than one type of voting system in a single polling place for the limited purpose of providing a person with physical disabilities with a method of casting a secret ballot.

(5) The rule does not require that a newly acquired voting system be placed in every early voting and election day polling site; however, a newly acquired voting system must be accessible in each polling site it is used.

§81.56. Authorized Alternative Methods of Providing a Secret Ballot to Persons with Physical Disabilities.

The following methods of providing a secret ballot to persons with physical disabilities are approved by the Office of the Secretary of State. Minor variations on these methods may be made without submitting the method to this office for approval. These methods supplement the regular voter-assistance procedures in Texas Election Code §§64.031 - 64.037.

(1) Paper or Optical Scan Ballot with Template/Overlay and Telephone or Audiotape System

(A) The political subdivision creates a precinct-specific tactile ballot cover or overlay ("template") that is used to allow visually or reading-impaired voters to vote independently through the use of touch. The ballot template is in the form of a folder or other overlay into which the voter's ballot is inserted, and a binder clip or similar fastener should be attached to keep the ballot in place. The ballot template has raised lines to guide a voter to the appropriate voting locations on the ballot, and has holes punched to allow the voter to mark the actual ballot. The lines may be created with velcro strips, fabric glue, caulk, or some other substance that will provide tactile guidance to the ballot layout. The lines should be designed to divide the races or issues on the ballot; each race or issue may be numbered by writing a number with the template-marking substance. The numbers may also be printed in Braille. If a vendor provides a ballot template with holes punched to correspond to every oval on an optical scan ballot, the authority conducting the election must make that template precinct-specific by dividing the ballot into the appropriate precinct races by using raised lines and covering the holes so that the voter may not make a mark. The material used to cover the holes must be self-adhesive and thick enough to alert the voter that a mark should not be made in that hole.

(B) When a voter with a visual or reading disability arrives at the polling site and requests to vote using this method, the election official must verify the voter's eligibility to vote; and the voter selects a ballot from the official precinct ballot stock. The election official then inserts the ballot into the template and hands it to the voter. One corner of the ballot template must be cut at an angle that corresponds to a similar cut on the ballot. This will allow the official and the voter to be sure that the ballot is correctly aligned and facing the right way in the ballot cover. The voter may choose to insert the ballot into the ballot cover rather than having the election official perform this task.

(C) If using the telephone system, the election official then makes a telephone call to a designated telephone number. A person assigned to read the ballot in English or Spanish (the "reader") to the voter answers the telephone. The election official tells the reader the precinct number only; the official does not tell the reader the name of the voter. The election official hands the voter the telephone. The reader instructs the voter how to read the ballot template to understand how it will allow him or her to mark his or her own ballot. Once the reader is sure the voter understands the procedures and the layout of the ballot template, the reader reads the first race and candidate names or propositions. The voter then marks the ballot through the hole in the ballot template corresponding to the candidate for which the voter wishes to vote (or for or against the proposition). The reader then instructs the voter to move to the next section on the ballot template to vote on the next race or issue. The reader must have a copy of the template that the voter is using so that the reader is sure to instruct the voter accurately on the proper races and candidates on which the voter is eligible to vote. The reader does not need an actual template; a carbon copy is sufficient. Once the voter has completed the ballot, the ballot is deposited in the ballot box, and the ballot cover is returned to the election official.

(D) If an audiotape system is used, the precinct election official hands the voter the appropriate audiotape, audiotape player, and a set of headphones. The voter listens to the tape to receive instructions on how to read the ballot template to understand how to mark the ballot. If the voter does not understand the instructions, the voter may call the election official over to explain the template procedures. Once the voter understands the procedures and the layout of the ballot template, the voter continues playing the audiotape. The voter may stop the audiotape as necessary while marking the ballot through the hole in the ballot template corresponding to the candidate for which the voter wishes to vote (or for or against the proposition). The voter then restarts the tape and moves down or across the ballot, as instructed on the tape, to vote on the next race or issue. When the voter has completed the ballot, the ballot is deposited in the ballot box, and the ballot cover, audiotape, audiotape player, and headphones are returned to the election official.

(E) Telephones used with this alternative method should be equipped with headsets rather than handsets. This will allow the voters to have their hands free to hold their ballot and template steady, and accurately mark the ballot through the template.

(F) This alternative method does not enable the voter with a physical disability to vote for a write-in candidate without assistance.

(G) Election officials must situate the voting booths in a manner that will ensure as much privacy and as little noise for voters as possible.

(2) Punch Card or Lever Machine with Audiotape or Telephone System

(A) Punch card and lever machine systems work similarly to the ballot template/overlay system, as the machines used allow visually or reading-impaired voters to vote using their sense of touch to guide them through the ballot. These systems may use either a telephone or audiotape to inform the voters of the procedures and the ballot contents.

(B) If using the telephone system, the election official makes a telephone call to a designated telephone number. A person assigned to read the ballot in English or Spanish (the "reader") to the voter answers the telephone. The election official tells the reader the precinct number only; the official does not tell the reader the name of the voter. The election official hands the voter the telephone. The reader instructs the voter on the procedures for voting with a punch card or lever machine, as applicable. Once the reader is sure the voter understands the procedures, the reader reads the first race and candidate names or proposition. The voter votes, and the reader then instructs the voter to move to the next section on the ballot to vote on the next race or issue. When the voter has cast the ballot, the voter returns the telephone to the election official.

(C) If an audiotape system is used, the precinct election official hands the voter the appropriate audiotape, audiotape player, and a set of headphones. The voter listens to the audiotape to receive instructions on how to vote with the punch card or lever machine. If the voter does not understand the instructions, the voter may call the election official over to explain the procedure. Once the voter understands the procedures, the voter continues playing the audiotape. The voter may stop the audiotape as necessary while marking the ballot. The voter then restarts the tape to vote on the next race or issue. When the voter has cast the ballot, the audiotape, audiotape player, and headphones are returned to the election official.

(D) Telephones used with this alternative method should be equipped with headsets rather than handsets. This will allow the voters to have their hands free to mark their ballots.

(E) Election officials must situate the voting booths in a manner that will ensure as much privacy and as little noise for voters as possible.

§81.57. Requirements for Voting System Accessibility

(a) A voting system shall be accessible to voters with physical disabilities including no vision, low vision (visual acuity between 20/70 and 20/200, and/or 30 degree or greater visual-field loss), no hearing, low hearing, limited manual dexterity, limited reach, limited strength, no mobility, low mobility, or any combination of the foregoing (except the combination of no hearing and no vision, see subsection (b) of this section), by providing voters with physical disabilities with a practical and effective means to cast an independent and secret ballot in accordance with each of the following, assessed independently and collectively:

(1) The voting system shall provide a tactile-input or speech-input device, or both; and

(2) The voting system shall provide a method by which voters can confirm any tactile or audio input by having the capability of audio output using synthetic or recorded human speech, which is reasonably phonetically accurate; and

(3) The voting system shall provide a means for a voter to change the voter's selection prior to the voter casting the ballot; and

(4) Any operable controls on the input device that are needed for voters without vision shall be discernable tactilely without actuating the keys. (Note: All the buttons on the device would not have to be discernable tactilely, only those buttons that are actually required for the individual to use the "operation without vision" mode.); and

(5) Any audio and non-audio access approaches shall be able to work both separately and simultaneously; and

(6) If a non-audio access approach is provided, the system shall not require color perception; the system shall use black text or graphics, or both, on white background or white text or graphics, or both, on black background, unless the office of the Secretary of State approves other high-contrast color combinations that do not require color perception; and

(7) Any voting system that requires any visual perception shall offer the election official who programs the system, prior to its being sent to the polling place, the capability to set the font size to a level that can be read by voters with low vision. (Note: Although there is no standard font size for this situation, a san-serif font of 18 points as printed on a standard 8.5 x 11 piece of paper will allow the most universal access.); and

(8) The voting system shall provide audio information, including any audio output using synthetic or recorded human speech or any auditory feedback tones that are important for the use of the audio approach, through at least one mode (e.g., by handset or headset) in enhanced auditory fashion (i.e., increased amplification), and shall provide incremental volume control with output amplification up to a level of at least 97 dB SPL, with at least one intermediate step of 89 dB SPL; and

(9) For transmitted voice signals, the voting system shall provide a gain adjustable up to a minimum of 20 dB with at least one intermediate step of 12 dB of gain; and

(10) For the safety of others, if the voting system has the possibility of exceeding 120 dB SPL, then a mechanism shall be included to reset the volume automatically to a safe level after every use (e.g., when handset is replaced) but not before; and

(11) If sound cues and audible information, such as "beeps" are used, there shall be simultaneous corresponding visual cues and information; and

(12) If a non-audio approach is used in conjunction with an audio counterpart, any spoken text shall also be presented on screen, with the exception that any auditory confirmation of a voter's selection as required by subsection (b) of this section shall not be printed in text on the screen (Note: A graphic representation of a ballot with a check, "X," etc. beside a candidate or proposition is allowed.); and

(13) All controls and operable mechanisms shall be operable with one hand, including with a closed fist, and operable without tight grasping, pinching, or twisting of the wrist; and

(14) The force required to operate or activate the controls shall be no greater than 5 lbf (pounds per square foot); and

(15) If a forward approach by a person in a wheelchair to a voting system is necessary, the maximum high-forward reach allowed shall be 48 inches (1220 mm) and the minimum low-forward reach shall be 15 inches (380 mm). If the high-forward reach is over an obstruction, reach and clearances shall be as shown in the figure below or otherwise in accordance with the ADAAG, as written at the time the system is certified for use in the state of Texas; and
Figure: 1 TAC §81.57(a)(15)

(16) If a side or parallel approach by a person in a wheelchair to a voting system is necessary, the maximum side reach allowed shall be 54 inches (1370 mm) and the low side reach shall be no less than 9 inches (230 mm) above the floor. If the side reach is over an obstruction, reach and clearances shall be as shown in the figure below or otherwise in accordance with the ADAAG, as written at the time the system is certified for use in the state of Texas; and

Figure: 1 TAC §81.57(a)(16)

(17) The highest operable part of controls, dispensers, receptacles, and other operable equipment shall be placed within at least one of the reach ranges outlined in paragraphs (15) and (16) of this subsection.

(b) Although we strongly encourage voting system vendors to strive to develop systems that will provide a secret ballot for all individuals, this office recognizes that the technology available at the time of the adoption of this section will not accommodate voters who have a combination of no hearing and no vision. A voting system may be considered accessible and in compliance with state law without allowing voters with a combination of no hearing and no vision to cast a secret ballot.

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 August 28, 2000.

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Jeffrey H. Eubank
Assistant Secretary of State
Office of the Secretary of State
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Proposal publication date: June 9, 2000
For further information, please call: (512) 463-5680

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PART 5. GENERAL SERVICES COMMISSION

CHAPTER 113. CENTRAL PURCHASING DIVISION

The General Services Commission adopts amendments to Title 1, T.A.C. Chapter 113, Subchapter A - Purchasing,§§113.2 - 113.6; 113.8 - 113.14; 113.18 - 113.20; Subchapter C - Specification,§§113.33 - 113.34; Subchapter D - Inspection,§§113.51 - 113.52, 113.56; Subchapter E - Cooperative Purchasing Program,§§113.85, 113.87; and Subchapter G - Buying Under a Contract Established by an Agency Other than the General Services Commission,§113.125. These rules concern the Central Procurement Division. The amendments to§§113.2, 113.3, and 113.4 are adopted with changes to the proposed text that was published in the June 9, 2000, issue of the Texas Register (25 TexReg 5515). Amendments to all other sections are adopted without changes to the proposed text and will not be republished.

The amendments to Chapter 113, Subchapters A, C, D, E, and G are adopted in order to streamline procedures, provide comprehensive definitions and to update statutory citations referenced within the rules.

The amendments will clarify language, delete obsolete language, and update statutory cites referenced within the rules. The amendments will provide for more efficient language and improved readability.

One comment was received in which the commenter proposed amendments for Chapter 113 - Central Purchasing Division. The comments addressed the following:

Deletion or addition of terms and language for definitions in Subchapter A,§113.2. Comments were received for the deletion of the definition in§113.2(1) - Adopted uniform standards and specifications; and for the deletion of wording in§113.2(40) - Product specification. Rewording was recommended for§113.2(19) - Distributor purchase, and§113.2(20) - Emergency purchase. The commenter further recommended the addition of a new definition for "Responsive vendor".

Response. The commission disagrees with the majority of the comments concerning definitions. The commission finds that the proposed language in definitions complies with purchasing statutes found in the Texas Government Code, Chapter 2155, and that the recommended changes to the language in definitions do not improve or provide the meaning necessary to carry out the intent of the statute.

The commission, however, agrees with the recommended rewording for§113.2(20) and language has been changed to read "Emergency purchase - A purchase of goods or services so badly needed than an agency will suffer financial or operational damage unless the items are secured immediately". The definition for§113.2 (40) - Product specification - has also been deleted. As a result of the deletion, a new definition was added and may be found in§113.2(58) - Specification.

Comment. The commenter suggested changing language in§113.3(a)(1) - Requisitions, which "formalizes electronic transmission of requisition data to the commission".

Response. The commission agrees and the language has been changed in§113.3(a)(1) to read ". . . specifications and conditions of the purchase either electronically or on a form . . ."

Comment. The commenter recommended the deletion of all added text in§113.4(a) which read "in excess of the non-competitive bid limit" because it was ambiguous and might conflict with the requirements of§113.11(c)(4) relating to provisions generally applicable to delegated purchases.

Response. The commission agrees and the language has been deleted from the adopted language in§113.4(a).

Comment. The commenter recommended the deletion of the term "uniform" found in the proposed language for§§ 113.2(1), 113.2(64) - Definitions; and§§113.33 and 113.34 concerning the selection and development of Texas Uniform Standards and Specifications.

Response. The commission disagrees. The term "uniform" is found in the Texas Government Code,§2155.068 and, therefore, the rule has not been changed.

Comment. The commenter finds that proposed language in§113.8(b)(1)(B) which reads "otherwise known as reciprocal preference" is confusing and has recommended a catchline for this section which reads "the commission adopts a reciprocal preference rule.

Response. The commission disagrees that the language in§113.8(b)(1)(B) is confusing, and that the recommended catchline would improve the interpretation of the rule.

Comment. The commenter recommended restating the proposed deletion of language in§113.11(c)(5) to prevent large purchases from being broken down into smaller purchases, therefore, circumventing the open market requirements and conflicting with§111.14(b)(1)(A) concerning procurements over $100.000.

Response. The commission disagrees and finds that the deletion of language in§113.11(c)(5) does not conflict

with§111.14(b)(1)(A) concerning the development and evaluation of Historically Underutilized Business subcontracting plans.

Texas Department of Transportation - Against

SUBCHAPTER A. PURCHASING

1 TAC §§113.2 - 113.6, 113.8 - 113.14, 113.18 - 113.20

The amendments are adopted under the authority of the Texas Government Code, Title 10, Subtitle D,§§2152.003, 2155.068. 2155.077, 2155.079, 2155.080, 2155.081, 2155.132, 2155.134, 2155.267, 2155.323, 2156.126 and 2251.003; Texas Government Code, Chapter 2158; and Education Code,§34.001 which provides the General Services Commission with the authority to promulgate rules necessary to implement the sections.

§113.2. Definitions.

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

(1) Adopted uniform standards and specifications - Specifications and standards developed by nationally recognized standards-making associations that are evaluated and adopted by the specifications and standards program.

(2) Advisory groups - A group that advises and assists the standards and specification program in establishing specifications. The advisory group may include representatives from federal, state and local governments, user groups, manufacturers, vendors and distributors, bidders, associations, colleges, universities, testing laboratories and others with expertise and specialization in particular product area.

(3) Agency -- A state agency as the term is defined under the Texas Government Code,Title 10,§2151.002.

(4) Agent of record - An employee or official designated by a qualified cooperative entity as the individual responsible to represent the qualified entity in all matters relating to the program.

(5) Approved products list - The list is also referred to as the approved brands list or qualified products list. It is a specification developed by evaluation brands and models of various manufacturers and listing those determined to be acceptable to meet the minimum level of quality. Testing is completed in advance of procurement to determine which products comply with the specifications and standards requirements

(6) Award--The act of accepting a bid, thereby forming a contract between the state and a bidder.

(7) Bid--An offer to contract with the state, submitted in response to a bid invitation issued by the commission.

(8) Bid deposit - A deposit required of bidders to protect the state in the event a low bidder attempts to withdraw its bid or otherwise fails to enter into a contract with the state. Acceptable forms of bid deposits are limited to: cashier's check, certified check, or irrevocable letter of credit issued by a financial institution subject to the laws of Texas and entered on the United States Department of the Treasury's listing of approved sureties; a surety or blanket bond from a company chartered or authorized to do business in Texas.

(9) Bid sample--A sample required to be furnished as part of a bid, for evaluating the quality of the product offered.

(10) Bidder--An individual or entity that submits a bid. The term includes anyone acting on behalf of the individual or other entity that submits a bid, such as agents, employees, and representatives.

(11) Blanket bond--A surety bond which provides assurance of a bidder's performance on two or more contracts in lieu of separate bonds for each contract. The amount for a blanket bond shall be established by the commission based on the bidder's annual level of participation in the state purchasing program.

(12) Board - The governing body of a county or local school district.

(13) Brand name--A trade name or product name which identifies a product as having been made by a particular manufacturer.

(14) Centralized master bidders list (CMBL)--A list maintained by the commission containing the names and addresses of prospective bidders and qualified information systems vendors.

(15) Consumable procurement budget--That portion of an agency's budget as identified by the comptroller's expenditure codes attributable to consumable supplies, materials, and equipment.

(16) Cooperative purchasing program - A program to provide purchasing services to qualified cooperative entities, as defined herein.

(17) Debarment - An exclusion from contracting or subcontracting with state agencies on the basis of any cause set forth in§113.102 of this title (relating to Vendor Performance and Debarment), commensurate with the seriousness of the offense, performance failure, or inadequacy to perform.

(18) Director--The director of the commission's purchasing division.

(19) Distributor purchase - purchase of repair parts for a unit of major equipment that are needed immediately or as maintenance contracts for laboratory/medical equipment.

(20) Emergency purchase--A purchase of goods or services so badly needed that an agency will suffer financial or operational damage unless the items are secured immediately.

(21) Environmentally sensitive products--Products that protect or enhance the environment, or that damage the environment less than traditionally available products.

(22) Equivalent product--A product that is comparable in performance and quality to the specified product.

(23) Escalation clause--A clause in a bid providing for a price increase under certain specified circumstances.

(24) Formal bid--A written bid submitted in a sealed envelope in accordance with a prescribed format, or an electronic data interchange transmitted to the commission in accordance with procedures established by the commission.

(25) Group purchasing program--A purchasing program that offers discount prices to two or more state agencies or institutions of higher education, which is formed as a result of interagency or interlocal cooperation and follows all applicable statutory standards for purchases.

(26) Informal bid--An unsealed, competitive bid submitted by letter, telephone, telegram, or other means.

(27) Invitation for bids (or IFB)--A written request for submission of a bid; also referred to as a bid invitation.

(28) Late bid--A bid that is received at the place designated in the bid invitation after the time set for bid opening.

(29) Level of quality - The ranking of an item, article, or product in regard to its properties, performance, and purity.

(30) List of approved equipment--A list of items available under term contracts for purchase by school districts through the commission pursuant to the Texas Education Code,§ 21.901.

(31) Manufacturer's price list--A price list published in some form by the manufacturer and available to and recognized by the trade. The term does not include a price list prepared especially for a given bid.

(32) Multiple award contract procedure--A purchasing procedure by which the commission establishes one or more levels of quality and performance and makes more than one award at each level.

(33) Non-competitive purchase -- A purchase of goods or services (also referred to as "spot purchase") that does not exceed the amount stated in §113.11 (c)(1) of this title (relating to Delegated Purchases).

(34) Notice of award--A letter signed by the director or his designee which awards and creates a term contract.

(35) Open market purchase--A purchase of goods, usually of a specified quantity, made by buying from any available source in response to an open market requisition.

(36) Performance bond - A surety bond which provides assurance of a bidder's performance of a certain contract. The amount for the performance bond shall be based on the bidder's annual level of potential monetary volume in the state purchasing program. Acceptable forms of bonds are those described in the definition for "bid deposit".

(37) Perishable goods--Goods that are subject to spoilage within a relatively short time and that may be purchased by agencies under delegated authority.

(38) Post-consumer materials--Finished products, packages, or materials generated by a business entity or consumer that have served their intended end uses, and that have been recovered or otherwise diverted from the waste stream for the purpose of recycling.

(39) Pre-consumer materials--Materials or by-products that have not reached a business entity or consumer for an intended end use, including industrial scrap material, and overstock or obsolete inventories from distributors, wholesalers, and other companies. The term does not include materials and by-products generated from, and commonly reused within, an original manufacturing process or separate operation within the same or a parent company.

(40) Proprietary--Products or services manufactured or offered under exclusive rights of ownership, including rights under patent, copyright, or trade secret law. A product or service is proprietary if it has a distinctive feature or characteristic which is not shared or provided by competing or similar products or services.

(41) Public bid opening--The opening of bids at the time and place advertised in the bid invitation, in the presence of anyone who wishes to attend. On request of any person in attendance, bids will be read aloud.

(42) Purchase orders--

(A) Open market purchase order--A document issued by the commission to accept a bid, creating an open market purchase contract.

(B) Automated contract purchase order--A release order issued by the commission under an existing term contract, and pursuant to a requisition from a qualified ordering entity.

(C) Non-automated purchase order - A release order issued by an agency as a non-automated term contract, and pursuant to a requisition by the qualified ordering entity.

(43) Purchasing functions--The development of specifications, receipt and processing of requisitions, review of specifications, advertising for bids, bid evaluation, award of contracts, and inspection of merchandise received. The term does not include invoice, audit, or contract administration functions.

(44) Qualified information systems vendor catalogue proposal - A request for offers or quotations of prices from catalogue vendors (QISV).

(45) Qualified cooperative entity - An entity that qualifies for participation in the cooperative purchasing program:

(A) A county, municipality, school district, special district, junior college district, or other legally constituted political subdivision of the state that is a local government.

(B) Mental health and mental retardation community centers in Government Code,§2155.202, that receive grants-in-aid under the provisions of Subchapter B, Chapter 534, Health and Safety Code.

(C) An assistance organization as defined in Government Code,§2175.001, that receive any state funds.

(D) A political subdivision, under Chapter 791, Government Code.

(46) Qualified Ordering Entity - A state agency as the term is defined under the Texas Government Code, Title 10,§2151.002, or an entity that qualifies for participation in the cooperative purchasing program as defined in Local Government Code, Subchapter D,§271.081.

(47) Recycled material content--The portion of a product made with recycled materials consisting of pre-consumer materials (waste), post-consumer materials (waste), or both.

(48) Recycled materials--Materials, goods, or products that contain recyclable material, industrial waste, or hazardous waste that may be used in place of raw or virgin materials in manufacturing a new product.

(49) Recycled product--A product that meets the requirements for recycled material content as prescribed by the rules established by the Texas Natural Resource Conservation Commission in consultation with the General Services Commission.

(50) Remanufactured product--A product that has been repaired, rebuilt, or otherwise restored to meet or exceed the original equipment manufacturer's (OEM) performance specifications; provided, however, the warranty period for a remanufactured product may differ from the OEM warranty period.

(51) Request for proposal--A written request for offers concerning goods or services the state intends to acquire by means of the competitive sealed proposal procedure.

(52) Requisition--

(A) Open market purchase requisition--An initiating request from an agency describing needs and requesting the commission to purchase goods or services to satisfy those needs.

(B) Term contract purchase requisition--A request from a qualified ordering entity for delivery of goods under an existing term contract.

(53) Responsible vendor - A vendor who has the capability to perform all contract requirements in full compliance with applicable state law, ethical standards, and applicable commission rules.

(54) Resolution - Document of legal intent adopted by the governing body of a qualified cooperative entity that evidences the

qualified cooperative entity's participation in the cooperative purchasing program.

(55) Scheduled purchase--A purchase with a prescheduled bid opening date, allowing the commission to combine orders for goods.

(56) Sealed bid--A formal written bid.

(57) Solicitation--An invitation for bids or a request for proposals.

(58) Specification - A concise statement of a set of requirements to be satisfied by a product, material or service, indicating whenever appropriate the procedures to determine whether the requirements are satisfied.

(59) Standard specification-A description of what the purchaser requires and what a bidder or proposer must offer.

(60) Successor -in -interest - Any business entity that has ownership similar to a business entity. For purposes of §113.102 of this title (relating to Vendor Performance and Debarment), it shall be presumed that a business entity that employs, or is associated with, any partner, member, officer, director, responsible managing officer, or responsible managing employee, of a business entity that was previously debarred is a successor-in-interest.

(61) Tabulation of bids--The recording of bids and bidding data for purposes of bid evaluation and recordkeeping.

(62) Term contract purchase--A purchase by a qualified ordering entity under a term contract, which established a source of supply for particular goods at a given price for a specified period of time.

(63) Testing - an element of inspection involving the determination, by technical means, of the properties or elements of item (s) or component (s), including function operation.

(64) Texas uniform standards and specification - Standards and specifications prepared and published by the standards and specifications program of the commission.

(65) Total expenditures on products with recycled material content, remanufactured products, and environmentally sensitive products--The total direct acquisition costs (vendor selling price plus delivery costs) of all such products.

(66) Unit price--The price of a selected unit of a good or service, e.g., price per ton, per labor hour, or per foot.

(67) Using agency--An agency of government that requisitions goods or services through the commission.

(68) Vendor--A supplier of goods or services to the state.

§113.3. Requisitions and Specifications; Proprietary Purchases; Lease Purchases.

(a) Requisitions.

(1) A purchase is initiated by an agency's submission of a requisition containing desired specifications and conditions of the purchase either electronically or on a form provided or approved by the commission. The requisition must also include the agency's certification that funds are available for the purchase.

(2) Requisitions shall be submitted to the commission far enough in advance to allow sufficient time for preparing and advertising bid invitations, receiving and evaluating bids, awarding contracts, and permitting a normal delivery schedule.

(3) The agency is responsible for determining its need for a purchase, and the commission will not question the agency's determination of need. However, the commission may require clarification of the specifications to foster open competition. If the agency's specifications unreasonably limit competition, the commission may require an additional written explanation.

(b) Specifications.

(1) The commission develops standard specifications for a number of commodities purchased by the state and provides agencies with a list of the commodities covered by the standard specifications. If an agency submits a requisition with non-standard specifications when an applicable standard specification exists, it must include an explanation as to why the standard specification is not being used.

(2) If an agency submits a requisition for the purchase of a product on the open market when an equivalent product is available for purchase under a term contract, it must include an acceptable explanation as to why the contract product is not satisfactory.

(3) The commission will review the specifications and conditions of purchase submitted by an agency. The commission will not significantly change specifications or conditions of purchase without written approval from the agency, but it may correct typographical errors if doing so will not significantly change the specifications. Incorrect, inadequate, or incomplete requisitions may be returned to the agency, with a written explanation for the return and the requirements for acceptable re-submission.

(4) The commission will normally specify delivery times that are standard in the industry. If an agency requires shorter than standard delivery times, it must state the requirement in its requisition. If the delivery requirement can only be met by one vendor, written justification will be required. If an agency does not require early delivery but wishes to take advantage of it if available, the commission will state in the bid invitation that the ability to make early delivery may be a factor in making the award. In such cases, when it is to the state's advantage, the commission may accept a bid other than the lowest after consulting with the agency. If the bid invitation contains no statement regarding early delivery, the commission may not consider early delivery in making an award.

(c) Proprietary purchases.

(1) When the commission finds that an agency has submitted specifications or conditions of purchase which are proprietary to one vendor and do not permit an equivalent product to be supplied, it shall require written justification before processing the requisition. Within 10 days after the commission received the requisition, it will notify the agency of the need for a written justification. An agency may submit a written justification along with its requisition if it chooses to do so.

(2) A written justification for the use of proprietary specifications or conditions must:

(A) contain an explanation of the need for the specifications or conditions;

(B) state the reasons why any competing or equivalent products identified by the commission are not satisfactory, addressing each such product individually;

(C) contain any other information requested by the commission; and

(D) be signed by the agency head, the chairman of its governing body, or a person to whom such signature authority has been properly delegated, or in the case of an institution of higher education,

by a person properly designated as a purchasing officer for the institution.

(3) When an agency submits a written justification meeting the above requirements, the commission shall make the requested purchase.

(4) When the commission reviews specifications or conditions and finds that they limit competition but are not proprietary to one vendor, it shall not return the requisition to the agency for that reason alone. However, a commission purchaser shall discuss with the agency purchaser the limiting effect, and the possible economic effect, of the specification or condition.

(d) Lease-purchase contracts.

(1) An agency may acquire capital equipment by lease-purchase if it is cost effective.

(2) If a proposed lease purchase is for information technologies resources, as defined in the Texas Government Code, Title 10, Subchapter A, Chapter 2054, the requisition must include written evidence that the Department of Information Resources has approved the agency's biennial operating plan. For other items, the commission will determine the cost effectiveness of a lease purchase. To establish cost effectiveness, the requisitioning agency should submit the following information:

(A) anticipated interest charges over the life of the contract;

(B) anticipated cost savings which would result from outright purchase;

(C) an affirmative statement that the agency reasonably expects to be able to make payments beyond the current biennium without requiring an increase in appropriations;

(D) any information requested by the commission; and

(E) any other information the agency considers relevant.

§113.4. Centralized Master Bidders List.

(a) The commission maintains the Centralized Master Bidders List (CMBL) of the names and addresses of vendors which have applied and been accepted for inclusion on the CMBL. The CMBL is maintained for the state's use in obtaining competitive bids for purchases and for registering vendors who wish to be designated as qualified information systems vendors. No vendor will be placed on the CMBL to receive bid invitations for information purposes only. Bid invitations and requests for proposals are transmitted to vendors on the CMBL for the solicited commodity and/or service for open market, term contracts, competitive sealed proposal acquisitions and delegated purchases in excess of the non-competitive bid limit.

(b) To be considered for inclusion on the CMBL, a vendor must:

(1) complete the application form provided by the commission which includes certification that the vendor has access to the class and item codes and is aware of the requirements and procedures regarding the provision of goods, services and other transactions with the state and its qualified ordering entities;

(2) remit a check or money order in the amount of $100, which is the biennial maintenance fee assessed to cover the commission's costs for maintaining the bidders list and transmission of bids or proposals. This fee, less a reasonable handling fee approved by the director, will be refunded if the applicant is not accepted for inclusion on the CMBL.

(c) The commission will review and evaluate the CMBL application, and may reject an application that is not satisfactorily completed.

(d) A vendor may be administratively removed from the CMBL for one or more of the following reasons:

(1) failing to pay or unnecessarily delaying payment of damages assessed by the commission;

(2) failing to submit bids in response to bid invitations on either:

(A) four consecutive open market invitations concerning the affected class or item; or

(B) one or more contract or schedule invitations concerning the affected class;

(3) failing to remit the biennial CMBL maintenance fee; or

(4) any factor set forth in Government Code, Chapter 2155, §§2155.070 and 2155.077.

(e) A vendor which has been removed from the CMBL shall not be reinstated until expiration of the period for which the vendor was removed and approval is granted by the director.

(f) An error in addressing a bid invitation or request for proposal or a failure of the post office to deliver the solicitation will not be sufficient reason to require the commission to reject all other bids or proposals.

(g) State agencies shall use the CMBL to select bidders for competitive bids or proposals and to the fullest extent possible for purchases exempt from the commission's purchasing authority. This requirement does not apply to the Texas Department of Transportation or to an institution of higher education as defined by§61.003, Education Code, but an institution of higher education should use the CMBL when possible.

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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Ann Dillon
General Counsel
General Services Commission
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For further information, please call: (512) 463-3960

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SUBCHAPTER C. SPECIFICATION

1 TAC §113.33, §113.34

The amendments are adopted under the authority of the Texas Government Code, Title 10, Subtitle D, §§2152.003, 2155.068. 2155.077, 2155.079, 2155.080, 2155.081, 2155.132, 2155.134, 2155.267, 2155.323, 2156.126 and 2251.003; Texas Government Code, Chapter 2158; and Education Code, §34.001 which provides the General Services Commission with the authority to promulgate rules necessary to implement the sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. INSPECTION

1 TAC §§113.51, 113.52, 113.56

The amendments are adopted under the authority of the Texas Government Code, Title 10, Subtitle D,§§2152.003, 2155.068. 2155.077, 2155.079, 2155.080, 2155.081, 2155.132, 2155.134, 2155.267, 2155.323, 2156.126 and 2251.003; Texas Government Code, Chapter 2158; and Education Code,§34.001 which provides the General Services Commission with the authority to promulgate rules necessary to implement the sections.

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SUBCHAPTER E. COOPERATIVE PURCHASING PROGRAM

1 TAC §113.85, §113.87

The amendments are adopted under the authority of the Texas Government Code, Title 10, Subtitle D,§§2152.003, 2155.068. 2155.077, 2155.079, 2155.080, 2155.081, 2155.132, 2155.134, 2155.267, 2155.323, 2156.126 and 2251.003; Texas Government Code, Chapter 2158; and Education Code,§34.001 which provides the General Services Commission with the authority to promulgate rules necessary to implement the sections.

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SUBCHAPTER G. BUYING UNDER CONTRACT ESTABLISHED BY AN AGENCY OTHER THAN THE GENERAL SERVICES COMMISSION

1 TAC §113.125

The amendments are adopted under the authority of the Texas Government Code, Title 10, Subtitle D,§§2152.003, 2155.068. 2155.077, 2155.079, 2155.080, 2155.081, 2155.132, 2155.134, 2155.267, 2155.323, 2156.126 and 2251.003; Texas Government Code, Chapter 2158; and Education Code,§34.001 which provides the General Services Commission with the authority to promulgate rules necessary to implement the sections.

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CHAPTER 113. CENTRAL PURCHASING DIVISION

The General Services Commission adopts the repeal of Title 1, T.A.C., Chapter 113, Subchapter A - Purchasing, §113.17; Subchapter B - Purchase of Alternative Fuel Vehicles, §113.21; Subchapter C - Specification, §§113.31 and 113.32; Subchapter D - Inspection, §113.53; Subchapter E - Cooperative Purchasing Program, §113.83 and 113.88; and Subchapter F - Vendor Performance and Debarment Program, §113.100 without changes to the proposed repeal as published in the June 9, 2000, issue of the *Texas Register* (25 TexReg 5531). The text to the rules will not be republished.

The repeal of Title 1, T.A.C., Chapter 113, Subchapter A - Purchasing, §113.17; Subchapter B - Purchase of Alternative Fuel Vehicles, §113.21; Subchapter C - Specification, §§113.31 and 113.32; Subchapter D - Inspection, §113.53; Subchapter E - Cooperative Purchasing Program, §113.83 and 113.88; and Subchapter F - Vendor Performance and Debarment Program, §113.100 is adopted in order to delete obsolete language and improve the readability of Chapter 113.

Repeal of Title 1, T.A.C., Chapter 113, Subchapter A - Purchasing, §113.17; Subchapter B - Purchase of Alternative Fuel Vehicles, §113.21; Subchapter C - Specification, §§113.31 and 113.32; Subchapter D - Inspection, §113.53; Subchapter E - Cooperative Purchasing Program, §113.83 and 113.88; and Subchapter F - Vendor Performance and Debarment Program, §113.100 will streamline the language in the rules by deleting cumbersome and outdated language.

No comments were received regarding the repeal of Title 1, T.A.C., Chapter 113, Subchapter A - Purchasing, §113.17; Subchapter B - Purchase of Alternative Fuel Vehicles, §113.21;

Subchapter C - Specification, §§113.31 and 113.32; Subchapter D - Inspection, §113.53; Subchapter E - Cooperative Purchasing Program, §113.83 and 113.88; and Subchapter F - Vendor Performance and Debarment Program, §113.100.

SUBCHAPTER A. PURCHASING

1 TAC §113.17

The repeal of the rules is adopted under the authority of the Texas Government Code, Title 10, Subtitle D, §§2152.002, 2155.068, 2155.069, 2155.077, 2155.134, 2177.001, and the Texas Education Code, §34.001 which provides the General Services Commission with the authority to promulgate rules necessary to implement these sections.

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 August 22, 2000.

TRD-200005909
Ann Dillon
General Counsel
General Services Commission
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For further information, please call: (512) 463-3960

SUBCHAPTER B. PURCHASE OF ALTERNATIVE FUEL VEHICLES

1 TAC §113.21

The repeal of the rules is adopted under the authority of the Texas Government Code, Title 10, Subtitle D, §§2152.002, 2155.068, 2155.069, 2155.077, 2155.134, 2177.001, and the Texas Education Code, §34.001 which provides the General Services Commission with the authority to promulgate rules necessary to implement these sections.

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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Ann Dillon
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SUBCHAPTER C. SPECIFICATION

1 TAC §113.31, §113.32

The repeal of the rules is adopted under the authority of the Texas Government Code, Title 10, Subtitle D, §§2152.002, 2155.068, 2155.069, 2155.077, 2155.134, 2177.001, and the Texas Education Code, §34.001 which provides the General Services Commission with the authority to promulgate rules necessary to implement these sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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General Services Commission
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SUBCHAPTER D. INSPECTION

1 TAC §113.53

The repeal of the rules is adopted under the authority of the Texas Government Code, Title 10, Subtitle D, §§2152.002, 2155.068, 2155.069, 2155.077, 2155.134, 2177.001, and the Texas Education Code, §34.001 which provides the General Services Commission with the authority to promulgate rules necessary to implement these sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. COOPERATIVE PURCHASING PROGRAM

1 TAC §113.83, §113.88

The repeal of the rules is adopted under the authority of the Texas Government Code, Title 10, Subtitle D, §§2152.002, 2155.068, 2155.069, 2155.077, 2155.134, 2177.001, and the Texas Education Code, §34.001 which provides the General Services Commission with the authority to promulgate rules necessary to implement these sections.

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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Ann Dillon
General Counsel
General Services Commission
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For further information, please call: (512) 463-3960

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SUBCHAPTER F. VENDOR PERFORMANCE AND DEBARMENT PROGRAM

1 TAC §113.100

The repeal of the rules is adopted under the authority of the Texas Government Code, Title 10, Subtitle D, §§2152.002, 2155.068, 2155.069, 2155.077, 2155.134, 2177.001, and the Texas Education Code, §34.001 which provides the General Services Commission with the authority to promulgate rules necessary to implement these sections.

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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Ann Dillon
General Counsel
General Services Commission
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PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 201. PLANNING AND MANAGEMENT OF INFORMATION RESOURCES TECHNOLOGIES

1 TAC §201.14

The Department of Information Resources adopts amended §201.14, relating to digital signatures. The amended rule is adopted without changes to the proposed text as published in the July 7, 2000, *Texas Register* (25 TexReg 6449).

No comments were received in response to the proposed amendment to §201.14.

The amendment, which corrects a minor clerical error in the rule's definition of "key pair," is adopted in accordance with Texas Government Code §2054.052(a), which provides the department may adopt rules as necessary to implement its responsibilities, and Texas Government Code §2054.060(a), which permits the department to adopt rules pertaining to digital signatures.

The amended rule affects Texas Government Code §2054.060.

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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TRD-200006026
Renee Mauzy
General Counsel
Department of Information Resources
Effective date: September 17, 2000
Proposal publication date: July 7, 2000
For further information, please call: (512) 475-2153

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

CHAPTER 37. FINANCIAL ASSURANCE

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §37.9001, Applicability; §37.9005, Definitions; §37.9030, Applicability; §37.9035, Definitions; §37.9045, Financial Assurance Requirements for Closure and Post Closure; and §37.9055, Institutional Control Requirements. Sections 37.9030 and 37.9035 are adopted *with changes* to the proposed text as published in the June 16, 2000, issue of the *Texas Register* (25 TexReg 5798). Sections 37.9001, 37.9005, 37.9045, and 37.9055 are adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The changes adopted in this chapter are part of a larger rulemaking to revise the agency's radiation control rules. This rule package has three major goals: (1) implement House Bill (HB) 1172, 76th Legislature, 1999, and its amendments to the Texas Health and Safety Code (THSC); (2) implement the recommendations of the TNRCC's Business Process Review Permit Implementation Team (BPR-PIT) to provide for consistency between the administrative procedures of the radiation control program and the other permitting programs of the agency; and (3) improve readability and understanding by reorganizing 30 TAC Chapter 336 (relating to Radioactive Substance Rules), putting its requirements into plain English and eliminating its redundancies and conflicts.

Changes to implement HB 1172 are: (1) amending the definition of low-level radioactive waste to be compatible with the United States Nuclear Regulatory Commission's (NRC's) definition; (2) incorporating the TNRCC's new authority to exempt from application of a rule; (3) adding an exemption to continue or expand on-site low-level radioactive waste disposal licensed before September 9, 1989; and (4) adding exemptions from radioactive material licensing requirements for facilities participating in the Voluntary Cleanup Program or Superfund cleanups.

The changes to Chapter 37 implement HB 1172 by incorporating the newly defined term "low- level radioactive waste" and to reflect changes to references due to the reorganization of Chapter 336.

SECTION BY SECTION DISCUSSION

Subchapter S - Financial Assurance for Alternative Methods of Disposal of Radioactive Materials

The title of the subchapter was amended by deleting "Alternative Methods of Disposal of" to agree with the deletion of the reference to Subchapter F in §37.9001.

To be consistent with organizational changes proposed in Chapter 336, §37.9001 was amended to add "of this title (relating to Radioactive Substance Rules), except owners or operators of a facility licensed under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste)" to indicate that this subchapter does not apply to facilities licensed under Subchapter H; and to delete, "Subchapter F of this title (relating to Licensing of Alternative Methods of Disposal of Radioactive Material)."

Section 37.9005 was amended to correct the cross-reference in the first sentence to "§336.602."

Subchapter T - Financial Assurance for Near-Surface Land Disposal Radioactive Waste

The title was amended to add "Low-Level" to conform with HB 1172.

Section 37.9030 was amended to add "Low-Level" to conform with HB 1172 and to add "and Chapter 336, Subchapter G of this title (relating to Decommissioning Standards)" to clarify that this subchapter is applicable to the ancillary surface facilities associated with a Subchapter H low-level radioactive waste facility per Title 10 Code of Federal Regulations Part 20. The proposed amendment to add a reference to Chapter 336, Subchapter G is withdrawn. This proposed amendment would have caused confusion because Chapter 37, Subchapter S (and not Subchapter T) applies to financial assurance for facilities licensed under Chapter 336, Subchapter G. Chapter 37, Subchapter T applies to financial assurance for facilities licensed under Chapter 336, Subchapter H. Chapter 336, Subchapter G only applies to decommissioning and radiological criteria for license termination of ancillary surface facilities at Chapter 336, Subchapter H licensed facilities. This is explained in Chapter 336, Subchapter G, §336.601(a) and 10 CFR §20.1401(a). Therefore, the proposal to add a reference to Chapter 336, Subchapter G in Chapter 37, Subchapter T on financial assurance for Chapter 336, Subchapter H facilities is withdrawn; and instead a concurrent change is made to Chapter 336, Subchapter H, §336.701 to clarify that Chapter 336, Subchapter G only applies to the ancillary surface facilities at Subchapter H licensed facilities.

Section 37.9035 was amended to add a reference to §336.602, which applies to ancillary facilities at near-surface land disposal low-level radioactive waste facilities. The proposed amendment to add a reference to Chapter 336, Subchapter G §336.602 is withdrawn for the same reasons given in the §37.9030 discussion. Also, from proposal to adoption, in the first line, the words "are defined" are corrected to "may be found" to be consistent with the wording in §37.9005.

Section 37.9045(a)(4) was amended to add "Low-Level" to conform with HB 1172.

Section 37.9055 was amended to add "Low-Level" to conform with HB 1172.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has 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 adopted rules are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because there are no new requirements added. In addition, the adopted rules do not meet the applicability requirements of a "major environmental rule." The adopted rules do not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement. The adoption is not promulgated solely under general authorities but rather under THSC, §401.412(d) and (f).

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to implement HB 1172 by incorporating the newly defined term "low-level radioactive waste" and to reflect changes to references due to the reorganization of Chapter 336. The rules will substantially advance these specific purposes by appropriately amending §§37.9001, 37.9005, 37.9030, 37.9035, 37.9045, and 37.9055. Promulgation and enforcement of these rules will not burden private real property because there are no new requirements imposed on private real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the adopted rulemaking and found that the rule is 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 it affect any action/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 on the proposed amendments was held on July 6, 2000; however, no one appeared at the hearing to testify. No written comments were received concerning this chapter during the public comment period which closed on July 17, 2000.

SUBCHAPTER S. FINANCIAL ASSURANCE FOR RADIOACTIVE MATERIAL

30 TAC §37.9001, §37.9005

STATUTORY AUTHORITY

The amendments are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

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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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-0348

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SUBCHAPTER T. FINANCIAL ASSURANCE FOR NEAR-SURFACE LAND DISPOSAL OF LOW-LEVEL RADIOACTIVE WASTE

30 TAC §§37.9030, 37.9035, 37.9045, 37.9055

STATUTORY AUTHORITY

The amendments are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

§37.9030. Applicability.

This subchapter applies to owners or operators required to provide financial assurance under Chapter 336, Subchapter H of this title (relating to Licensing Requirements For Near-Surface Land Disposal of Low-Level Radioactive Waste). This subchapter establishes requirements and mechanisms for demonstrating financial assurance for closure and post closure.

§37.9035. Definitions.

Definitions for terms that appear throughout this subchapter may be found in Subchapter A of this chapter (relating to General Financial Assurance Requirements), §336.2 of this title (relating to Definitions), and §336.702 of this title (relating to Definitions), except the following definitions shall apply for this subchapter.

(1) Annual review - Conducted on the anniversary date of the establishment of the financial assurance mechanism.

(2) Closure - Any one or combination of the following: closure, dismantlement, decontamination, decommissioning, reclamation, disposal, groundwater restoration, stabilization, monitoring, or post closure observation and maintenance.

(3) Facility - All contiguous land, water, buildings, structures, and equipment which are or were used for the disposal of radioactive waste, including the radioactive waste, and soils and groundwater contaminated by radioactive material.

(4) Institutional control - Shall be referenced as post closure.

(5) Post closure - The same as institutional control as specified in §336.734 of this title (relating to Institutional Requirements).

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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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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CHAPTER 39. PUBLIC NOTICE

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §39.1, Applicability; §39.5, General Provisions; §39.11, Text of Public Notice; §39.13, Mailed Notice; §39.17, Notice of Minor Amendment; §39.701, Applicability; §39.703, Notice of Completion of Technical Review; §39.707, Published Notice; and §39.709, Notice of Contested Case Hearing on Application. The TNRCC also adopts the repeal of existing Subchapter F, §39.301, Notice of Declaration of Administrative Completeness; §39.302, Applicability; §39.303, Notice of License Applications Upon Completion of Technical Review; §39.305, Mailed Notice for Radioactive Material Licenses; §39.307, Published Notice; §39.309, Notice of Contested Case Hearing on Application; §39.311, Proof and Certification of Notice; and §39.313, Public Notification and Public Participation. Sections 39.703, 39.707, and 39.709 are adopted *with changes* to the proposed text as published in the June 16, 2000, issue of the *Texas Register* (25 TexReg 5800). Amended §§39.1, 39.5, 39.11, 39.13, 39.17, and 39.701 and the repeals, §§39.301 - 39.303, 39.305, 39.307, 39.309, 39.311, and 39.313 are adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The changes adopted in this chapter are part of a larger rulemaking to revise the agency's radiation control rules. This rule package has three major goals: (1) implement House Bill (HB) 1172, 76th Legislature, 1999, and its amendments to the Texas Health and Safety Code (THSC); (2) implement the recommendations of the TNRCC's Business Process Review Permit Implementation Team (BPR-PIT) to provide for consistency between the administrative procedures of the radiation control program and the other permitting programs of the agency; and (3) improve readability and understanding by reorganizing 30 TAC Chapter 336 (relating to Radioactive Substance Rules), putting its requirements into plain English and eliminating its redundancies and conflicts.

Changes to implement HB 1172 are: (1) amending the definition of low-level radioactive waste to be compatible with the United States Nuclear Regulatory Commission's (NRC's) definition; (2) incorporating the TNRCC's new authority to exempt from application of a rule; (3) adding an exemption to continue or expand on-site low-level radioactive waste disposal licensed before September 9, 1989; and (4) adding exemptions from radioactive material licensing requirements for facilities participating in the Voluntary Cleanup Program or Superfund cleanups.

The BPR-PIT changes are part of an agency-wide effort to make programs consistent where feasible. The agency's management has mandated the consistency effort to make agency processes more efficient and "user friendly." Most of the license application process requirements in Chapter 336 can be modified to be more consistent with the requirements of the other permitting programs within the agency. The TNRCC expects a consistent application process to be especially helpful for persons who

have multiple permits/licenses from the TNRCC or to staff during the review of consolidated permit applications. Major adopted changes are as follows: (1) that the radiation control program begins using the agency's definitions for major and minor amendments; and (2) the radiation control program license application process will be moved for the most part from Chapter 336 to Chapter 281 (relating to Applications Processing) and Chapter 305 (relating to Consolidated Permits) and amended to be consistent with agency administrative procedures.

The amendments and repeals in Chapter 39 are to incorporate the HB 1172 newly defined term "low-level radioactive waste" and to make only Subchapters H and M of this chapter applicable to radioactive material licenses in the future because Subchapter F is obsolete.

SECTION BY SECTION DISCUSSION

Subchapter A - Applicability and General Provisions

Section 39.1 was amended by replacing reference to Subchapters "B - F" with "B - E," by adding the word "and." Section 39.1 was also amended by deleting "and Public Notice for Radioactive Material Licenses" because there were no radioactive material licenses pending on September 1, 1999, (the first part of the sentence states it applies to radioactive material applications that were declared administratively complete before September 1, 1999) and former Subchapter F was repealed; and by deleting former paragraph (7) because the whole chapter is no longer to apply to radioactive material licenses; and by renumbering the last paragraph to account for the deletion of former paragraph (7).

Section 39.5(c) was amended by deleting the last sentence that stated, "This subsection does not apply to applications for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules)." Section 39.5(f), (g), and (h) was amended by deleting the last sentence that stated, "This subsection does not apply to applications for radioactive material licenses under Chapter 336 of this title." These amendments were made because the adopted rule has been changed so that Subchapter A no longer applies and only Subchapters H and M apply to radioactive material licenses.

Former §39.11(13) was deleted because the adopted rule has been changed so that only Subchapters H and M will apply to radioactive material licenses, and associated formatting changes were made to §39.11(11) and (12).

Former §39.13(b) was deleted because the adopted rule had been changed so that only Subchapters H and M will apply to radioactive material licenses.

Former §39.17(b)(2) was deleted because the adopted rule had been changed so that only Subchapters H and M will apply to radioactive material licenses. Conforming grammatical changes were also made to §39.17(b)(1).

Subchapter F - Public Notice of Radioactive Material License Applications

Former Subchapter F was repealed because there were no radioactive material license applications pending on September 1, 1999, and Subchapter F applied to such applications declared administratively complete before September 1, 1999.

Subchapter M - Public Notice for Radioactive Material Licenses

Section 39.701 was amended to delete "that is declared administratively complete on or after September 1, 1999," because this date was past, and there were no applications still pending on September 1, 1999. Minor grammatical changes were also made to §39.701.

The title in §39.703 was changed to "Notice of Completion of Technical Review" to simplify it. Section 39.703(a) was amended by adding "Low-Level" to conform with this newly defined term in HB 1172. A minor correction was made after proposal because requirements to license a previously unlicensed site with buried radioactive material for decommissioning were moved from Chapter 336, Subchapter F to Chapter 336, Subchapter G in a concurrent rulemaking; therefore, any notice requirement applicable to Subchapter F should also reference Subchapter G. A reference to Subchapter G has been added accordingly after the reference to Subchapter F in §39.703(b).

A minor correction to §39.707(a) was made after proposal. Requirements to license a previously unlicensed site with buried radioactive material for decommissioning were moved from Chapter 336, Subchapter F to Chapter 336, Subchapter G in a concurrent rulemaking; therefore, any notice requirement applicable to Subchapter F should also reference Subchapter G. A reference to Subchapter G has been added accordingly after the reference to Subchapter F. Section 39.707(b) was amended by adding "Low-Level" to conform with this newly defined term in HB 1172.

Section 39.709(b) was amended adding "Low-Level" to conform with this newly defined term in HB 1172. A minor correction was also made after proposal because requirements to license a previously unlicensed site with buried radioactive material for decommissioning were moved from Chapter 336, Subchapter F to Chapter 336, Subchapter G in a concurrent rulemaking; therefore, any notice requirement applicable to Subchapter F should also reference Subchapter G. A reference to Subchapter G has been added accordingly after the reference to Subchapter F.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has 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 adopted amendments and repeals in Chapter 39 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because there are no new requirements added that are not already required by current state law.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these adopted rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to incorporate the HB 1172 defined term "low-level radioactive waste" in lieu of "radioactive waste" and to make only Subchapters H and M of this chapter applicable to radioactive material licenses in the future because obsolete Subchapter F is concurrently repealed. Promulgation and enforcement of these rules will not burden private real

property which is the subject of the rules because there are no new notice requirements added that are not also currently required by state law.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the adopted rulemaking and found that the rule is 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 it affect any action/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 on the proposed amendments and repeals was held on July 6, 2000; however, no one appeared at the hearing to testify. No written comments were received concerning this chapter during the public comment period which closed on July 17, 2000.

SUBCHAPTER A. APPLICABILITY AND GENERAL PROVISIONS

30 TAC §§39.1, 39.5, 39.11, 39.13, 39.17

STATUTORY AUTHORITY

The amendments are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

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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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-0348

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SUBCHAPTER F. PUBLIC NOTICE OF RADIOACTIVE MATERIAL LICENSE APPLICATIONS

30 TAC §§39.301 - 39.303, 39.305, 39.307, 39.309, 39.311, 39.313

STATUTORY AUTHORITY

The repeals are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

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SUBCHAPTER M. PUBLIC NOTICE FOR RADIOACTIVE MATERIAL LICENSES

30 TAC §§39.701, 39.703, 39.707, 39.709

STATUTORY AUTHORITY

The amendments are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

§39.703. Notice of Completion of Technical Review.

(a) When the executive director has completed the technical review of an application for a license, major amendment, or renewal of a license issued under Chapter 336 of this title (relating to Radioactive Substance Rules) or for a minor amendment issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), notice shall be mailed and published under this subchapter. The deadline to file public comment, protests, or hearing requests is 30 days after publication.

(b) For any other application for a minor amendment to a license issued under Chapter 336, Subchapter F of this title (relating to Alternative Methods of Disposal of Radioactive Material) or Subchapter G of this title (relating to Decommissioning Standards), notice shall be mailed under this subchapter. The deadline to file public comment, protests, or hearing requests is ten days after mailing.

§39.707. Published Notice.

(a) For applications under Chapter 336, Subchapter F of this title (relating to Alternative Methods of Disposal of Radioactive Material) or Subchapter G of this title (relating to Decommissioning Standards), when notice is required to be published under this subchapter, the applicant shall publish notice at least once in a newspaper of largest general circulation in the county in which the facility is located.

(b) For applications for a new license, renewal license, or major amendment to a license issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), when notice is required to be published under this subchapter, the applicant shall publish notice in a newspaper published in the county or counties in which the facility is or will be located. If no newspaper is published in the county or counties in which the facility is or will be located, a written copy of the notice shall be posted at the courthouse door and five other public places in the immediate locality to be affected. The notice shall be posted for at least 31 days.

(c) In addition to published notice requirements in subsection (b) of this section, for an amendment of a license under Chapter 336, Subchapter H of this title, the chief clerk shall publish notice once in the *Texas Register*.

§39.709. Notice of Contested Case Hearing on Application.

(a) The requirements of this section apply when an application is referred to SOAH for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(b) For applications under Chapter 336, Subchapter F of this title (relating to Alternative Methods of Disposal of Radioactive Material) or Subchapter G of this title (relating to Decommissioning Standards), notice shall be mailed no later than 30 days before the hearing. For applications under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), notice shall be mailed no later than 31 days before the hearing.

(c) When notice is required under this section, the text of the notice must include the applicable information specified in §39.411(b)(13) and (d) of this title (relating to Text of Public Notice).

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 August 25, 2000.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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Proposal publication date: June 16, 2000
For further information, please call: (512) 239-0348

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CHAPTER 50. ACTION ON APPLICATIONS AND OTHER AUTHORIZATIONS
SUBCHAPTER C. ACTION BY THE EXECUTIVE DIRECTOR

30 TAC §50.31

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §50.31, Purpose and Applicability. Section §50.31 is adopted *with a change* to the proposed text as published in the June 16, 2000 issue of the *Texas Register* (25 TexReg 5804).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

This rulemaking applies to both the radiation control and water programs.

The radiation control amendment is a part of a larger radiation control rule adoption package that has three major goals: (1) implement House Bill (HB) 1172, 76th Legislature, 1999, and its amendments to the Texas Health and Safety Code (THSC); (2) implement the recommendations of the TNRCC's Business Process Review Permit Implementation Team to provide for consistency between the administrative procedures of the radiation control program and the other permitting programs of the agency; and (3) improve readability and understanding by reorganizing 30 TAC Chapter 336 (relating to Radioactive Substance Rules), putting its requirements into plain English and eliminating its redundancies and conflicts.

Changes to implement HB 1172 are: (1) amending the definition of low-level radioactive waste to be compatible with the United States Nuclear Regulatory Commission's (NRC's) definition; (2) incorporating the TNRCC's new authority to exempt from application of a rule; (3) adding an exemption to continue or expand on-site low-level radioactive waste disposal licensed before September 9, 1989; and (4) adding exemptions from radioactive material licensing requirements for facilities participating in the Voluntary Cleanup Program or Superfund cleanups.

Texas Water Code (TWC), §5.122, provides authority for the commission to delegate to the executive director, by rule or order, its authority to act on certain uncontested matters. The commission has therefore delegated authority to the executive director to act on various matters in §50.31Senate Bill (SB) 1421 amended TWC, §17.927, Application for Financial Assistance, to require an applicant for financial assistance to include, at the request of the Texas Water Development Board, a written determination by the commission on the financial, managerial, and technical capacity of the applicant to operate the system for which assistance is being requested. Senate Bill 1421 also amended Texas Civil Statutes, Article 6243-101, the Texas Plumbing Licensing Law, to require the commission to certify organizations that provide "self-help" project assistance, without a plumbing license, in a county any part of which is within 50 miles of an international border.

SECTION BY SECTION DISCUSSION

Section 50.31(b) was amended by capitalizing the word "subchapter." Section 50.31(b)(11) was amended to delete "radioactive waste or" because the term "radioactive material" in the same paragraph includes "low-level radioactive waste" by definition. New §50.31(b)(21) delegates to the executive director the determination of the financial, managerial, and technical capacity of applicants for loans from the Texas Water Development Board, if requested by that agency. However, a minor change has been made from proposal to adoption. In new §50.31(b)(21), the word "qualifications" has been changed to "capacity" to more closely match the new TWC §17.927(b)(15) language that states ". . .include, on request of the board, a written determination by the commission on the managerial, financial, and technical capacity of the applicant to operate the system for which assistance is being requested." New §50.31(b)(22) delegates to the executive director the certification of an organization that is installing plumbing in a "self-help" project in a county within 50 miles of an international border.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has 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 adopted rule is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The

adopted rule does not place any requirements on the regulated community not already required by law. In addition, the adopted rule is not a "major environmental rule" because it does not meet the applicability requirements of a "major environmental rule." The adopted rule does not exceed a standard set by federal law, does not exceed an express requirement of state law, nor does it exceed a requirement of a delegation agreement, and is not promulgated solely under the general authority of the agency. This rulemaking specifically implements provisions of SB 1421 and HB 1172. The rulemaking simply deletes a redundant reference to radioactive waste; requires the TNRCC to provide a written determination on the managerial, financial, and technical capacity of a political subdivision to operate a system for which financial assistance is being requested upon a request from the Texas Water Development Board and delegates to the executive director the certification of an organization that is installing plumbing in a "self-help" project in a county within 50 miles of an international border.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for the adopted rule amendment under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule amendment is to improve the language of the radiation control program requirement and to implement two of the provisions in SB 1421. The adopted rule amendment substantially advance the specific purpose by amending §50.31 to improve the language of the radiation control program requirement and to incorporate two of the new provisions in SB 1421. Promulgation and enforcement of the amendment will not burden private real property because the actions that are required by the rule amendment relate to internal actions of the commission and not to private real property owners. Therefore, this adoption will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the adopted rulemaking and found that the rule is 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 it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11Therefore, the adoption is not subject to the CMP.

HEARING AND COMMENTERS

A public hearing on the proposed amendment was held on July 6, 2000; however, no one appeared at the hearing to testify. No written comments were received concerning this chapter during the public comment period which closed on July 17, 2000.

STATUTORY AUTHORITY

The amendment is adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103. The amendment is also adopted under TWC, §5.122, which provides authority for the commission to delegate to the executive director, by rule or order, its authority to act on certain uncontested matters; and §17.927, which authorizes the commission to make determinations of financial, managerial, and technical capacity of applicants for financial assistance for operation of a water system; and Texas Civil Statutes, Article 6243-101, §3, which authorizes the commission to certify an organization, that does not have a plumbing license, to provide assistance on "self-help" water and sewer projects in certain counties.

§50.31. Purpose and Applicability.

(a) The purpose of this subchapter is to delegate authority to the executive director and to specify applications on which the executive director may take action on behalf of the commission.

(b) This subchapter applies to any application that is declared administratively complete before September 1, 1999. Any application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter G of this chapter (relating to Action by the Executive Director). Except as provided by subsection (c) of this section, this subchapter applies to:

(1) air quality permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(2) appointments to the board of directors of districts created by special law;

(3) certificates of adjudication;

(4) certificates of convenience and necessity;

(5) district matters under Chapters 49 - 66 of the Texas Water Code;

(6) districts' proposed impact fees, charges, assessments, or contributions approvable under Local Government Code, Chapter 395;

(7) extensions of time to commence or complete construction;

(8) industrial and hazardous waste permits;

(9) municipal solid waste permits;

(10) on-site waste water disposal system permits;

(11) radioactive material permits or licenses;

(12) rate matters for water and wastewater utilities under Texas Water Code, Chapters 11, 12, or 13;

(13) underground injection control permits;

(14) water rights permits;

(15) wastewater permits;

(16) weather modification measures permits;

(17) driller licenses under Texas Water Code, Chapter 32;

(18) pump installer licenses under Texas Water Code, Chapter 33;

(19) irrigator or installer registrations under Texas Water Code, Chapter 34;

(20) municipal management district matters under Local Government Code, Chapter 375;

(21) determination of the financial, managerial, and technical capacity of applicants for loans from the Texas Water Development Board, if requested by that agency; and

(22) certification of an organization that is installing plumbing in a "self-help" project, in a county any part of which is within 50 miles of an international border.

(c) This subchapter does not apply to:

(1) air quality standard permits under Chapter 116 of this title;

(2) air quality permits under Chapter 122 of this title (relating to Federal Operating Permits);

(3) air quality standard exemptions;

(4) consolidated proceedings covering additional matters not within the scope of subsection (b) of this section;

(5) district matters under Texas Water Code, Chapters 49 - 66, as follows:

(A) an appeal under Texas Water Code, §49.052 by a member of a district board concerning his removal from the board;

(B) an application under Texas Water Code, Chapter 49, Subchapter K, for the dissolution of a district;

(C) an application under Texas Water Code, §49.456 for authority to proceed in bankruptcy;

(D) an appeal under Texas Water Code, §54.239, of a board decision involving the cost, purchase, or use of facilities;

(E) an application under Texas Water Code, §49.351 for approval of a fire department or fire-fighting services plan; or

(F) an application under Texas Water Code, §54.030 for conversion of a district to a municipal utility district;

(6) emergency or temporary orders or temporary authorizations;

(7) actions of the executive director under Chapters 101, 111, 112, 113, 114, 115, 117, 118, and 119 of this title (relating to General Rules; Control of Air Pollution From Visible Emissions and Particulate Matter; Control of Air Pollution From Sulfur Compounds; Control of Air Pollution From Toxic Materials; Control of Air Pollution From Motor Vehicles; Control of Air Pollution From Volatile Organic Compounds; Control of Air Pollution From Nitrogen Compounds; Control of Air Pollution Episodes; and Control of Air Pollution From Carbon Monoxide);

(8) all compost facilities authorized to operate by registration under Chapter 332 of this title (relating to Composting);

(9) concentrated animal feeding operations (CAFOs) under Chapter 321, Subchapter K of this title (relating to Concentrated Animal Feeding Operations);

(10) an application for creation of a municipal management district under Local Government Code, Chapter 375; and

(d) Notwithstanding subsections (b) or (c) of this section, when the rules governing a particular type of application allow a motion for reconsideration, §50.39(b) - (f) of this title (relating to Motion for Reconsideration) applies. If the rules under which the executive director evaluates a registration application provide criteria for evaluating the application, the commission's reconsideration will be limited to those criteria.

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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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-0348

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CHAPTER 205. GENERAL PERMITS FOR WASTE DISCHARGES

SUBCHAPTER A. GENERAL PERMITS FOR WASTE DISCHARGES

30 TAC §§205.1 - 205.7

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to Chapter 205, §205.1, Definitions; §205.2, Purpose and Applicability; §205.3, Public Notice, Public Meetings, and Public Comment; §205.4, Authorizations and Notices of Intent; §205.5, Permit Duration, Amendment, and Renewal; §205.6, Annual Fee Assessments; and new §205.7, Additional Characteristics and Conditions for General Permits. Sections 205.1 - 205.4 and 205.6 are adopted *with changes* to the proposed text as published in the June 2, 2000, issue of the *Texas Register* (25 TexReg 5139). Sections 205.5 and 205.7 are adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The new and amended sections of Chapter 205 are adopted to implement House Bill (HB) 1283, which amended Texas Water Code (TWC), §26.040, and became law as an act of the 76th Texas Legislature, 1999. Among other changes, this adoption addresses the provisions of HB 1283 by removing the limitation that general permits cannot authorize discharges of more than 500,000 gallons in any 24-hour period; by providing that the commission may issue a general permit for storm water discharges without having to make the findings required by TWC, §26.040(a)(1) - (5) for other categories of discharges; and by adding a requirement that the commission deny or suspend a discharger's authority under a general permit if the commission determines that the discharger operates any facility for which the discharger's compliance history contains violations constituting a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations. The new and amended sections also simplify the rule language, change the term "commission" to "executive director" or "agency," as appropriate, and clarify the requirements and procedures for issuing a general permit and obtaining authorization for discharge under a general permit.

SECTION BY SECTION DISCUSSION

Adopted §205.1, concerning Definitions, is amended to add a definition for "compliance history," which is a term used in §205.4(e), relating to the implementation of the HB 1283 changes to TWC, §26.040. Adopted §205.1 is also amended to add definitions for "notice of change or NOC" and "notice of termination or NOT," which are terms used in §205.4(h), relating to the certain procedures regarding general permits. The amendments also include the deletion of certain terms used in §205.2, because these terms are self-explanatory, and they are

the same as those found in the United States Environmental Protection Agency's (EPA) regulations for general permits found in 40 Code of Federal Regulations (CFR) §122.28. The commission believes that definitions for these terms are not needed, and their inclusion could possibly be confusing to the public. The terms so deleted are "same or similar monitoring requirements," "same or substantially similar types of operations," "same requirements regarding operating conditions," and "same types of waste." Also, statutory references have been reformatted for consistency throughout the section.

Section 205.1(1) is amended to define "compliance history" because under TWC, §26.040(h), the commission must deny or suspend a discharger's authority under a general permit if the commission determines that the discharger operates any facility for which the discharger's compliance history contains violations constituting a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process. The commission adopts the definition of "compliance history," as follows: "The record of all notices from the commission, including notices of violation from the executive director; and of all orders of the commission, of any other agency or political subdivision of the State of Texas and of the United States Environmental Protection Agency (USEPA) pertaining to an applicant's adherence to environmental laws and rules of the State of Texas or the United States; with the terms of any permit, compliance agreement or order issued by the commission or the USEPA; and with any final judicial decision or settlement addressing the applicant's adherence to such environmental laws and rules. The history shall be for the five-year period before the date on which the NOI is filed or, if an NOI is not required, the five-year period before the permittee begins operating under the general permit. It shall not include any order that is precluded by its terms or by law from becoming part of the applicant's compliance history." This definition is adopted without changes to the proposed.

Section 205.1(4) is amended to add a definition for "notice of change or NOC," as follows: "A written submittal to the executive director from a discharger authorized under a general permit providing changes to information previously provided to the agency, or any changes with respect to the nature or operations of the facility, or the characteristics of the discharge." This definition provides clarification of the requirement under §205.4(h) that general permits require a person authorized to discharge waste under a general permit to submit up-to-date information to the executive director in a notice of change within a specified period of time prior to a change in previous information provided to the agency or any other change with respect to the nature or operations of the facility or the characteristics of the discharge. In a change from proposal, two extraneous words "information on" have been deleted.

Section 205.1(6) is amended to add a definition for "notice of termination or NOT," as follows: "A written submittal to the executive director from a discharger authorized under a general permit requesting termination of coverage." This definition provides clarification of the requirement under §205.4(h) that general permits require when the ownership of the facility changes or is transferred, a notice of termination must be submitted by the present owner, and the new owner must submit a new NOI not later than ten days prior to the change in ownership. This definition is adopted without changes to the proposed text.

Adopted §205.2, concerning Purpose and Applicability, is amended to eliminate the 500,000-gallon per day cap on discharges that may be authorized by a general permit, in accordance with HB 1283. The changes also provide that the commission may issue a general permit for storm water discharges without having to make the findings required by TWC, §26.040(1) - (5), for other categories of discharges, along with other clarifications. Under adopted §205.2(a), the wording is amended to read as follows: "The commission may issue a general permit to authorize the discharge of waste into or adjacent to water in the state by category if the commission finds the discharges in the category are storm water or the dischargers in the category: (1) engage in the same or substantially similar types of operations; (2) discharge the same types of waste; (3) are subject to the same requirements regarding effluent limitations or operating conditions; (4) are subject to the same or similar monitoring requirements; and (5) are more appropriately regulated under a general permit than under individual permits, on the basis that both: (A) the general permit can be readily enforced and the executive director can adequately monitor compliance with the terms of the general permit; this requirement being satisfied if the provisions of the general permit are clear and unambiguous and it requires adequate monitoring, record keeping, and reporting, appropriate to the type of activity authorized; and (B) the category of discharges covered by the general permit will not include a discharge of pollutants that will cause significant adverse effects to surface or groundwater quality."

Adopted §205.2(b) is reformatted for clarity by dividing existing portions of this subsection into paragraphs (1) and (2), and by deleting the superfluous sentence "For example, certain dischargers of the same type of waste may be covered under one statewide general permit." As noted at proposal, the commission intends for the descriptions under proposed §205(b)(1) and (2) to be examples, and are not intended to be limiting conditions.

Section 205.2(c) is adopted as proposed, stating "Authorization to discharge under a general permit does not confer a vested right."

Adopted §205.3, concerning Public Notice, Public Meetings, and Public Comment, is amended to clarify and simplify the rules, as well as to update references to certain notice requirements. Also, changes are made to the requirements for newspaper notice, to be consistent with the revisions made by HB 1283, which states that "For a statewide general permit, the commission shall designate one or more newspapers of statewide or regional circulation and shall publish notice of the proposed statewide general permit in each designated newspaper in addition to the *Texas Register*." In this regard, adopted §205.3(a)(1) retains the previously existing requirement for *Texas Register* publication for each draft general permit and clarifies that this paragraph applies to draft general permits that will not have statewide applicability. The adopted amendments under §205.3(a)(2) change the requirement of publication for draft general permits with statewide applicability from the previous requirement for publication in the daily newspaper of largest general circulation in eleven required metropolitan areas to the adopted requirement for publication in "the *Texas Register* and in at least one newspaper of statewide or regional circulation," which is in accordance with the aforementioned requirements of HB 1283. Section §205.3(a) is adopted without changes to the proposed text.

Adopted §205.3(b) is also adopted without changes to the proposed text. Adopted §205.3(b)(2) is amended to replace the phrase "state and federal agencies" with the term "persons," and paragraph (3) is deleted, as proposed. Adopted §205.3(c) is amended by reformatting the previously existing requirements

into paragraphs (1) - (4), and by clarifying the rule language, as proposed. Adopted §205.3(d) is amended to change the heading, and to clarify the wording under paragraphs (1) - (5), as proposed. Adopted §205.3(e) and (f) is also amended for clarification purposes, as proposed.

Adopted §205.3(g) is amended to account for the types of minor revisions to general permits in accordance with §305.62, concerning Amendment. Thus, the phrase "or minor modification" is added to amend this subsection. In addition, subsection (g) is amended to correct the typographical error in the proposal, "§395.62(c)," which is changed to "§305.62(c)."

Adopted §205.4, concerning Authorizations and Notices of Intent, is amended to implement new requirements of HB 1283 that allow authorization under a general permit to be obtained without submitting an NOI, to clarify when the executive director will deny or suspend a discharger's authority under a general permit, to add an additional circumstance for denying or suspending authorization due to a history of "egregious conduct" on the part of the discharger, to clarify the rule by revising language and by reformatting this section.

Adopted §205.4(a) is amended to cover certain requirements relating to general permits. This subsection is adopted, as proposed, to begin as follows: "A qualified discharger may obtain authorization to operate under a general permit by complying with the general permit's conditions for gaining coverage." Then, under paragraphs (1) - (5), certain requirements, allowances, and limitations are spelled out. In a change from proposal, §205.4(a)(5) is revised to add more flexibility, and is adopted to read as follows: "An NOI shall be submitted to the executive director in a form or format that is specified in the general permit or otherwise set out in commission rules."

Adopted §205.4(b) is amended to cover certain general permits requirements relating to individual permittees. This subsection is adopted, as proposed, to begin as follows: "The following requirements apply to existing individual permittees." This subsection essentially rewrites the previously existing rule language under current §205.4(b)(1) from the perspective of what the general permit must require or can allow, whereas the previous language was written from the perspective of what a discharger must or can do. As noted at proposal, the reason for this shift in perspective is that Chapter 205 is not an actual general permit, but rather includes procedures for adopting a general permit, and what should be included in general permits. Adopted §205.4(b)(1) is "rounded out" with the minimum requirements of the general permit needed for individual permit dischargers to "convert" to general permits, with a clarifying change to the proposed text adopted under §205.4(b)(1)(B) by adding the phrase "or amended, as appropriate." Adopted §205.4(b)(2) is basically a reformatted previously existing §205.4(b)(4) with additional language which "fleshes out" what the general permit shall require the discharger who is covered by an individual permit to do in order to obtain authorization to discharge waste from a new outfall. Adopted §205.4(b)(3) is a reformatted and more complete version of previously existing §205.4(b)(2). Section 205.4(b) is adopted without changes to the proposed text.

Adopted §205.4(c) is amended to spell out the requirements that apply to denial of an authorization or NOI, by reformatting and, to a certain extent, "fleshing out" requirements from portions of the previously existing rules. In a change from proposal, revisions have been adopted under §205.4(c)(2)(C) and (3)(E) that make the denial of authorizations to discharge under an existing general permit discretionary for discharges that contain pollutants that cause significant adverse effects to water quality. In the proposal, the denial of authorizations to discharge under an existing general permit was mandatory for discharges that are significant contributors of pollutants impairing the quality of surface or groundwater in the state. Also under §205.4(c)(2)(C), the commission has clarified that denial is mandatory for any discharge which causes a violation of the Texas Surface Water Quality Standards. Revisions have also been adopted under §205.4(c)(2)(E) and (3)(F) that make the denial of authorizations to discharge under an existing general permit discretionary if the discharger or facility is the subject of an unresolved agency enforcement action in which the executive director has issued written notice that enforcement has been initiated. In the proposal, such denial was mandatory.

Adopted §205.4(d) is amended to spell out the requirements that apply to suspensions of authorizations or NOIs of intent, by reformatting and, to a certain extent, "fleshing out" requirements from portions of the existing rules. Changes from proposal include the addition of the clarifying phrase ", or unless the executive director has required the discharger to immediately cease the discharge" under §205.4(d)(1)(D); and the addition of a phrase under §205.4(d)(2) exempting discharges of storm water from the requirement to immediately cease the discharge when authorization to discharge has been suspended under §205.4(d)(5)(F). The commission believes that this revision is necessary because it is impractical to immediately cease most storm water discharges. Additional changes from proposal are revisions under §205.4(d)(4)(B) and (5)(F) that make the suspension of authorizations to discharge under an existing general permit discretionary for discharges that discharges that contain pollutants that cause significant adverse effects to water quality. In the proposal, the suspension was mandatory for discharges that are significant contributors of pollutants impairing the quality of surface or groundwater in the state. Also under §205.4(d)(4)(B), the commission has clarified that suspension is mandatory for any discharge which causes a violation of the Texas Surface Water Quality Standards. Revisions have also been adopted under §205.4(d)(4)(C) and (5)(G) that make the suspension of authorizations to discharge under an existing general permit discretionary if the discharger or facility is the subject of an unresolved agency enforcement action in which the executive director has issued written notice that enforcement has been initiated. In the proposal, such suspension was mandatory. Finally, the language from proposed §205.4(d)(6) has been moved for organizational purposes to adopted §205.4(j), because the referenced 30 TAC §50.139, relating to Motion to Overturn Executive Director's Decision, applies to more than suspensions. Since the original proposal placed this reference under a subsection dealing with only suspensions, it is clearer to remove this language and place it in a separate subsection.

Adopted §205.4(e) implements TWC, §26.040(h), which requires the commission to deny or revoke an NOI if, after a hearing, it finds that the discharger has a history of violations that constitutes a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process. Under the adopted rule, the history of violations that could be considered by the commission will include all violations of Texas environmental laws administered by TNRCC that have been documented by the executive director during the preceding five years. These include NOVs, NOEs, and all administrative and judicial orders entered with regard to TNRCC or EPA permits and rules. Agreed orders entered into by the commission which

contain the limitation that they are not intended to become part of the respondent's compliance history will be considered only if the executive director has documented failure to comply with the terms of the order. The commission's experience indicates that if an applicant has a history that reflects a disregard for the regulatory process, that person is more likely to present future compliance problems. In the past, the commission has included special conditions in permits, designed to address past compliance problems at the permitted facility. This adoption will further that policy by requiring that an operator or owner with a very poor compliance history seek and obtain an individually tailored permit.

Such a pattern of conduct exhibited at the applicant facility and in regard to wastewater discharge statutes and rules would clearly be the most relevant portion of a discharger's compliance history and given the greatest weight in the commission's deliberations. Violations by the same applicant in other media and at other facilities may also be relevant, however. To the extent that the facts surrounding them indicate a pattern of violation, or a management structure or other uniform factors exist, they may indicate the same attitude or practices are likely to occur at the facility seeking the NOI. Consequently, the adoption allows the commission to consider these violations as well, granting them the weight appropriate to their relative degree of similarity or remoteness to the facility or the activity that is the subject of the general permit.

Section 205.4(e) is adopted without changes to the proposed text, stating "The commission, after hearing, shall deny or suspend a discharger's authority to discharge under a general permit if the commission determines that the discharger operates any facility for which the discharger's compliance history contains violations constituting a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations. A hearing under this subsection is not subject to Texas Government Code, Chapter 2001." The commission is adopting the definition of "compliance history," as discussed earlier in this preamble.

Adopted §205.4(f) is amended to add the opening phrase "The general permit shall describe," consistent with the aforementioned approach of changing the perspective of the rules toward what the general permit must require or can allow; and to clarify this subsection, as proposed.

Adopted §205.4(g) is amended to replace the words "shall" and "will" with the word "may," which changes the rules from prescriptive to permissive, with regard to application fees for general permits; and to make other clarifying changes, as proposed. In addition, the wording has been revised in response to comment, as discussed later in this preamble, to read as follows: "Unless otherwise provided in the general permit or in §305.53 of this title (relating to Application Fee), a person seeking authorization by general permit shall submit a $100 application fee payable to the agency at the time of filing an NOI. If a person is denied coverage under the general permit in accordance with subsection (c) or (e) of this section, any application fee will be applied to the application fee required for an individual permit application for the same discharge."

Adopted §205.4(h) is amended to add the opening phrase "The general permit shall require a" and to replace the phrase "new NOI" with the phrase "notice of change," as proposed. This subsection is adopted with other clarifying changes, and is adopted with the following change to the proposed text: replacement of the phrase "not later than ten days" with the phrase "within a specified period of time." The commission notes that the new terms "notice of change" and "notice of termination" are defined under adopted §205.1, as discussed earlier in this preamble.

Section 205.4(i) is adopted with the clarifying amendments that were proposed, with no change to the proposed text.

Adopted §205.4(j) is language which has been moved for organizational purposes from proposed §205.4(d)(6).

Adopted §205.5, concerning Permit Duration, Amendment, and Renewal, is amended under subsection (b) to allow the commission to continue to authorize dischargers under an expired general permit in cases where the commission has proposed to renew the general permit before the expiration date. In such cases, the general permit shall remain in effect for these dischargers until the date on which the commission takes final action on the proposed permit renewal. Section 205.5(c) is amended to add two clarifying phrases. Section 205.5(d) is amended to add more details to the requirements concerning submittal of applications for individual permits when a general permit is about to expire. Section 205.5(f) is amended to clarify the requirements concerning consistency of general permits with the Texas Coastal Management Plan (CMP). The changes to §205.5 are adopted without changes to the proposed text.

Adopted §205.6, concerning Annual Fee Assessments, is amended to correct a reference that has changed since the rules were initially adopted, and to clarify that the commission has the authority to charge an annual watershed monitoring and assessment fee, but is not necessarily required to do so. In a change from proposal, as discussed later in this preamble, the phrase "or as specified in the general permit" is added for flexibility, so that the rule reads as follows: "A person authorized by a general permit shall pay an annual waste treatment inspection fee under Texas Water Code (TWC), §26.0291, consistent with §§305.501 - 305.507 of this title (relating to the Waste Treatment Inspection Fee Program) or as specified in the general permit; and may be subject to an annual watershed monitoring and assessment fee under TWC, §26.0135(h), consistent with §220.21 of this title (relating to Water Quality Assessment Fees) or as specified in the general permit."

New adopted §205.7, concerning Additional Characteristics and Conditions for General Permits, is taken from §321.141, in anticipation of the future repeal of Chapter 321, and is also adopted without changes to the proposed text.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and has 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. The rule will not adversely effect in a material way on the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state for two reasons. The rules will result in overall economic savings, while protecting the public health and safety and environment. There are economic savings because many of the entities that would otherwise be required to obtain an individual permit will be able to obtain coverage under one standard permit, a general permit. This improves efficiency in the permitting process which results in overall economic savings. The general permits issued under these rules will ensure the protection of public health and

safety and the environment. Furthermore, the proposed rulemaking does not meet any of the four applicability requirements listed in §2001.0225(a).

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of these rules is to implement HB 1283, 76th Legislature, 1999, and clarify the requirements and procedures for issuing a general permit and obtaining authorization for discharge under a general permit. The rules will substantially advance this stated purpose by amending Chapter 205 to remove the limitation that general permits cannot authorize discharges of more than 500,000 gallons in any 24- hour period; by providing that the commission may issue a general permit for storm water discharges without having to make the findings required by TWC, §26.040(a)(1) - (5), for other categories of discharges; by adding a requirement that the commission deny or suspend a discharger's authority under a general permit if the commission determines that the discharger operates any facility for which the discharger's compliance history contains violations constituting a recurring pattern of egregious conduct; and by clarifying the language and organizational structure of the rules. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because the rules remove a restriction and merely clarify other portions of the rules. The subject regulations do not affect a landowner's rights in private real property because this rulemaking does not restrict or limit the owner's right to property that would otherwise exist in the absence of the regulations. In other words, because these rules broaden the applicability of general permits, which provide a less burdensome avenue for gaining authorization for discharges than do alternative permitting schemes, and because these rules clarify the requirements and procedures for issuing a general permit and obtaining authorization for discharge under a general permit, they do not restrict the owner's right to property. Therefore, these rules do not constitute a takings under the Texas Government Code, §2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the rulemaking and found that it is identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the CMP, or will affect an action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11.

The commission has prepared a consistency determination for the rules pursuant to 31 TAC §505.22, and has found the rulemaking consistent with the applicable CMP goals and policies. The following is a summary of that determination. CMP goals applicable to the rules are the protection, preservation, restoration and enhancement of the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the rules include the requirement that discharges of municipal and industrial wastewater in the coastal zone shall comply with water- quality-based effluent limits. Promulgation and enforcement of these rules is consistent with the applicable CMP goals and policies because the rules will result in more efficient and cost-effective use of public resources regulating wastewater facilities, while maintaining protection of the quality of the surface water resources of the state. Dischargers will be subject to requirements in the permit. In addition, the rules specifically require the executive director to deny authorization under an existing general permit if the discharge is located where it poses or could pose an adverse impact upon a critical area, and it is practicable to locate the discharge in a more suitable location.

HEARINGS AND COMMENTERS

A public hearing on the proposal was held in Austin on June 29, 2000. The public comment period closed at 5:00 p.m., June 19, 2000. Eight commenters provided oral testimony and/or submitted written testimony. Each of the eight commenters suggested changes to the proposal as stated in the ANALYSIS OF TESTIMONY section of the preamble. In general, most of the comments were directed at the issues of compliance history, fees, public notice, notifications, suspension or denial of general permits, and applicability. Oral comments were presented by Shawn Glacken, TXU Business Services. Written comments were submitted by American Electric Power Company (AEP); Bexar County; Lloyd, Gosselink, Blevins, Rochelle, Baldwin & Townsend, P.C. (Lloyd, Gosselink); the National Wildlife Federation; Tarrant County; Texas Cities Coalition on Stormwater (TCCOS); Texas Counties Storm Water Coalition; Texas Parks and Wildlife Department (TPWD); and TXU Business Services (TXU).

ANALYSIS OF TESTIMONY

Lloyd, Gosselink commented that the fiscal note is inadequate because it failed to consider significant additional costs, from the proposed application fees and watershed monitoring and assessment fees, to small businesses or to local governments who as a result of the proposed Chapter 205 rule changes may be able to utilize general permits adopted by the commission for storm water permit coverage. The commenter noted that since EPA general permits had no fees associated with permit coverage the proposed fees represent significant additional costs to small businesses and local governments and these costs have not been properly calculated or analyzed by the agency.

The commission disagrees with this comment. The purpose of the fiscal note is to analyze the fiscal impacts the proposed new rule or amended rule will have on the state and local governments and on persons required to comply with the rule. Chapter 205 was originally adopted by the commission in 1998 and is being amended in this rulemaking to implement HB 1283, which amended TWC, §26.040. The only substantive changes made to Chapter 205 regarding application fees, in §205.4(g), and watershed monitoring and assessment fees, in §205.6, are to make the assessment of such fees on persons operating under a general permit discretionary rather than mandatory. These changes will clearly not have an adverse impact on persons required to comply with the rule because under the adopted rules it is possible that they may not be assessed an application fee or watershed monitoring and assessment fees whereas previously the assessment of such fees were mandatory under Chapter 205. Other changes made to Chapter 205 to implement HB 1283, most notably the deletion of the 500,000 gallon per 24-hour cap, have the practical effect of allowing storm water discharges to be authorized under a general permit. Without this change, storm water discharges regulated by the commission would have to be authorized by an individual permit. If coverage under an individual permit was the only option, the regulated entity would incur not only the application and watershed monitoring and assessment fees that they may have been assessed if they were authorized under a general permit, but also the costs associated with preparing a complete permit application, rather than an NOI,

and potentially the costs associated with a contested case hearing. Additionally, authorizations through general permit coverage may be obtained in a matter of days, while coverage under an individual permit may take 180 days or more. Clearly the availability to small businesses and local governments of a general permit to authorize storm water discharges will allow those entities to avoid costs that they would otherwise incur through individual permitting. Even though these entities may not have been assessed fees by EPA for coverage under EPA storm water general permit, under the Memorandum of Agreement (MOA) dated September 14, 1998 between EPA and the commission authorizing the commission to administer the Texas Pollutant Discharge Elimination System (TPDES), the commission now has jurisdiction to regulate storm water discharges under TPDES. Any fiscal impact associated with the difference in fees assessed by the commission and fees assessed by EPA to entities regulated by a storm water general permit are not the result of this rulemaking but rather the result of the commission obtaining TPDES authorization.

TCCOS commented that the commission should exclude general permits for municipal separate storm sewer (MS4) discharges from the scope of the adopted rule. The commenter notes that the general permits for MS4 discharges will be unprecedented in the commission's history because they will cover a vast number of outfalls and will raise a number of significant legal and practical issues. The commenter is concerned that the proposed rules are intended to be applied to general permits for MS4 discharges as if they are any other discharge. The commenter notes that commission has until December 2002 to adopt a general permit for MS4 discharges and should avoid prejudging how general permits for MS4 discharges will be addressed by excluding them from the scope of the proposed rules.

The commission disagrees with this comment. Chapter 205 sets out the procedural requirements for the commission to issue a new general permit, for a discharger to request authorization under a general permit, and for the executive director to determine whether a discharger request for authorization under a general permit should be approved, denied, or suspended. These are procedural requirements that should apply to all general permits, regardless of the type of discharge. The substantive operational, monitoring, and other requirements that must be complied with by dischargers operating under a general permit will be set out in detail in each general permit and will be subject to notice and opportunity for comment prior to issuance by the commission. These substantive requirements will vary depending on the type of discharge and the geographical scope of the general permit. The issues noted by the commenter that will be associated with the MS4 general permit do not justify excluding the MS4 permit from scope of the general permit procedural rules set out in Chapter 205 because these issues are not affected by these rules and will be appropriately addressed by the commission prior to the issuance of the MS4 general permit.

The National Wildlife Federation commented that the adopted rules, in order to comply with §305.538 and 40 CFR §122.4(i), should specifically prohibit authorization of discharges into streams listed as impaired pursuant to Section 303(d) of the Clean Water Act unless there is a showing that the types of discharges being authorized do not have the potential to contribute to the impairment.

The commission disagrees with this comment. The blanket prohibition, proposed by the commenter, of authorization through a general permit of any discharges into streams listed as impaired pursuant to Section 303(d) of the Clean Water Act unless there is a showing that the types of discharges being authorized do not have the potential to contribute to the impairment, is not required by either 30 TAC §305.538 or 40 CFR §122.4(i) because those regulations only apply to "new sources" or "new dischargers." The commission will address the requirements of 30 TAC §305.538 and 40 CFR §122.4(i) when it issues each general permit by limiting the scope of coverage to ensure that the requirements of these regulations are met when it issues the general permit.

AEP and TXU commented that notices of violation (NOVs) should not be included in the definition of "compliance history," under proposed §205.1(1), primarily because NOVs are alleged violations rather than findings of violations. AEP expressed the belief that the proposed definition is more broad than is allowed by the relevant statutory provisions, and TXU commented that the proposed definition appears to exceed the legislative intent of HB 1283. TXU commented that the rule should incorporate the statutory language in HB 1283, "that the compliance history contains violations constituting a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations." TXU also noted that other state agencies may handle NOVs in a different manner than current TNRCC practices.

The commission disagrees with these comments. The commission notes that the rule does not propose that NOVs from other state agencies will be part of the compliance history considered by the commission. The commission believes it is appropriate to include commission NOVs in the definition of "compliance history," because such an approach is clearly within the scope of TWC, §26.040 and; therefore, consistent with the legislative intent. Under TWC, §26.040(h), the commission is required to "deny or suspend a discharger's authority to discharge under a general permit if the commission determines that the discharger operates any facility for which the discharger's *compliance history contains violations* constituting a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, *including a failure to make a timely and substantial attempt to correct the violations*." (Emphasis added). Based upon the use of the word "violations" of the statute, as emphasized above, it is clear, based upon the statutory language, that the violations to be included in the compliance history may include violations that have been the subject of an NOV but have not yet been the subject of a commission order finding that the violation occurred. Under the commission's inspection and enforcement procedures, for many types of violations, a regulated entity that has been inspected and found by the inspector to be in violation has a designated timeframe, which in many cases is 30 days, from the inspection and NOV to make a timely and substantial attempt to correct the violation. Because, under commission procedures, the time to make a timely and substantial attempt to correct the violation occurs long before there could be a commission order finding that a violation occurred, the compliance history should not be limited to violations that have resulted in a commission order finding that the violation occurred but should also include violations that have been subject to an NOV. With regard to the comment that the rule should incorporate the statutory language concerning egregious conduct, the commission believes that this language more properly belongs under §205.4(e), where it is included in this adoption.

Therefore, no changes to the proposed text are adopted in response to these comments.

TXU commented that it supported the TNRCC's view that the definition of "compliance history" should apply only to a company's operations in the State of Texas, and not those operations they may own or operate in other states.

The commission disagrees with this comment. The definition of "compliance history" is not limited to a company's operations in the State of Texas. For example, the definition includes, in part, the record of all orders of the EPA pertaining to an applicant's adherence to environmental laws and rules of the United States; with the terms of any permit, compliance agreement or order issued by the EPA; and with any final judicial decision or settlement addressing the applicant's adherence to such environmental laws and rules. Thus, the definition includes an applicant's compliance history outside the State of Texas, insofar as it pertains to the aforementioned EPA orders. Therefore, no changes to the proposed text are adopted in response to this comment.

AEP commented that the definition of "compliance history" should not include Senate Bill 1660, or so-called "no findings," orders, and suggested clarifying language to the proposed language. The commenter suggested that the proposed sentence "It shall not include any order that is precluded by its terms or by law from becoming part of the applicant's compliance history." be adopted as follows: "It shall not include any order that by its terms of by law is not intended to become part of the applicant's compliance history."

The commission agrees in part with this comment, in that the definition of "compliance history" does not include "no findings" orders. However, the commission does not agree with the substitute language, because the phrase "...any order that is precluded by its terms or by law from becoming part of the applicant's compliance history," as proposed, is more precise than the phrase suggested by the commenter. Therefore, no changes to the proposed text are adopted in response to this comment.

The National Wildlife Federation commented that the definition of "compliance history" should be refined to provide clearly that orders issued by a local government regarding failure to comply with local ordinances or regulations are included in this definition.

The commission disagrees with this comment. The commission does not believe that the definition should be expanded to include adherence to local ordinances or regulations, because due to the great variety of local environmental ordinances or regulations and the lack of uniformity in the degree to which local governments enact and enforce these local ordinances or regulations, the number of violations of local government ordinances or regulations may not be truly representative of a regulated entity's compliance history. For example, an entity located in a part of the state where local government is aggressive in enacting and enforcing local environmental ordinances and regulations may have been cited for many local violations. Whereas, a similar entity with the same operational practices but located in an area of the state where the local government is not aggressive in enacting and enforcing local environmental ordinances and regulations may not have any local violations. For the same reason, the commission has chosen not to consider violations of other state' environmental laws as part of the compliance history. By limiting violations to Texas state environmental laws and federal environmental laws, the commission is creating a level playing field whereby regulated entities will be judged on their record of violations of Texas state environmental laws or federal environmental laws. Therefore, no changes to the proposed text are adopted in response to this comment.

The National Wildlife Federation commented that the definition of "compliance history" is unduly narrow because it fails to include violations of laws of other states. The commenter stated that the language of TWC, §26.040, is not limited to facilities within Texas, and that the scope of the rules may not be more narrow than the statute in this regard.

The commission agrees in part with this comment. The commission agrees that the definition of "compliance history" should not be limited to a company's operations in the State of Texas. In fact, the definition includes, in part, the record of all orders of the EPA pertaining to an applicant's adherence to environmental laws and rules of the United States; with the terms of any permit, compliance agreement or order issued by the EPA; and with any final judicial decision or settlement addressing the applicant's adherence to such environmental laws and rules. Thus, the definition includes an applicant's compliance history outside the State of Texas, insofar as it pertains to the aforementioned EPA orders and any final judicial decision or settlement addressing the applicant's adherence to federal environmental laws and rules. However, the commission does not agree that the definition should include the record of an applicant's adherence to laws of other states. As with consideration of violations of local ordinances and rules, the commission believes that due the great variety of state environmental laws enacted throughout the 50 states and the lack of uniformity in enforcement of these laws from one state to another, consideration of violations of environmental laws from other states may not be truly representative of a regulated entities compliance history. Therefore, no changes to the proposed text are adopted in response to this comment.

TPWD commented that the definition of "compliance history" should be slightly revised to account for both notices and orders from other agencies.

The commission disagrees with this comment. The definition of compliance history does include orders from other state agencies and EPA. With respect to NOVs, the adopted rule defining compliance history includes commission NOVs, and does not include NOVs from other agencies, because the commission has developed and implemented a specific policy governing facility inspections and the procedures for issuing an NOV. Because of this procedure, the commission is confident that when an NOV is issued by the commission, the site inspector has properly documented the violation and there is a firm basis for believing that a violation may have occurred. Therefore, there is a firm basis for including these NOVs within the compliance history notwithstanding there not being a final commission order finding that a violation occurred. The commission cannot make the same judgment regarding NOVs issued by other agencies because the procedures followed by other agencies in issuing NOVs are not within the commission's control. Therefore, no changes to the proposed text are adopted in response to this comment.

TPWD commented that the language under §205.1(4), "providing information on changes to information previously provided to the agency" is confusing.

The commission agrees with this comment and adopts the phrase as follows: "providing changes to information previously provided to the agency."

The National Wildlife Federation commented that the proposed deletion of the definitions for the statutory terms that create limitations on the scope of authority for issuance of general permits is inappropriate, but also commented that the terms proposed for deletions were circular definitions that failed to make them meaningful. The commenter stated that the commission must acknowledge in the rules that there are limitations on categories that may be approved by general permit and must explain how those limitations will be respected.

The commission disagrees with this comment. As stated earlier in this preamble, §205.1(4) - (7) is proposed to be deleted because the commission believes that these terms are self-explanatory and unnecessary, and because they are the same as those found in the EPA's regulations for general permits found under 40 CFR §122.28. Therefore, the deletions of the terms "same or similar monitoring requirements," "same or substantially similar types of operations," "same requirements regarding operating conditions," and "same types of waste" are adopted without changes to the proposal in response to this comment.

The National Wildlife Federation commented that, under §205.2, although TWC, §26.040, does not mandate a commission finding that the category of storm water discharges covered by the general permit will not include a discharge of pollutants that will cause significant adverse effects to water quality, the rules should make clear that the commission will not issue a general permit for storm water discharges without making such a finding.

The commission disagrees with this comment. The statutory provisions clearly exempt storm water discharges from the findings set forth under TWC, §26.040(a)(1) - (5). Nevertheless, under adopted §205.4(c)(3)(E), the executive director may deny authorization to discharge under an existing general permit if the discharge contains pollutants that will cause significant adverse effects to water quality. Also, the commission notes that, under adopted §205.4(c)(2)(C), the executive director shall deny authorization to discharge under an existing general permit if the discharge causes a violation of the Texas Surface Water Quality Standards.

The National Wildlife Federation commented that the rule should make clear that a discharge must consist solely of storm water before it can be authorized by general permit that is not supported by the findings set out under TWC, §26.040(a)(1) - (5).

The commission disagrees with this comment. The commission believes that the phrase "if the commission finds the discharges in the category are storm water" under §205.2(a) is sufficiently clear to ensure that storm water is the only category of discharge that does not require the commission to make the findings required by TWC, §26.040(a)(1) - (5). In other words, the commission does not believe that storm water needs to be defined because its meaning is sufficiently clear. Furthermore, the commission believes that it can issue a general permit which authorizes storm water discharges, which does not require the commission to make the findings required by TWC, §26.040(a)(1) - (5), and which also authorizes other types of discharges for which the commission has made the findings required by TWC, §26.040(a)(1) - (5). Therefore, no change to the proposed text is adopted in response to this comment.

The National Wildlife Federation and TPWD commented that the word "affects" under proposed §205.2(a)(5)(B) should be replaced with the word "effects."

The commission agrees with this comment, and adopts the aforementioned change which corrects the typographical error in the proposal.

TPWD commented that the public notice which would be provided under proposed §205.3 is inadequate, basically because there would be no effective means for the general public, regulated community, or environmental groups to learn of proposed general permits unless they follow the *Texas Register* or see a newspaper notice. The commenter suggested that the TNRCC develop a mechanism for effectively providing notice to all these groups, and that such a procedure should include a requirement to notify stakeholders that a general permit is being considered for development, providing the opportunity for participation in the development of the general permit. Furthermore, the commenter stated that the procedure should also include notice of a proposed general permit and opportunity for comment. The commenter suggested a mailing list of interested parties, who would receive a notice of intent to develop a general permit and a notice of the proposed general permit.

The commission disagrees with this comment, with regard to proposed §205.3 being inadequate. The commission notes that under adopted §205.3(a), notice of each draft general permit is required to be published in the *Texas Register.* In addition, for draft general permits without statewide applicability, the agency shall publish notice in a daily or weekly newspaper of general circulation in the area affected by the activity that is the subject of the proposed general permit, under adopted §205.3(a)(1). For draft general permits with statewide applicability, notice shall also be published in at least one newspaper of statewide or regional circulation. The commission further notes that under adopted §205.3(b), for TPDES general permits, mailed notice of the draft general permit must also be provided to the county judge of the county or counties in which the dischargers under the general permit could be located; persons on a mailing list that has been developed by including those who request in writing to be on the list, soliciting persons for "area lists" from participants in past permit proceedings in that area, and notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals; and any other person the executive director or chief clerk may elect to include. The commission believes that these requirements provide for adequate notice of draft general permits. Therefore, no changes to the proposed text are adopted in response to this comment.

The National Wildlife Federation commented that, under proposed §205.3(a), the TNRCC should provide the option of requiring that notice of permits which do not have statewide applicability must be published in more than one newspaper. The commenter stated that, depending on the area of applicability, it often may be true that no single newspaper adequately covers the region to be affected.

The commission agrees in part with this comment. The commission believes that adopted §205.3(a) requires that notice of a draft general permit which will not have statewide applicability be published in more than one newspaper under some circumstances. The commission notes that the requirement is for publication "...in a daily or weekly newspaper of general circulation in the area affected by the activity that is the subject of the proposed general permit." In cases where there is not a single daily or weekly newspaper that is of general circulation in the area affected by the activity that is the subject of the proposed general

permit, then the rule clearly requires that more than one newspaper be used, to the extent that the affected area is covered. Therefore, no changes to the proposed text are adopted in response to this comment.

The National Wildlife Federation commented that, under proposed §205.3(a), for permits of statewide applicability, it would be far more effective for the rule to establish a general requirement of publication in a major newspaper in each region of the state unless TNRCC determines that the activity being authorized does not occur a significant level in one or more of the regions. The commenter stated that, at a minimum, the rules should describe the approach the commission will use in determining where notice will be published.

The commission disagrees with this comment. Adopted §205.3(a)(2) implements the statutory requirement, under TWC, §26.040(b), to publish notice of each statewide general permit in one or more newspapers of statewide or regional circulation, which will ensure that the statutory requirement is met. The commission does not believe that rulemaking is the appropriate mechanism for setting out detailed procedures describing the approach the agency will take in determining where notice will be published. Instead, such procedures may be described in an implementation procedures document. Therefore, no changes to the proposed text are adopted in response to this comment.

The National Wildlife Federation commented that, under §205.3(a), mailed notice should be provided for all general permits to persons who have requested to receive notice of TNRCC permit actions, and that mailed notice should be available to any person who has requested to be included on the list maintained under §39.7.

The commission agrees in part with this comment. The commission believes that the adopted procedures for public notice, as discussed previously in this preamble, provide adequate public notice for general permits. These procedures include, under §205.3(b)(2), that for TPDES general permits, mailed notice will be provided to those persons on a mailing list that has been developed in part by including those who request in writing to be on the list. In addition, the commission intends to address notice requirements under issued general permits. Therefore, no changes to the proposed text are adopted in response to this comment.

The National Wildlife Federation commented that copies of the executive director's response to written comments should be mailed to the commenting parties as soon as they are filed with the chief clerk's office. The commenter did not suggest that any particular rule be revised to implement this comment.

The commission agrees in part with this comment. The commission notes that, under adopted §205.3(e), the executive director's written response shall be made available to the public and filed with the chief clerk at least ten days before the commission considers the approval of the general permit. The commission believes that the requirement that the executive director's response to written comment be made available to the public at least ten days prior to commission consideration of the general permit provides adequate opportunity for commenters to review the executive director's written response well before the commission considers the approval of the general permit. Therefore, no changes to the proposed text are adopted in response to this comment.

TPWD provided a comment under §205.4(a)(2) questioning whether the word "is" in the phrase "after a general permit is expired" should be "has."

The commission agrees with this comment. Adopted §205.4(a)(2) reads as follows: "No new discharge under the authority of a general permit may commence after a general permit has expired."

The National Wildlife Federation commented that, under §205.4, the rules do not seem to protect against antibacksliding or inconsistency with the Water Quality Management Plan in instances when an NOI is not required because there is no mechanism to ensure that a general permit will not be allowed to replace an individual permit that had more stringent effluent limitations.

The commission agrees that authorization to discharge under a general permit, as an alternative to an individual permit, may not be allowable where an individual permit contains more stringent requirements and effluent limitations. The commission believes that provisions to address this issue, and other similarly related issues, should be included in general permits as they are developed for consideration. Therefore, no changes to the proposed text are adopted in response to this comment.

The National Wildlife Federation commented that, under §205.4, the rules appear to ignore the limitation of TWC, §26.040 that general permits cannot authorize discharges covered by individual permits, by allowing discharges to be shunted to new outfalls.

The commission disagrees with this comment. The commission believes that the statute does not preclude an existing discharger from changing to a general permit. The commission believes that an individual permittee may request that the individual permit be cancelled or amended, as appropriate, and obtain authorization to discharge under a general permit. Therefore, the commission adopts a revision under §205.4(b)(1)(B) to cover such amendments, by adding the following phrase at the end of this subparagraph "or amended, as appropriate."

The National Wildlife Federation commented that, under §205.4(c), the language should provide for denial of an NOI and suspension of authority to discharge when the pollutants being discharged are determined to have the potential to impair water quality. The commenter stated that actual impairment of water quality should not be a prerequisite to taking action to prevent or stop a discharge that has significant potential to degrade water quality.

The commission disagrees with this comment. The commission believes that providing for denial of an NOI or suspension of authority to discharge when there is only a potential to impair water quality is not consistent with TWC, §26.040(a)(5)(B), which provides that the category of discharges covered by the general permit will not include a discharge of pollutants that will cause significant adverse effects to water quality. Therefore, no changes to the proposed text are adopted in response to this comment.

TCCOS commented that, under proposed §205.4(c)(2) and (d)(4), the executive director must deny or suspend authorization to discharge under a general permit because the discharge is a significant contributor of pollutants impairing the quality of surface or groundwater in the state, and expressed the belief that such a provision could be interpreted to prevent many of the MS4s in the state from using general permits. The TCCOS recommended that the commission modify this provision to make the eligibility condition discretionary.

The commission agrees with this comment. The commission believes that the types of discharges that affect surface or groundwater should be divided into two categories for the purposes of this rule. One category is made up of discharges which contain pollutants that cause significant adverse effects to water quality, while the other category is made up of discharges which cause a violation of the Texas Surface Water Quality Standards. The commission considers the latter category to pose a more serious threat to the surface or groundwater in the state. Consequently, the commission adopts the rule to make the denial or suspension of authorization to discharge under an existing general permit mandatory in cases where the discharge causes a violation of the Texas Surface Water Quality Standards, by adding this category of discharge to §205.4(c)(2)(C) and (d)(4)(B). The commission also adopts the rule to make the denial or suspension of authorization under a general permit discretionary, for discharges which contain pollutants that cause significant adverse effects to water quality, by adding this category of discharge to §205.4(c)(3)(E) and (d)(5)(F). In addition, the commission adopts a revision to §205.4(d)(2) to except from the requirement to immediately cease the discharge, when the discharge is storm water for which authorization to discharge has been suspended under §205.4(d)(5)(F). The commission believes that this revision is necessary because it is impractical to immediately cease most storm water discharges.

TCCOS commented that, under proposed §205.4(c)(2) and (d)(4), the executive director must deny or suspend authorization to discharge under a general permit if the discharger has failed to pay any portion of a delinquent fee or charge assessed by the executive director, or is the subject of an unresolved agency enforcement action in which the executive director has issued written notice that enforcement has been initiated, and expressed the belief that these provisions will have the effect of depriving local governments of their statutory and due process rights to contest decisions made by the executive director and to have these issues addressed by the commission. The commenter stated that under the proposed rule, a local government that disagrees with the executive director's determination on a fee issue would be denied the opportunity to use a general permit merely for contesting the executive director's decision. The commenter recommended that proposed §205.4(c)(2)(E)(i) and (d)(4)(C) be deleted, and that if these rules were not modified, then the rules should define "delinquent fee or charge" and "assessed by the executive director," since these terms have varying interpretations.

The commission disagrees with this comment. With regard to failing to pay any portion of a delinquent fee or charge assessed by the executive director, the commission believes that persons who fail to pay, in a timely manner, fees or charges assessed by the executive director should not be able to obtain authorization to discharge unless and until the fee or charge is fully paid. Furthermore, the commission does not believe that the terms "delinquent fee or charge" or "assessed by the executive director" need to be defined in the rules. The commission notes that an assessed fee or charge is one that has been imposed in writing, and a delinquent fee or charge is one that has not been fully paid by the due date. Therefore, no changes to the proposed text are adopted in response to this comment.

TCCOS commented that, under the proposed rules, a local government would be denied the opportunity to use a general permit merely for exercising its right to have the commission review the executive director's allegations. The commenter stated that this provision creates an untenable dilemma that if the executive director commences an enforcement action against any operation of a local government, the local government will have to choose between contesting the executive director's allegations or continuing to discharge storm water. The commenter stated that the commission should not create such a Hobson's choice by rule. The commenter went on to state that, given the presence of the provisions under §205.4(e), it does not see the need for §205.4(c)(2)(E), (3)(D), and (d)(4)(C) and (d)(5)(E), and requests that these provisions not be included in the final rule. Finally, the commenter stated that if the proposed provisions are not modified, it is essential that the rules better clarify what specific actions of the executive director will justify the automatic suspension of use of a general permit, and asked if "an unresolved agency enforcement action in which the executive director has issued written notice that enforcement has been initiated" mean a notice of violation, or is it an executive director's preliminary report?

The commission agrees in part with this comment. The commission agrees that a discharger should not be automatically prohibited from obtaining authorization under a general permit if there is an unresolved enforcement because the circumstances of each individual case should be weighed to determine whether denial or suspension of the NOI by the executive director is justified. Instead, the commission believes that denial or suspension of authorization to discharge under a general permit if the discharger or facility is the subject of an unresolved enforcement action in which the executive director has issued written notice that enforcement has been initiated should be discretionary, and that discretion should be used based on the severity of the violation or violations. Therefore, such denials and suspensions have been transferred in the rules from §205.4(c)(2)(E) and (d)(4)(C) to §205.4(c)(3)(F) and (d)(5)(G), respectively. The commission notes that the requirements under §205.4(e) concerning egregious conduct are adopted under a separate basis for denial or suspension, in accordance with TWC, §26.040(h). Finally, the commission notes that a notice of enforcement letter is the "written notice that enforcement has been initiated."

TPWD commented concerning discretionary authority to deny or suspend authorizations that the reasons should include "Other reasons as required by law or as are justified by the commission in the reasonable exercise of its discretion," under §205.4(c)(3) and (d)(5).

The commission disagrees with this comment. The commission believes that the proposed language, as adopted under §205.4(c)(3)(D) and (d)(5)(E), which includes as a reason for discretionary authority to deny or suspend authorizations that "the discharger has been determined by the executive director to have been out of compliance with any rule, order, or permit of the commission, including non-payment of fees assessed by the executive director" provides the executive director with sufficient discretionary authority, in conjunction with the more specific reasons under adopted §205.4(c)(3)(A) - (C) and (d)(5)(A) - (D). Therefore, no changes to the proposed text are adopted in response to this comment.

The National Wildlife Federation commented that §205.4(d)(1)(B) and (D) seem to be inconsistent, in that subparagraph (B) requires the written notice that the executive director intends to suspend a discharger's authority to include a statement of whether the discharger shall immediately cease the discharge, whereas subparagraph (D) seems to indicate that authorization to discharge will not be suspended prior to commission action on an individual permit application.

The commenter suggested that subparagraph (D) should be qualified by adding language that it applies only if immediate cessation of discharge has not been required by the executive director.

The commission agrees with this comment. Therefore, the following phrase had been included at the end of adopted §205.4(d)(1)(D): ", or unless the executive director has required the discharger to immediately cease the discharge."

Lloyd, Gosselink and TCCOS commented that, under §205.4(g), the commission lacks the statutory authority to require application fees for general permits. Both commenters cite TWC, §5.235, which authorizes the commission to collect fees, but only fees "prescribed by law," and TWC, §26.040(k), which allows the commission to impose a reasonable and necessary fee under TWC, §26.0291 on a discharge covered by a general permit. The commenters point out that TWC, §26.0291 authorizes only waste treatment inspection fees. TCCOS recommended that the commission either delete §205.4(g) in its entirety or should exclude local governments from the scope of the provision.

The commission disagrees with this comment. Under TWC, §5.235(b), "except as otherwise provided by law, the fee for filing an application or petition is $100 plus the cost of any required notice." Under §3.2(4), an "application" is defined as "a petition or written request to the commission for an order, permit, license, registration, standard exemption, or other approval." Submittal of an NOI is an application subject to an application fee under TWC, §5.235(b), because it is a written request to the commission for approval to discharge under a general permit. Texas Water Code, §26.040 does not provide that the commission may not charge an application fee under TWC, §5.235. Therefore, the commission's authority under TWC, §5.235(a) and (b), applies to applications for NOIs. Furthermore, the commission notes that Rider 5 to the 1999/2000 Appropriations Act sets the "maximum rate for fees" authorized by TWC, §5.235(b) and (c), at $2000. Therefore, the proposed language under §205.4(g) is adopted to read as follows: "Unless otherwise provided in the general permit or in §305.53 of this title (relating to Application Fee), a person seeking authorization by general permit shall submit a $100 application fee payable to the agency at the time of filing an NOI. If a person is denied coverage under the general permit in accordance with subsection (c) or (e) of this section, any application fee will be applied to the application fee required for an individual permit application for the same discharge." The commission notes that the $100 fee is the minimum fee for an application, as required by TWC, §5.235(b).

TCCOS commented that, under proposed §205.4(h), given the scope of the storm water management programs that will be required by MS4 general permits, and the workings of internal municipal government, it questioned whether it will be practical for a local government to give the TNRCC notice of changes in the program at least ten days before the change is made as would be required by the proposal. The commenter recommended that the specific provisions regarding notice of changes be addressed in the MS4 general permit rather than in this general permit rule.

The commission agrees with this comment. The commission appreciates that it may be difficult to ensure that the requirement to submit a notice of change not later than ten days prior to the change would be reasonable in all instances. Therefore, §205.4(h) is adopted with the phrase "not later than ten days" replaced with the phrase "within a specified period of time."

TCCOS commented that, under proposed §205.4(i), the provision allowing the commission to establish a provision in a general permit for notifications by dischargers to county judges and mayors should be a mandatory requirement for all general permits.

The commission disagrees with this comment. The commission notes that making the notification requirement under §205.4(i) mandatory would result in a veritable flood of notifications to county judges and mayors, because there will be possibly thousands of NOIs, such as the anticipated storm water construction general permits for sites one acre or larger. The commission believes that it is more appropriate to retain the discretionary notification requirement in order to ensure that the significant NOIs will be able to be noticed, without overloading the system with notices concerning relatively insignificant discharges. Therefore, no changes to the proposed text are adopted in response to this comment.

TXU commented that, under §205.5(c), there should not be a requirement that a new NOI be submitted for a renewed general permit if there has been no change in the activities authorized by the general permit. The commenter also noted that if a new NOI is required for discharges which are already permitted by a general permit, the proposed rule would create a gap in coverage between the date a renewed or amended general permit is issued and the date discharges are authorized by the new NOI. The commenter proposed the following language: "Upon issuance of an amended general permit, discharges previously covered under the expired general permit, will have coverage extended to the date authorization is granted under the new NOI, if one is required by the general permit."

The commission disagrees with this comment. The commission believes that it is appropriate that a permittee submit an NOI for continued coverage if the renewed general permit requires an NOI, even if there has been no change in the activities authorized by the general permit. The commission notes that submission of an NOI for permit coverage is an acknowledgment by the applicant that the permit is applicable and that the applicant agrees to comply with the conditions of the general permit. Additionally, renewed general permits may include substantial revisions to the expiring permit. Therefore, no change to the proposed text is adopted in response to this comment.

TCCOS commented that, under proposed §205.5(d), the commission should modify the provision to exempt MS4 permits from the 90-day limitation. The proposal states that if the commission has not proposed to renew a general permit at least 90 days before its expiration date, dischargers authorized under a general permit must submit an individual permit application before the expiration of the general permit.

The commission disagrees with this comment. TCCOS refers to the "existing individual MS4 applications that were required by EPA for the National Pollutant Discharge Elimination System (NPDES) Phase I MS4 permits. These applications contained extensive requirements that took up to two years to complete. The commission will reissue each of these permits as individual TPDES permits as they expire. The commission does not intend to require an application that contains the extensive requirements of the existing NPDES MS4 application for renewal of these permits. Similarly, any MS4 system covered under a general permit that must meet the proposed §205.5(d) requirements would submit an application for an individual permit that is similar to other TPDES discharge permits. The 90-day time frame will provide an appropriate amount of time for applicants to prepare

and submit a TPDES individual permit application form. Therefore, no change to the proposed text is adopted in response to this comment.

Lloyd, Gosselink and TCCOS commented that, under §205.6, the commission lacks the statutory authority to require watershed monitoring and assessment fees for general permits. Both commenters cite TWC, §5.235, which authorizes the commission to collect fees, but only fees "prescribed by law," and TWC, §26.040(k), which allows the commission to impose a reasonable and necessary fee under TWC, §26.0291, on a discharge covered by a general permit. The commenters point out that TWC, §26.0291 authorizes only waste treatment inspection fees. TCCOS recommended that the commission either delete the language in proposed §205.4(g) relating to annual watershed monitoring and assessment fees or should exclude local governments from the scope of the provision.

The commission disagrees with this comment. Under TWC, §26.0135(h) the commission shall assess watershed monitoring and assessment fees to "users of water and wastewater permit holders in the watershed according to the records of the commission generally in proportion to their right, through permit or contract, to use water from and discharge wastewater in the watershed." Persons authorized to discharge wastewater under a general permit are holders of a permit, albeit a general rather that individual permit, who have a right to discharge wastewater by virtue of their coverage under a general permit. Therefore, persons discharging under a general permit fall within the scope of the persons who are assessed a watershed monitoring and assessment fee under TWC, §26.0135. Texas Water Code, §26.040, does not state that the commission may not assess watershed monitoring and assessment fees on persons discharging under a general permit; therefore, the commission's statutory authority under TWC, §26.0135, applies to dischargers authorized under general permits. Therefore, no changes to the proposed text are adopted in response to this comment.

Lloyd, Gosselink commented, under §205.6, that even if TWC, §26.040, did authorize the commission to collect watershed monitoring and assessment fees, which it did not, municipalities having a population of greater than 10,000 may not be charged such fees because TWC, §26.0135(h), provides that no municipality shall be assessed costs for the water quality management activities of TWC, §26.177. The commenter stated that under this provision cities subject to the water pollution abatement plan requirements of TWC, §26.177, would not be required to pay the watershed monitoring and assessment fees.

The commission agrees in part with this comment. The commenter is correct that TWC, §26.0135(h), provides, with respect to watershed monitoring and assessment fees, that no municipality shall be assessed cost for any efforts that duplicate water quality management activities described in TWC, §26.177. However, the commission disagrees that municipalities having a population greater than 10,000 may not be charged watershed monitoring and assessment fees. In order to qualify for the exemption for assessment of costs that duplicate water quality management activities, the municipality must have established and implemented a water pollution control and abatement program under TWC, §26.177(a), that includes, at a minimum, the services and functions described in TWC, §26.177(b)(1) - (6), and the program must have been submitted to and approved by the commission under TWC, §26.177(c).

TCCOS commented that, under §205.6, cities should not be required to submit waste treatment inspection fees for MS4s authorized by a general permit. The commenter expressed the belief that this issue in particular is premature because the resolution of this issue will depend upon how the general permits for MS4 discharges are ultimately structured. The commenter stated that, given the uncertainty relating to the structure of the general permits for MS4 discharges, the commission should consider changing the language in the rule from the mandatory "shall" to the discretionary "may." Alternatively, the commenter suggested that the rule should state that such fees may be charged for MS4 permits and shall be charged for all other general permits.

The commission agrees in part with this comment. Given that the structure of the MS4 general permit is uncertain at this time, the commission believes that by adding the phrase "or as specified in the general permit," needed flexibility will be added to the rules. Therefore, §205.6 is adopted to read in part as follows: "A person authorized by a general permit shall pay an annual waste treatment inspection fee under Texas Water Code (TWC), §26.0291, consistent with §§305.501 - 305.507 of this title (relating to the Waste Treatment Inspection Fee Program) or as specified in the general permit." Accordingly, when the general permit is proposed, this fee issue will be considered and the public will have the opportunity to provide comment.

TCCOS commented that, under §205.6, the amount of annual waste treatment fee that a small MS4 would be required to pay is unclear because existing §305.503(g)(2) is not clear on whether payment of $900 per permit or $900 per outfall is required. Because each city will have numerous storm water outfalls if the fee will be $900 per outfall each city subject to storm water permits will have to pay the maximum $25,000 fee for the luxury of receiving rainfall.

Again, the commission agrees in part with this comment. The commission believes that by adding the phrase "or as specified in the general permit," needed flexibility will be added to the rules. Therefore, §205.6 is adopted to read in part as follows: "A person authorized by a general permit shall pay an annual waste treatment inspection fee under Texas Water Code (TWC), §26.0291, consistent with §§305.501 - 305.507 of this title (relating to the Waste Treatment Inspection Fee Program) or as specified in the general permit." When the general permit is proposed, it will clearly specify whether the annual waste treatment inspection fee applies per permit or per outfall. The commission notes that the public will have the opportunity to comment on this issue at the time the general permit is proposed.

TCCOS commented that, under §205.6, the commission lacks statutory authority to assess municipalities for costs of efforts that duplicate water quality management activities described in TWC, 26.177. The commenter notes that if the general permits for MS4 discharges contain activities that resemble activities described in TWC, §26.177, the commission will lack authority to assess fees for such costs against municipalities.

The commission agrees in part with this comment. The commenter is correct that, under TWC, §26.0135(h), the commission does not have the authority to assess a municipality for the cost of any efforts that duplicate water quality management activities described in TWC, §26.177. However, the commission disagrees that if the general permits for MS4 discharges contain activities that resemble activities described in TWC, §26.177, the commission lacks the authority to assess fees for such costs against municipalities. In order to qualify for the exemption for

assessment of costs that duplicate water quality management activities described in TWC, §26.177, the municipality must have established and implemented a water pollution control and abatement program under TWC, §26.177(a), that includes, at a minimum, the services and functions described in TWC, §26.177(b)(1) - (6), and the program must have been submitted to and approved by the commission under TWC, §26.177(c). The mere inclusion of activities in the MS4 general permits that resemble activities described in TWC, §26.177, does not trigger the exemption for assessment of costs absent the establishment and implementation of an approved water pollution abatement program by a municipality because the exemption is limited to costs for any efforts that duplicate the water quality management activities described in TWC, §26.177. In order for there to be duplication of such activities, the municipality must have previously implemented these activities under its approved water pollution abatement program.

TCCOS commented that, under §205.6, the commission should not assess water treatment fees against municipal discharges associated with industrial activity that are also discharges from the MS4 because the commission would otherwise be recovering double fees for the same discharge.

The commission disagrees with this comment. The commission notes discharges of storm water from MS4s and discharges of storm water from industrial facilities to MS4s must be authorized under two distinctly separate permits. Nevertheless, the commission believes that some flexibility in establishing annual fees is warranted. By adding the phrase "or as specified in the general permit," needed flexibility will be added to the rules. Therefore, §205.6 is adopted to read in part as follows: "A person authorized by a general permit shall pay an annual waste treatment inspection fee under Texas Water Code (TWC), §26.0291, consistent with §§305.501 - 305.507 of this title (relating to the Waste Treatment Inspection Fee Program) or as specified in the general permit." Again, the commission notes that the public will have the opportunity to comment on this issue at the time general permits are proposed.

TCCOS commented that, under §205.6, the rule should include language that acknowledges that the commission may share fees with local governments with MS4 permits. The commenter notes TWC, §26.0291, requires the commission to use the fees generated by the waste treatment fund to pay its expenses in inspecting waste treatment facilities and enforcing the provisions of TWC, Chapter 26. The commenter also notes that TWC, §26.175, provides that the commission may transfer money or property to a local government for the purpose of water quality management, inspection, enforcement, technical aid and education, and the construction, ownership, purchase, maintenance, and operation of disposal systems. If the MS4 general permits require that local governments carry out some of the water quality management, inspection, education and enforcement functions that the commission would otherwise have to perform, those municipalities will be eligible for funds collected by the commission under TWC, §26.0291, and the commission should expressly recognize through this rule that such transfers may take place.

The commission agrees in part with this comment. TWC, §26.175, does provide that a local government may execute cooperative agreements with the commission for the transfer of money or property from any party to the agreement to another party to the agreement for the purpose of water quality management, inspection, enforcement, technical aid and education, and the construction, ownership, purchase, maintenance, and operation of disposal systems. The commission notes that, on a case-by-case basis, the provisions of TWC, §26.175, may come into play. The commission believes that no rule changes are necessary for implementation of these statutory provisions. Therefore, no changes to the proposed text are adopted in response to this comment.

Bexar County and the Texas Counties Storm Water Coalition expressed opposition to the assessment of any fees on counties associated with "Phase II" storm water general permitting and commented that, under §205.6, the assessment of the waste treatment inspection fee should be discretionary rather than mandatory. The commenters suggested the following language for §205.6: "The agency may impose reasonable and necessary fees under Texas Water Code, §26.0291, consistent with sections 305.501 - 305.507 of this title (relating to Waste Treatment Inspection Fee Program) on a discharger covered by a general permit, and may impose an annual watershed monitoring and assessment fee under Texas Water Code §26.0135(h), consistent with section 220.21 of this title (relating to Water Quality Assessment Fees)."

The commission disagrees with this comment. Nevertheless, the commission believes that by adding the phrase "or as specified in the general permit," needed flexibility will be added to the rules, as to the specific amount of the waste treatment inspection fee. Therefore, §205.6 is adopted to read in part as follows: "A person authorized by a general permit shall pay an annual waste treatment inspection fee under Texas Water Code (TWC), §26.0291, consistent with §§305.501 - 305.507 of this title (relating to the Waste Treatment Inspection Fee Program) or as specified in the general permit." In this way, the public will have the opportunity to comment on this issue at the time general permits are proposed.

TPWD commented that, under §205.6, the proposed rule should be revised to read: "A person authorized by a general permit shall pay an annual waste treatment inspection fee under Texas Water Code (TWC) §26.0291, as specified in the general permit or consistent with §§305.501 - 305.507 of this title (relating to the Waste Treatment Inspection Fee Program); and may be subject to an annual watershed monitoring and assessment fee under TWC, §26.0135(h), as specified in the general permit or consistent with §220.21 of this title (relating to Water Quality Assessment Fees)." The commenter stated that the recommended change would track the language proposed for application fees by giving the commission the option of collecting fees in accordance with Chapter 305 and Chapter 220 or establishing them in the general permit. The commenter recommends that the rule should provide for flexibility in establishing the fee structure because fees established according to Chapter 305 may be inappropriately high for some classes of dischargers and it is difficult to anticipate all the types of general permits that the commission may wish to develop.

The commission agrees with this comment. The commission believes that by adding the phrase "or as specified in the general permit," needed flexibility will be added to the rules without diminishing its enforceability. Therefore, §205.6 is adopted to read as follows: "A person authorized by a general permit shall pay an annual waste treatment inspection fee under Texas Water Code (TWC), §26.0291, consistent with §§305.501 - 305.507 of this title (relating to the Waste Treatment Inspection Fee Program) or as specified in the general permit; and may be subject to an annual watershed monitoring and assessment fee under TWC, §26.0135(h), consistent with §220.21 of this title (relating

to Water Quality Assessment Fees) or as specified in the general permit."

TXU commented that although fees are not part of the proposed rule, the commission should provide an opportunity for the public to comment on any additional fees that would be placed on the regulated community as a result of moving storm water discharges into the general permitting process.

The commission agrees with this comment. The commission notes that the public will have the opportunity to comment on any fees assessed under a general permit at the time the general permit is proposed.

The National Wildlife Federation commented that, regarding consistency with the CMP, the provisions of the rules requiring denial of authorization to discharge for discharges adversely affecting critical areas do not provide protection in the case of general permits that do not require the filing of a notice of intent. The commenter stated that critical areas are not adequately protected by these rules to make them consistent with the CMP.

The commission disagrees with this comment. The commission notes that general permits must be developed with conditions and limitations that are protective of water quality and human health. Whether or not an NOI is required to be filed does not diminish the level of protection provided by the general permit. Since persons who discharge under a general permit must abide by its conditions and limitations, whether or not an NOI is required to be filed, the general permit and these rules are consistent with the CMP. Therefore, no changes to the proposed text are adopted in response to this comment.

STATUTORY AUTHORITY

The amendments are adopted under and implement TWC, §26.040, which provides the commission with the authority to regulate certain waste discharges by general permit, and TWC, §26.040(m), which authorizes the commission to adopt rules as necessary to implement TWC, §26.040.

These amendments are also adopted under the TWC, §5.102, which provides the commission with general powers to carry out duties under the TWC, §§5.103, 5.105, and 5.120, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state and to establish and approve all general policies of the commission.

§205.1. Definitions.

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

(1) Compliance history - The record of all notices from the commission, including notices of violation from the executive director; and of all orders of the commission, of any other agency or political subdivision of the State of Texas and of the United States Environmental Protection Agency (EPA) pertaining to an applicant's adherence to environmental laws and rules of the State of Texas or the United States; with the terms of any permit, compliance agreement or order issued by the commission or the USEPA; and with any final judicial decision or settlement addressing the applicant's adherence to such environmental laws and rules. The history shall be for the five-year period before the date on which the NOI is filed or, if an NOI is not required, the five-year period before the permittee begins operating under the general permit. It shall not include any order that is precluded by its terms or by law from becoming part of the applicant's compliance history.

(2) General permit - A permit issued under the provisions of this chapter authorizing the discharge of waste into or adjacent to water in the state for one or more categories of waste discharge within a geographical area of the state or the entire state as provided by Texas Water Code (TWC), §26.040.

(3) Individual permit - A permit, as defined in the TWC, §26.001, issued by the commission or the executive director to a specific person or persons in accordance with the procedures prescribed in the TWC, Chapter 26, (other than TWC, §26.040).

(4) Notice of change or NOC - A written submittal to the executive director from a discharger authorized under a general permit providing changes to information previously provided to the agency, or any changes with respect to the nature or operations of the facility, or the characteristics of the discharge.

(5) Notice of intent or NOI - A written submittal to the executive director from a discharger requesting coverage under the terms of a general permit.

(6) Notice of termination or NOT - A written submittal to the executive director from a discharger authorized under a general permit requesting termination of coverage.

(7) Texas Pollutant Discharge Elimination System (TPDES) - The state program authorized under Clean Water Act, §§307, 318, 402, and 405 for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements under the Texas Water Code and Texas Administrative Code regulations.

§205.2. Purpose and Applicability.

(a) The commission may issue a general permit to authorize the discharge of waste into or adjacent to water in the state by category if the commission finds the discharges in the category are storm water or the dischargers in the category:

(1) engage in the same or substantially similar types of operations;

(2) discharge the same types of waste;

(3) are subject to the same requirements regarding effluent limitations or operating conditions;

(4) are subject to the same or similar monitoring requirements; and

(5) are more appropriately regulated under a general permit than under individual permits, on the basis that both:

(A) the general permit can be readily enforced and the executive director can adequately monitor compliance with the terms of the general permit; this requirement being satisfied if the provisions of the general permit are clear and unambiguous and it requires adequate monitoring, record keeping, and reporting, appropriate to the type of activity authorized; and

(B) the category of discharges covered by the general permit will not include a discharge of pollutants that will cause significant adverse effects to surface or groundwater quality.

(b) The commission may issue a general permit to authorize the discharge of waste by categories of dischargers designated under subsection (a) of this section either within the entire state or within a discrete geographical area identified by an appropriate division or combination of geographic or political boundaries.

(1) General permits granted for discrete geographical areas may be based upon, but not limited to, factors such as related water quality standards, climatological conditions, and watershed specific

standards in accordance with Chapter 311 of this title (relating to Watershed Protection).

(2) Discharges to be regulated with effluent limitations specific to a particular water body may be covered under a general permit limited to a particular watershed or geographical area.

(c) Authorization to discharge under a general permit does not confer a vested right.

§205.3. Public Notice, Public Meetings, and Public Comment.

(a) Notice shall be published as follows.

(1) If the draft general permit will not have statewide applicability, the agency shall publish notice of each draft general permit in the *Texas Register* and in a daily or weekly newspaper of general circulation in the area affected by the activity that is the subject of the proposed general permit.

(2) For draft general permits with statewide applicability, notice shall be published in the *Texas Register* and in at least one newspaper of statewide or regional circulation.

(3) The public notice shall be published not later than the 30th day before the commission considers the approval of a general permit.

(b) For Texas Pollutant Discharge Elimination System general permits, mailed notice of the draft general permit will also be provided to the following:

(1) the county judge of the county or counties in which the dischargers under the general permit could be located;

(2) if applicable, persons for which notice is required in 40 Code of Federal Regulations (CFR), §124.10(c); and

(3) any other person the executive director or chief clerk may elect to include.

(c) The contents of a public notice of a draft general permit shall:

(1) include the applicable information described in §39.11 of this title (relating to Text of Public Notice);

(2) include an invitation for written comments by the public regarding the draft general permit;

(3) specify a comment period of at least 30 days; and

(4) include either a map or description of the permit area.

(d) Requirements relating to public meetings are as follows.

(1) The agency may hold a public meeting to provide an additional opportunity for public comment and shall hold such a public meeting when the executive director determines, on the basis of requests, that a significant degree of public interest in a draft general permit exists.

(2) Notice of a public meeting shall be by publication in the *Texas Register* not later than the 30th day before the date of the meeting.

(3) Notice of the public meeting shall be mailed to the following:

(A) the county judge of the county or counties in which the dischargers under the general permit could be located;

(B) if applicable, persons for which notice is required in 40 CFR, §124.10(c);

(C) any other person the executive director or chief clerk may elect to include; and

(D) persons who filed public comment or request for a public meeting on or before the deadline for filing public comment or request for a public meeting.

(4) The contents of a public notice of a public meeting shall include the applicable information described in §39.11 of this title (relating to Text of Public Notice). Each notice must include an invitation for written or oral comments by the public regarding the draft general permit.

(5) The public comment period shall automatically be extended to the close of any public meeting held by the agency on the proposed general permit.

(e) If the agency receives public comment during the comment period relating to issuance of a general permit, the executive director shall respond in writing to these comments, and this response shall be made available to the public and filed with the chief clerk at least ten days before the commission considers the approval of the general permit. The response shall address written comments received during the comment period and oral or written comments received during any public meeting held by the agency. The commission shall consider all public comment in making its decision and shall either adopt the executive director's response to public comment or prepare its own response.

(1) The commission shall issue its written response to comments on the general permit at the same time the commission issues or denies the general permit.

(2) A copy of any issued general permit and response to comments shall be made available to the public for inspection at the agency's Austin office and also in the appropriate regional offices.

(3) A notice of the commission's action on the proposed general permit and a copy of its response to comments shall be mailed to each person who made a comment.

(4) A notice of the commission's action on the proposed general permit and the text of its response to comments shall be published in the *Texas Register*.

(f) Except as specified in subsection (g) of this section, the requirements of subsections (a) - (e) of this section apply to processing of a new general permit, an amendment, renewal, revocation, or cancellation of a general permit.

(g) A general permit may be proposed for minor amendment or minor modification, as described in §305.62(c) of this title (relating to Amendment), without newspaper publication.

§205.4. Authorizations and Notices of Intent.

(a) A qualified discharger may obtain authorization to operate under a general permit by complying with the general permit's conditions for gaining coverage.

(1) A general permit shall specify either an applicable deadline for filing the notice of intent (NOI), or that an NOI is not required prior to commencement of a qualifying discharge.

(2) No new discharge under the authority of a general permit may commence after a general permit has expired.

(3) For those general permits requiring an NOI, a discharger may begin discharging under the general permit after the date or period of time specified in the general permit unless the executive director or commission before that time notifies the discharger pursuant to subsections (c) or (e) of this section that the discharger is not eligible for authorization under the general permit.

(4) The executive director shall provide written notice to a discharger if the executive director determines that the discharger is not eligible for authorization under the general permit. The content of the notice is described in subsections (c) and (d) of this section.

(5) An NOI shall be submitted to the executive director in a form or format that is specified in the general permit or otherwise set out in commission rules.

(b) The following requirements apply to existing individual permittees.

(1) The general permit shall specify how a discharger covered by an individual permit may substitute authorization to discharge waste under the general permit. At a minimum, the general permit shall provide that coverage under the general permit shall not commence until:

(A) the permittee has submitted an NOI, if one is required by the general permit, as specified by subsection (f) of this section; and

(B) the executive director has received the discharger's written request that the individual permit be canceled or amended, as appropriate.

(2) The general permit may allow a discharger who is covered by an individual permit to obtain authorization to discharge waste from a new outfall under a general permit. Agency action on a new discharge does not affect the status of the discharger's existing individual permit. The general permit shall describe how to obtain authorization to discharge waste from a new outfall. Authorization under the general permit shall not commence until the discharger:

(A) submits an NOI, if one is required by the general permit, as specified in subsection (f) of this section; and

(B) requests and receives written approval from the executive director of a minor modification to their individual permit exempting the new outfall from coverage under the individual permit.

(3) Except as provided under subsection (b)(2) of this section, the commission shall cancel an individual permit if the executive director or commission does not deny the NOI or authorization under subsection (c) or (e) of this section.

(c) The following requirements apply to denial of an authorization or notice of intent.

(1) The executive director shall provide written notice to a discharger if the executive director denies the discharger's NOI or authorization to discharge under a general permit, including, at a minimum, a brief statement of the basis for this decision.

(2) The executive director shall deny authorization to discharge under an existing general permit for the following reasons:

(A) the quantity of discharge, the type of waste, or the type of operation does not comply with the general permit;

(B) the discharge is required to be authorized under the Texas Pollutant Discharge Elimination System (TPDES), and discharging under the general permit would result in backsliding prohibited under 40 Code of Federal Regulations §122.44(l), as amended and adopted under §305.531(3) of this title (relating to Establishing and Calculating Additional Conditions and Limitations for TPDES Permits);

(C) the discharge causes a violation of the Texas Surface Water Quality Standards;

(D) the discharge is located where it causes or could cause an adverse impact upon a critical area, as defined in 31 TAC §501.3 (relating to Definitions and Abbreviations), and there is a suitable location that is available and capable of being used in light of cost, technology, and logistics;

(E) the discharger or facility:

(i) has failed to pay any portion of a delinquent fee or charge assessed by the executive director;

(ii) is not in compliance with all requirements, conditions, and time frames specified in an unexpired commission final enforcement order relating to the activity regulated by the general permit; or

(iii) is subject to an unexpired enforcement order that requires the facility to comply with operating conditions different from or additional to the requirements of the general permit;

(F) the discharge would be inconsistent with the state water quality management plan (WQMP).

(3) The executive director may deny authorization to discharge under an existing general permit for reasons including, but not limited to, the following:

(A) a change has occurred in the availability of demonstrated technology or practices for the prevention, control, or abatement of pollutants applicable to the discharge necessary to be implemented to meet applicable federal or state standards;

(B) specific effluent limitation guidelines are promulgated for a discharge covered by the general TPDES permit, but the general permit has not yet been amended to incorporate the new effluent limitation guidelines;

(C) the owner and/or the operator of the facility has not filed an NOI in accordance with §305.43 of this title (relating to Who Applies);

(D) the discharger has been determined by the executive director to have been out of compliance with any rule, order, or permit of the commission, including non-payment of fees assessed by the executive director;

(E) the discharge contains pollutants that cause significant adverse effects to water quality. In making this determination, the executive director shall consider the following factors:

(i) the location of the discharge;

(ii) the size of the discharge;

(iii) the quantity and nature of pollutants discharged;

(iv) whether the discharge would adversely affect groundwater quality, inconsistent with the policy specified in the Texas Water Code (TWC), §26.401; and

(v) other factors relating to the protection of water quality standards; and

(F) the discharger or facility is the subject of an unresolved agency enforcement action in which the executive director has issued written notice that enforcement has been initiated.

(4) If authorization to discharge is denied under this subsection, the executive director may require the person whose authorization is denied to apply for and obtain an individual permit. If the discharger is seeking to replace its individual permit with general permit coverage, but the discharger's general permit authorization is denied, the discharger shall apply for renewal of the individual permit prior to

the expiration date of its individual permit to maintain authorization to discharge, in accordance with §305.63 of this title (relating to Renewal).

(d) The following requirements apply to suspensions of authorizations and NOIs.

(1) The general permit shall describe the procedures for suspension of authorization and NOIs under a general permit. The general permit shall require the executive director to provide written notice to a discharger that the executive director intends to suspend a discharger's authority to discharge under a general permit, including:

(A) a brief statement of the basis for this decision under this subsection;

(B) a statement of whether the discharger shall immediately cease the discharge;

(C) a statement setting the deadline for filing the application for an individual permit; and

(D) a statement that the person's discharge authorization under the general permit shall be suspended on the effective date of the commission's action on the individual permit application unless the commission expressly provides otherwise, or unless the executive director has required the discharger to immediately cease the discharge;

(2) Except for suspensions under paragraph (5)(F) of this subsection relating to storm water discharges, if a discharger's authorization under a general permit is suspended, the discharger shall immediately cease the discharge.

(3) The executive director may require the person whose authorization to discharge is suspended to apply for and obtain an individual permit.

(4) After providing written notice to the discharger, the executive director shall suspend authorization to discharge under an existing general permit for the following reasons:

(A) the quantity of discharge, the type of waste, or the type of operation does not comply with the general permit;

(B) the discharge causes a violation of the Texas Surface Water Quality Standards;

(C) the discharger or facility:

(i) has failed to pay any portion of a delinquent fee or charge assessed by the executive director;

(ii) is not in compliance with all requirements, conditions, and timeframes specified in an unexpired commission final enforcement order relating to the activity regulated by the general permit, or

(iii) is subject to an unexpired enforcement order that requires the facility to comply with operating conditions different from or additional to the requirements of the general permit;

(D) the discharge is inconsistent with the state WQMP;

(E) an application is not received by the deadline specified by rule or in the general permit.

(5) After providing written notice to the discharger, the executive director may suspend authorization to discharge under an existing general permit for reasons including, but not limited to, the following:

(A) a change has occurred in the availability of demonstrated technology or practices for the prevention, control, or abatement of pollutants applicable to the discharge necessary to be implemented to meet applicable federal or state standards;

(B) specific effluent limitation guidelines are promulgated for a discharge covered by the general TPDES permit, but the general permit has not yet been amended to incorporate the new effluent limitation guidelines;

(C) the owner and/or the operator of the facility has not filed an NOI in accordance with §305.43 of this title;

(D) circumstances have changed since the time of the NOI so that the discharge is no longer appropriately controlled to meet applicable water quality standards under the general permit, or either a temporary or permanent reduction, or elimination of the authorized discharge is necessary;

(E) the discharger has been determined by the executive director to have been out of compliance with any rule, order, or permit of the commission, including non-payment of fees assessed by the executive director;

(F) the discharge contains pollutants that cause significant adverse effects to water quality. In making this determination, the executive director shall consider the following factors:

(i) the location of the discharge;

(ii) the size of the discharge;

(iii) the quantity and nature of pollutants discharged;

(iv) whether the discharge would adversely affect groundwater quality, inconsistent with the policy specified in the TWC, §26.401; and

(v) other factors relating to the protection of water quality standards; and

(G) the discharger or facility is the subject of an unresolved agency enforcement action in which the executive director has issued written notice that enforcement has been initiated.

(e) The commission, after hearing, shall deny or suspend a discharger's authority to discharge under a general permit if the commission determines that the discharger operates any facility for which the discharger's compliance history contains violations constituting a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations. A hearing under this subsection is not subject to Texas Government Code, Chapter 2001.

(f) The general permit shall describe the content of the NOI, if one is required by the general permit. At a minimum, the NOI shall require the submission of information necessary for adequate program implementation including, at a minimum, the legal name and address of the owner and operator, the facility name and address, specific description of its location, type of facility or discharges, and the receiving water(s). An NOI shall be signed in accordance with §305.44 of this title (relating to Signatories to Applications).

(g) Unless otherwise provided in the general permit or in §305.53 of this title (relating to Application Fee), a person seeking authorization by general permit shall submit a $100 application fee payable to the agency at the time of filing an NOI. If a person is denied coverage under the general permit in accordance with subsection (c) or (e) of this section, any application fee will be applied to the application fee required for an individual permit application for the same discharge.

(h) The general permit shall require a person authorized to discharge waste under a general permit to submit up-to-date information

to the executive director in a notice of change within a specified period of time prior to a change in previous information provided to the agency or any other change with respect to the nature or operations of the facility or the characteristics of the discharge. In cases where the general permit requires that an NOI be submitted, the general permit shall require that when the ownership of the facility changes or is transferred, a notice of termination be submitted by the present owner, and a new NOI be submitted by the new owner, not later than ten days prior to the change in ownership.

(i) When requested by a county or municipality, the commission may establish a provision in a general permit for notification by the discharger to a county judge or mayor of a municipality of NOIs that would allow discharges within their respective jurisdiction. If the executive director or commission denies authorization for a proposed discharge in the county or municipality, the executive director shall notify the county judge or mayor.

(j) The executive director's decisions on NOIs under this chapter are subject to §50.139 of this title (relating to Motion to Overturn Executive Director's Decision).

§205.6. Annual Fee Assessments.

A person authorized by a general permit shall pay an annual waste treatment inspection fee under Texas Water Code (TWC), §26.0291, consistent with §§305.501-305.507 of this title (relating to the Waste Treatment Inspection Fee Program) or as specified in the general permit; and may be subject to an annual watershed monitoring and assessment fee under TWC, §26.0135(h), consistent with §220.21 of this title (relating to Water Quality Assessment Fees) or as specified in the general permit.

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 August 24, 2000.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-4712

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CHAPTER 281. APPLICATIONS PROCESSING
SUBCHAPTER A. APPLICATIONS PROCESSING

30 TAC §§281.5, 281.21, 281.23

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §281.5, Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits; §281.21, Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary; and §281.23, Application Amendment. Section 281.23 is adopted *with changes* to the proposed text as published in the June 16, 2000 issue of the *Texas Register* (25 TexReg 5807). Sections 281.5 and 281.21 are adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The changes adopted in Chapter 281 are part of a larger rulemaking to revise the agency's radiation control rules. This rulemaking package has three major goals: (1) implement House Bill (HB) 1172, 76th Legislature, 1999, and its amendments to the Texas Health and Safety Code (THSC); (2)implement the recommendations of the TNRCC's Business Process Review Permit Implementation Team (BPR-PIT) to provide for consistency between the administrative procedures of the radiation control program and the other permitting programs within the agency; and (3) improve readability and understanding by reorganizing 30 TAC Chapter 336 (relating to Radioactive Substance Rules), by putting its requirements into plain English and by eliminating its redundancies and conflicts.

The BPR-PIT changes are part of an agency-wide effort to make programs consistent where feasible. The agency's management has mandated the consistency effort to make agency processes more efficient and "user friendly." Most of the license application process requirements in Chapter 336 can be modified to be more consistent with the permit application requirements of the rest of the agency. The TNRCC expects a consistent application process to be especially helpful for persons who have multiple permits/licenses from the TNRCC or are seeking consolidated permits. Major adopted changes are: (1) that the radiation control program will begin using the agency's definitions for major and minor amendments; and (2) the radiation control program application process will be moved completely from Chapter 336 to Chapter 281 (relating to Applications Processing) and Chapter 305 (relating to Consolidated Permits) with technical requirements remaining in Chapter 336 and amended to be consistent with agency administrative procedures.

The following amendments are adopted to make the application requirements of Chapter 281 applicable to the radiation program and to correct a cross-reference.

SECTION BY SECTION DISCUSSION

The §281.5 title was amended to read "Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits" to be inclusive of radioactive material. The section was also amended to add "radioactive material" in another location to make the requirement also applicable to radioactive material. As recommended by the agency's BPR-PIT, programs have been encouraged to seek consistency in processes wherever possible, to simplify the regulatory process for both the regulated public and the agency. These adopted amendments make the radioactive material license application process the same as with other waste permit application processes. Since all administrative reviews have been consolidated within the agency, having a similar application format and content should make the administrative review of radioactive material license applications more efficient.

Section 281.21(f)(1) was amended by inserting "When the executive director is considering an application for a new license or license renewal to dispose of low-level radioactive waste from other persons and determines that the licensed activity may have a significant effect on the human environment, the executive director shall prepare or have prepared a written analysis of the effect on the environment" in place of deleted "The executive director shall prepare a written environmental analysis of a proposed license activity as required by Chapter

336 of this title (relating to Radioactive Substance Rules); and." This amendment is necessary to incorporate the language that needed to be carried over from concurrently repealed §336.203(a) of this title (relating to Environmental Analysis). Section 281.21(f)(2) was also amended to add "The environmental analysis, shall be included as part of the record of the commission's proceedings." This amendment is necessary to incorporate the language that needed to be carried over from concurrently repealed §336.203(b).

Section 281.23(a) was amended to delete "or Chapter 336 of this title (relating to Radioactive Substance Rules)." This amendment is necessary due to concurrently adopted changes to 30 TAC §305.62 and §336.2(58) and (61) by which the radiation control program adopts the definitions of major and minor amendment used by other agency programs, as discussed in the preamble on §305.62(c)(2). Another change to §281.23(b)(1) was made from proposal to adoption in the reference to the definition of major amendment, §336.2 was changed to §305.62 because the definition of major amendment has been moved from §336.2 to §305.62 in concurrent rulemaking. These adopted changes are one of the agency's BPR-PIT's recommendations to provide for greater consistency between programs within the agency. The changes are especially helpful for persons having more than one permit/license from this agency and for simplifying the processing of any consolidated permit/license application.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has 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 adopted amendments to §§281.5, 281.21, and 281.23 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because there are no new requirements added. In summary, the rules simply amend the definition of low-level radioactive waste to be compatible with the NRC definition and make the radiation application requirements more consistent with those of the rest of the agency.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of these rule amendments is to implement the recommendations of the TNRCC's BPR-PIT to provide for consistency between the procedures of the radiation control program and the other permitting programs within the agency. The rules substantially advance this specific purpose by facilitating the use of the agency's definitions for major amendments rather than a radiation control program specific definition and by moving part of the application process from Chapter 336 to Chapter 281 (relating to Applications Processing). Promulgation and enforcement of these adopted rules will not burden private real property which is the subject of the rules because there are no new rule requirements added.

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/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 on the proposed amendments was held on July 6, 2000; however, no one appeared at the hearing to testify. No written comments were received concerning this chapter during the public comment period which closed on July 17, 2000.

STATUTORY AUTHORITY

The amendments are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

§281.23. Application Amendment.

(a) No amendments to an application which would constitute a major amendment under the terms of §305.62 of this title (relating to Amendment) can be made by the applicant after the chief clerk has issued notice of the application and draft permit, unless new notice is issued which includes a description of the proposed amendments to the application. For purposes of this section, an attempted transfer of an application shall constitute an amendment requiring additional notice.

(b) For applications under Chapter 336 of this title (relating to Radioactive Substance Rules), an application amendment received after commencement of technical review, shall be processed as follows:

(1) The executive director shall determine whether the application amendment constitutes a major amendment as defined in §305.62 of this title or constitutes a substantial technical change to the application. Substantial technical changes may include changes in proposed waste disposal methods, enlargement or relocation of proposed areas to be licensed, transfer of an application to another applicant, significant changes in proposed facilities or operations, or other changes which will require extensive technical review.

(2) An application amendment that constitutes a major amendment or a substantial technical change shall be processed as a new and separate application.

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 August 25, 2000.

TRD-200005977
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-0348

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CHAPTER 290. PUBLIC DRINKING WATER

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §290.38, Definitions; §290.39, General Provisions; §290.41, Water Sources; §290.44, Water Distribution; §290.45, Minimum Water System Capacity Requirements; and §290.47, Appendices. The commission also adopts new §290.42, Water Treatment; §290.46, Minimum Acceptable Operating Practices for Public Drinking Water Systems; §290.101, Purpose; §290.102, General Applicability; §290.103, Definitions; §290.104, Summary of Maximum Contaminant Levels, Maximum Residual Disinfectant Levels, Treatment Techniques, and Action Levels, §290.105, Secondary Standards; §290.106, Inorganic Contaminants; §290.107, Organic Contaminants; §290.108, Radiological Sampling and Analytical Requirements; §290.109, Microbial Contaminants; §290.110, Disinfectant Residuals; §290.111, Turbidity; §290.112, Total Organic Carbon (TOC); §290.113, Disinfection By-products (TTHM AND HAA5); §290.114, Disinfection By-products Other than TTHM and HAA5; §290.115, Transition Rule for Disinfection By-products; §290.117, Regulation of Lead and Copper; §290.118, Secondary Constituents; §290.119, Analytical Procedures; §290.121, Monitoring Plans; and §290.122, Public Notification. The commission also adopts the repeal of §290.42, Water Treatment; §290.46, Minimum Acceptable Operating Practices for Public Drinking Water Systems; and §§290.101 - 290.106 and 290.108 - 290.121. Sections 290.39, 290.41, 290.42, 290.44, 290.46, 290.47, 290.102 - 290.115, 290.118, 290.119, and 290.121 are adopted *with changes* to the proposed text as published in the April 21, 2000, issue of the *Texas Register* (25 TexReg 3420). The amendments to § 290.38 and §290.45; the repeal of §§290.42, 290.46, 290.101 - 290.106, and 290.108 - 290.121; and new §§290.101, 290.117, 290.122 are adopted without changes and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted rules implement the federal Stage 1 Disinfectants and Disinfection By-products Rule (DBP1R), 63 Fed Reg 69390 (1998) and the federal Interim Enhanced Surface Water Treatment Rule (IESWTR), 63 Fed Reg 69478 (1998). The adopted rules will also make changes to the state design criteria for drinking water treatment plants and clarify existing regulatory requirements.

The sections of the rules relating to the federal Stage 1 DBP1R implement National Primary Drinking Water Regulations for three disinfectants (chlorine, chloramines, and chlorine dioxide), two groups of organic disinfection by-products (total trihalomethanes and haloacetic acids) and their organic precursors, and two inorganic disinfection by-products (chlorite and bromate). These sections also include monitoring, reporting, and public notification requirements for these compounds. The sections that relate to the disinfectants apply to all public water systems while the sections related to organic and inorganic disinfection byproducts apply only to community water systems and nontransient, noncommunity systems. The regulatory provisions related to the federal Stage 1 DBP1R are implemented in a staged manner beginning January 1, 2001.

The sections of the rules related to the federal IESWTR apply to all public water systems operating surface water treatment plants or treatment plants for groundwater under the direct influence of surface water (GUI). A well is under the direct influence of surface water if water from the surface can flow into the well. For example, the presence of surface-water dwelling microbes in the wellwater would indicate that the well is under the direct influence of surface water. The rules require *Cryptosporidium* removal at all surface water and GUI systems through strengthened combined filter effluent turbidity (CFE) performance standards. The rules also establish individual filter turbidity provisions and disinfection benchmark provisions for those surface water and GUI systems serving more than 10,000 people. All of the sections related to the IESWTR become effective on January 1, 2002.

The federal requirements for IESWTR apply to public water systems that serve at least 10,000 people and use surface water or GUI. Systems that serve fewer than 10,000 people and use surface water or GUI will be regulated under the United States Environmental Protection Agency's (EPA) proposed Long Term Stage 1 Enhanced Surface Water Treatment Rule (LT1ESWTR). The *Cryptosporidium* removal (i.e., combined filter effluent) provisions of the LT1ESWTR will be the same as the IESWTR provisions. Although the proposed effective date of the LT1ESWTR is November 1, 2003, Texas rules implement the CFE turbidity limits for systems serving fewer than 10,000 people at the same time as systems serving 10,000 or more people on January 1, 2002.

The draft proposal language for the Chapter 290 rules was developed in an ad hoc workgroup that included representatives of utilities of all types and sizes, from all areas of Texas; Texas League of Women Voters; Texas Rural Water Association; Texas Water Utilities Association; Texas Section of the American Water Works Association; Clean Water Action; Texas Municipal League; Texas AIDS Network; TNRCC Field Operations staff; and TNRCC central office staff. Each element of the rules was covered in four eight-hour meetings. One of the items this group discussed was the well-documented public health threat posed by even short-term exposure to *Cryptosporidium*. Because lowering the turbidity of the combined filter effluent provides a significant degree of protection against this pathogen, the group reached a consensus that the new strengthened CFE turbidity limits should be implemented simultaneously for small and large surface water and GUI systems. However, the workgroup recognized that some small systems might not be able to meet the new CFE turbidity limit with their existing facilities and recommended that the commission extend the compliance deadline for small surface water and GUI treatment plants that need to upgrade or renovate their facilities. Under the adopted rules, the TNRCC will extend the compliance deadline for the new CFE limit until January 1, 2004, (i.e., the date that DBP1R provisions apply to systems which serve fewer than 10,000 people) for any small system that needs to make, and agrees to make necessary capital improvements to its surface water or GUI treatment plant.

Chapter 290 also includes revised design criteria for public water system facilities and revises monitoring and reporting requirements. The sections of the rules relating to state design criteria apply to all public water systems. However, some of the changes to the design criteria apply to specific unit processes and therefore will only affect water treatment plants utilizing those specific unit processes. If a plant does not have a specific unit process that is covered by the rules, the plant is not affected by the rules regarding that specific unit process.

SECTION BY SECTION DISCUSSION

Adopted new §290.38, Definitions, incorporates definitions that are used in the subchapter. These include a definition of public drinking water program which is a term used in various sections of the adopted regulations. Because of changes to various rules related to backflow protection and cross-connection control, the definitions for ABPA, ASSE, and high health hazard were deleted. The definition of health hazard is amended, and definitions for air gap, nonhealth hazard, potential contamination hazard, and L/d ratio are added.

Adopted new §290.39, General Provisions, incorporates three new provisions. This section provides that a person proposing to install a public drinking water system near a city, district, or a certificated service area of another water service provider must file a written application for service with that other service provider and pay all application fees. This section also allows a public water system to seek a hardship exception to the requirement to apply for service. Finally, the section requires all systems to notify the executive director of any plans to modify its disinfection practices.

Adopted new §290.39(c)(2) provides a hardship exception for the requirement to apply for service from an adjacent water supply. The executive director will evaluate any request for this hardship exception using criteria found in the agency's regulatory guidance document, "The Feasibility of Regionalization, Water Utilities Program."

Adopted new §290.39(e)(5) provides that construction features and facility siting for new water systems and major improvements must be in conformity with applicable commission rules.

Adopted new §290.39(j)(2) provides that certain public water systems (i.e., those that use surface water sources or groundwater sources under the direct influence of surface water) must notify the executive director prior to making significant changes to the disinfection process used at their treatment plant and was amended to require these systems to obtain the executive director's approval before implementing the change.

Adopted new §290.39(j)(3) provides that public water systems must notify the executive director prior to changing the type of disinfectant used to maintain a disinfectant residual in the distribution system.

Adopted new §290.41, Water Sources, references the current American Water Works Association (AWWA) standard for water well pressure cementation methods. This section also provides that water quality data that must be provided by the design engineer to the staff in order to obtain approval for a new surface water source.

Adopted new §290.41(c)(3)(C) references the current AWWA standard for water well pressure cementation methods.

Adopted new §290.41(c)(3)(H) provides that well installation must be done in such a way that the public water supply well is protected from contamination due to flooding.

Adopted new §290.41(e)(1)(F) expressly states the water quality data that must be provided by the design engineer to the executive director in order to obtain approval for a new surface water source. This section was amended to add source water pH to the list of parameters. Also, in response to comments, fecal coliform was replaced by *Escherichia coli* to better correspond with the state water quality standards for identification of human contamination.

Adopted new §290.42 contains the state design criteria for drinking water treatment plants.

Adopted new §290.42(a) provides for the capacity of the public water system's production and treatment facilities. New subsection (b) provides the standards for groundwater sources.

Adopted new §290.42(c) addresses standards for springs and other water sources. New paragraph (1) incorporates the new federal requirement, under 40 Code of Federal Regulations (CFR) §141.170(a)(1), that treatment facilities achieve a 2-log (99%) removal of *Cryptosporidium* oocysts from water sources that may be vulnerable to contamination from surface water.

Adopted new §290.42(d) addresses standards for surface water sources and incorporates the new federal requirement that treatment facilities achieve a 2-log (99%) removal of *Cryptosporidium* oocysts from surface water sources from 40 CFR §141.170(a)(1). The section contains the updated minimum design requirements for surface water treatment plants. New paragraph (2) relates to cross-connection control within the treatment plant and was amended to incorporate the prohibition against leaking conduits and piping. New paragraph (3) relates to waste stream management and recycling practices at surface water treatment plants and was amended to eliminate an unrelated sentence regarding leaking piping. New paragraph (5) requires surface water treatment plants to have flow metering devices to monitor the flow rate of water in separate treatment trains, recycled decant water, and treated water used to backwash filters, in addition to the requirement that flow metering devices be provided for raw and finished water. This will provide the water plant operator with basic operational data with which to operate the plant effectively given the new turbidity requirements of 40 CFR §141.173(a)(1).

Adopted new §290.42(d)(6), contains the requirements for chemical storage and feed at surface water treatment plants. New subparagraph (A) requires that the system be designed with the capability to store a 15-day supply of chemicals at the design capacity of the surface water treatment plant. This addresses the fact that resupply in Texas may be accomplished with more rapidity than that which was achievable at the time the old rule was promulgated. New subparagraph (B) contains the requirements for day tanks and provides for process control instrumentation to ensure that no overfeed of chemicals occurs. New subparagraph (C) requires that all chemical tanks be clearly labeled with the tank's contents and new subparagraph (D) contains the requirements for storage of dry chemicals. New subparagraph (E) requires bulk storage facilities, day tanks, and their containment facilities be designed to minimize the possibility of leaks and spills. New subparagraph (F) requires that the pumps and control systems used in contact with a chemical be designed to minimize the possibility of leaks and spills. New subparagraph (G) requires the piping and valves associated with the storage of a chemical be constructed of materials compatible with that chemical.

Adopted new §290.42(d)(7), relates to the design of facilities used to feed water treatment chemicals. The paragraph contains requirements that will allow chemicals to be applied in a manner that will maximize reliability, facilitate maintenance, and ensure optimal finished water quality. Subparagraph (A) requires each chemical feeder to have a standby or reserve unit. Subparagraph (B) addresses chemical feed equipment dosage. Subparagraph (C) requires the materials used for chemical feeders be compatible with the chemical being fed and subparagraph (D) requires that the design of chemical feed

systems prevent chemical back-siphoning. Subparagraph (E) addresses enclosed feed lines, subparagraph (F) addresses dry chemical feeders, subparagraph (G) addresses coagulant feed systems, subparagraph (H) addresses the separation of chlorine and ammonia feed equipment, and subparagraph (I) requires chemical feed points be provided to achieve acceptable finished water quality, adequate taste and odor control, corrosion control, and disinfection.

Adopted new §290.42(d)(8) addresses flash mixing equipment, distinct from flocculation. Two sets of mechanical flash mixing equipment are required for plants treating more than 3.0 million gallons per day. Public water systems with other sources of potable water, with which they can meet average daily water demand, are exempted from the requirement for redundant equipment. Flash mixing equipment is to be sized to account for the range of flows likely to be treated at the plant.

Adopted new §290.42(d)(9) contains provisions for flocculation equipment. Subparagraph (A) allows public water systems treating over 3.0 million gallons per day with other sources of potable water, with which they can meet average daily water demand, to design a new plant with one set of flocculation equipment. Subparagraph (B) addresses the design of coagulation to achieve settleable floc. Flocculation facilities are to be designed with a minimum theoretical detention time of at least 20 minutes when operated at the design flow rate to correspond with currently acceptable engineering practice. However, facilities constructed prior to October 1, 2000 are exempt from this requirement if the settled water turbidity of each sedimentation basin remains below 10.0 Nephlometric Turbidity Units (NTU) and the filtered water meets the requirements of §290.111. Flocculation facilities are to be designed with decreasing mixing energy from the inlet to outlet. Subparagraph (C) requires coagulated water be transported without destruction of floc.

Adopted new §290.42(d)(10) contains the requirements for surface water treatment plant sedimentation or clarification facilities. Subparagraph (A) allows public water systems treating over 3.0 million gallons per day, with other sources of potable water with which they can meet average daily water demand, to design a new plant to have one set of clarification equipment. Subparagraph (B) requires design to prevent short-circuiting and coagulated water flow through the sedimentation basins without destruction of floc. Subparagraph (C) enumerates the specific design parameters needed for adequate sedimentation, including both hydraulic detention time and surface overflow rate as design parameters. Subparagraph (D) requires clarification basins be designed to prevent the accumulation of settled solids. Sedimentation basins must be designed to be capable of complete draining in six hours, if the system has no other sources of potable water with which to meet average daily demand.

Adopted new §290.42(d)(11) contains provisions related to gravity or pressure type filters. Plants must have filtration facilities. Subparagraph (A) requires that the use of pressure filters be limited to installations with a treatment capacity of less than 0.50 million gallons per day. Subparagraph (B) specifies that surface water treatment plants are to be designed with sufficient filter capacity to assure effective filtration. New clause (i) requires rapid sand filters to be designed based on a maximum filtration rate of 2.0 gallons per minute per square foot (gpm/ft^2) but allows declining rate filters to be operated at a flow rate of up to 3.0 gpm/ft^2 at the beginning of the filter run. New clause (ii) requires high-rate gravity filters to be designed based on a maximum filtration rate of 5.0 gpm/ft^2 but allows these declining rate filters to be operated at a flow rate of up to 6.5 gpm/ft^2 at the beginning of the filter run. New clause (iii) requires pressure filters to be designed based on a maximum filtration rate of 2.0 gpm/ft^2 and new clause (iv) requires that the total design capacity of the filtration facilities be based on the cumulative capacity of the individual filters with the largest filter out of service. New clause (iv) conforms with current industry design practices and ensures an adequate supply of potable water to the system's customers during periods of routine filter maintenance. In response to comments, adopted subparagraph (B) was reorganized and amended to remove the clause allowing a plant to be designed with all filters in service if the system has other sources of potable water with which to meet average daily demand. The change to subparagraph (B) was required to ensure that the remaining filters are not overloaded when one filter is off line for backwashing. Subparagraph (C) incorporates current engineering practice for alternative filter bed designs, to enable systems to meet the provisions of 40 CFR §141.173(a). Filter media purity and filter media grain size must conform to AWWA standards and the depth of filter media shall be 24 inches or greater and provide an L/d ratio of at least 1,000. Typical design criteria for rapid sand and a variety of high-rate filters are provided to assist engineers in designing filters that can meet the new turbidity requirements of 40 CFR §141.173(a). The provisions of adopted subparagraph (D), contain requirements for filter support gravel design, have been incorporated as subparagraph (C)(iv) in the adopted rules. New subparagraph (D) provides for flow rate control at each filter. New subparagraph (E) contains the design requirements for monitoring equipment used in conjunction with filters and incorporates provisions of 40 CFR §141.74(a) relating to individual filter monitoring. New subparagraph (F) contains provisions relating to filter backwashing facilities and contains provisions resulting from 40 CFR §141.175(b). New subparagraph (G) allows the continued operation of a drinking water treatment plant during any special studies performed as part of the requirements of 40 CFR §141.175(b) relating to special monitoring on individual filters.

Adopted new §290.42(d)(12) contains lighting and drainage requirements for pipe galleries. Dark grey was added as a required pipe color for filter backwash waste pipes. Adopted new §290.42(d)(13) contains specifications for plant piping paint color schemes to aid in identification. Subparagraph (A) lists the acceptable color code for piping for plants built or repainted after October 1, 2000. Subparagraph (B) allows deviation from the provisions of subparagraph (A) for plants repainted before October 1, 2000, if those plants provide clear visual distinction between process streams. Subparagraph (C) requires that the process piping color scheme be documented and that the documentation be accessible to plant personnel. Dark grey was added as a required pipe color for filter backwash waste pipes.

Adopted new §290.42(d)(14) requires surface water treatment plants to be designed with sampling taps for raw, settled, filtered, and finished water.

Adopted new §290.42(d)(15) contains requirements for an adequately equipped laboratory to be available locally so that daily microbiological and chemical tests can be conducted. Provisions required under 40 CFR §141.131(c) are included. Subparagraph (A) requires systems serving more than 25,000 people to have a local laboratory certified by the Texas Department of Health (TDH) to conduct daily microbial analysis. Subparagraph (B) provides that systems not having on-site microbial analysis facilities may send samples to a certified lab, as long as this can be accomplished within the requisite time period. Subparagraph

(C) requires labs to include equipment for required measurements for pH, temperature, disinfectant residual, alkalinity, turbidity, jar tests for determining the optimum coagulant dose, and any other analyses deemed necessary to monitor specific water quality or treatment processes. Subparagraph (D) incorporates the requirement of 40 CFR §141.131(c) that systems using chlorine dioxide have an amperometric titrator with platinum-platinum electrodes. Subparagraph (E) requires systems with sludge blanket clarifier to have a sludge depth measuring device. Subparagraph (F) requires systems using solids recirculation to be equipped to measure slurry solids concentration. Subparagraph (G) requires that after January 1, 2002, surface water treatment plants have a computer and software for recording performance data, maintaining records, and submitting reports. The staff of the public drinking water program will provide spreadsheet templates to public water systems. The spreadsheet templates will assist the water treatment plant in collecting data, calculating results, and reporting results to the commission.

Adopted new §290.42(e)(1), requires water from surface water sources or groundwater under the direct influence of surface water to be disinfected in a manner consistent with the requirements of §290.110 concerning disinfectants. Paragraph (2) requires that all groundwater must be disinfected prior to distribution and specifies the application point. Paragraph (3) provides standards for disinfection equipment. Paragraph (4) clarifies the placement of safety equipment when chlorine gas is used. Paragraph (5) requires that by January 1, 2001, housing for all gas chlorination equipment and cylinders be in a separate building and meet certain safety standards. Paragraph (5) was amended to clarify that 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 mechanical equipment not associated with the chlorination equipment. Paragraph (6) specifies ventilation requirements. Paragraph (7) contains standards for hypochlorination solution containers and pumps. Paragraph (8) contains standards for the use of anhydrous ammonia feed equipment.

Adopted new §290.42(f) addresses other treatment processes. The commission corrected the reference from §290.39(g) to §290.39(l).

Adopted new §290.42(g) contains provisions for sanitary facilities for water works installations.

Adopted new §290.42(h) requires a permit from the agency for discharging wastes from water treatment processes.

Adopted new §290.42(i) requires that all chemicals and any additional or replacement process media must conform to American National Standards Institute/National Sanitation Foundation Standard 60 for direct additives and Standard 61 for indirect additives.

Adopted new §290.42(j) contains safety requirements and references the applicable safety standards of the Occupational Safety and Health Administration and the Texas Hazards Communication Act, Texas Health and Safety Code (THSC), Title 5, Chapter 502. The system is required to comply with the EPA requirements for risk management plans.

Adopted new §290.42(k) requires a thorough plant operations manual be compiled and kept up-to-date.

Adopted new §290.44(h), Backflow, Siphonage, relates to backflow prevention.

Adopted new §290.44(h)(1)(A) relates to the installation of air gaps and backflow prevention assemblies at the service connections and references a specific list of health hazards that public water systems must protect against.

Adopted new §290.44(h)(1)(B) also relates to residential air gaps or backflow prevention. Residences or establishments that have an adequate cross-connection control program in place are not required to have backflow prevention at the meter. New clause (i) contains the requirements for inspection, testing, and establishment of an adequate cross-connection control program. New clause (ii) contains the requirements for reporting and record keeping for an adequate cross-connection control program. New clause (iii) places responsibility for cross-connection control programs on the water purveyor.

Adopted new §290.44(h)(4) relates to backflow prevention assembly testing, and what qualifications testers must have. In response to comments, §290.44(h)(4) was modified to provide further clarification, especially in regard to fireline testing. Specifically, §290.44(h)(4)(A)(ii) now reads: "Backflow prevention assembly testers may test and repair assemblies on firelines only if they are permanently employed by an Approved Fireline Contractor. The State Fire Marshall's office requires that any person performing maintenance on firelines must be employed by an Approved Fireline Contractor."

Adopted new §290.44(h)(4)(B) relates to gauges used to test backflow prevention devices. Adopted new §290.44(h)(4)(C) relates to the reporting requirements for backflow prevention assembly testing.

Adopted new §290.45, Minimum Water System Capacity Requirements, sets out the requirements for redundancy in service pumps for small community and noncommunity water systems in order to help ensure continuous uninterrupted operation of those systems. Redundancy means the provision of two pumps so that, if the main water pump fails, a second pump is available and may be installed quickly so that customers are not without water for extended periods.

Adopted new §290.45(b)(1)(F)(iii) requires at least two service pumps for all groundwater systems with 100 connections or more and for all groundwater systems with fewer than 100 connections that have ground storage. Adopted new §290.45(d)(2)(B)(iii) requires a pump with a total capacity of 2.0 gallons per minute at systems with a maximum demand less than 15 gallons per minute. Adopted new clause (iv) requires at least two pumps at systems with a maximum demand greater than 15 gallons per minute.

Adopted new §290.46 contains the minimum acceptable operating practices for public drinking water systems.

Adopted new §290.46(a) contains general requirements for a public drinking water system. Adopted new §290.46(b) addresses microbiological analysis submission and requirements. Adopted new subsection (c) requires samples for chemical analysis to be submitted as directed by the agency.

Adopted new §290.46(d) contains requirements for disinfectant residuals and monitoring. It requires systems be operated in such a manner that the disinfectant residuals be acceptable and continuously maintained during the treatment process and throughout the distribution system. New paragraph (1) requires compliance with §290.110 and new paragraph (2) specifies the minimum disinfectant residuals in the finished water storage tank and in the far reaches of the distribution

system at all times. Systems using free chlorine must operate the disinfection equipment to achieve a free chlorine residual of 0.2 milligrams per liter (mg/L). Systems using chloramines must operate the disinfection equipment in such manner to achieve a total chlorine residual of 0.5 mg/L.

Adopted new §290.46(e) provides the conditions under which a system must be under the direct supervision of a certified water works operator. New paragraph (1) provides requirements for systems which utilize groundwater or purchased water and provides the grade of certification required for the water works operator. A system using only groundwater or purchased water with 250 or fewer connections must be operated by an operator holding minimum of a Class "D" certificate. A system using only groundwater or purchased water serving more than 250 connections must be operated by an operator holding minimum of a Class "C" certificate. A system using only groundwater or purchased water serving more than 1,000 connections must be operated by two operators holding minimum of a Class "C" certificate. A system using surface water must employ an operator holding minimum of a Class "B" surface water certificate after January 1, 2004, to correspond with proposed changes in operator certification requirements. Until January 1, 2004, a system using surface water must employ an operator holding minimum of a Class "B" surface water certificate or a Class "C" surface water certificate and having completed a 20-hour lab class.

Adopted new §290.46(e)(2) requires that a surface water treatment plant must have at least a Class "C" surface water operator on the premises at any time the plant is in operation or the plant must be equipped with continuous turbidity and disinfectant residual monitors with automatic shutdowns and alarms.

Adopted new §290.46(e)(3) requires systems which are classified as groundwater under the direct influence of surface water to be under the supervision of either an operator who has at least a Class "C" groundwater certificate and has had additional training or who has at least a Class "C" surface water certificate. Systems that utilize cartridge filters must be under the supervision of at least a Class "C" groundwater operator who has completed an eight-hour training course on monitoring and reporting requirements. Systems that utilize coagulant addition and direct filtration must be under the supervision of at least a Class "C" groundwater operator who has completed a 20-hour Surface Water Protection course and an eight-hour training course on monitoring and reporting requirements. Systems which utilize complete surface water treatment must comply with the requirements of §290.46(e)(2).

Adopted new §290.46(e)(4) requires certified operators to provide written notice of the public water systems which they operate to the agency when applying for, renewing, or upgrading their certification or within ten days of any change in responsibility. Adopted new §290.46(e)(5) provides that the training programs for all chemicals used in the water treatment must meet applicable standards established by OSHA or the Texas Hazard Communications Act, THSC, Title 5, Chapter 502.

Adopted new §290.46(f) contains all the requirements for public water systems relating to reporting and record keeping. Paragraph (1) discusses the organization of records and maintenance of copies and allows the records to be maintained in stored in either a hard-copy or electronic formats. Paragraph (2) provides that the operating records be accessible for review during inspections.

Adopted new §290.46(f)(3) specifies the retention schedule for record keeping. In response to comments, this section was modified to clarify that all public water systems must keep records of operations. New subparagraph (A) requires that for at least two years records must be retained for the amount of chemical used daily; volume of water treated each day; complaints with respect to water quality, low pressure, or outages and results of investigations; dates that dead-end mains were flushed; dates that storage tanks and other facilities were cleaned; and maintenance records for water system equipment and facilities. Adopted new subparagraph (B) requires three-year retention for records of violation and corrective action, records of all public notices issued by the system, records of special filter monitoring performed as part of the requirements of §290.111 resulting from the incorporation of 40 CFR §141.175(b), calibration records and records of backflow prevention programs. New subparagraph (C) requires water systems retain certain records for a period of five years after they are no longer in effect for records regarding a variance or exemption granted to the system and concentration-time (CT) studies. New subparagraph (D) requires the results of microbiological analyses to be retained by the system for five years. New subparagraph (E) requires a ten-year retention for copies of monthly operating reports (MORs) and supporting documentation including turbidity monitoring results of the combined filter effluent; the results of chemical analyses; written reports, summaries or communications relating to sanitary surveys; and copies of the Customer Service Inspection Reports. In response to comments, the reference to "other pertinent data" contained in subparagraph (E)(v) was removed and a more specific requirement related to special studies and similar documents was adopted as subparagraph (F).

Adopted new §290.46(f)(4) requires water systems to submit any monthly or quarterly reports that are required by the executive director. Systems must submit their reports to the public drinking water program's address, and the report must be submitted by the tenth day of the month following the period of time that the report covers (as per federal provision under 40 CFR §141.175(a)). The reports must contain all the information required by the drinking water standards and the results of any special monitoring test which have been required. This specifically includes reports resulting from 40 CFR §141.175(b)(1). The reports must be completed in ink, typed, or computer printed, and signed by the certified water works operator.

Adopted new §290.46(g) states when disinfection of new or repaired facilities is necessary.

Adopted new §290.46(h) requires that a supply of calcium hypochlorite be kept on hand and used when making repairs, setting meters, and disinfecting new mains prior to placing them in service.

Adopted new §290.46(i) addresses the adoption of plumbing ordinances, regulations, or services agreements by the public water system to insure that neither cross-connections nor other unacceptable plumbing practices are permitted and the use of pipes, fittings, solders, and flux is regulated.

Adopted new §290.46(j) contains customer service inspections requirements. The subsection specifies when an inspection certificate should be completed and who is capable of conducting the customer service inspection certification. New paragraph (2) requires the prompt elimination of potential contaminant hazards as they are discovered. The existence of a health hazard is sufficient grounds for immediate termination of water service. Service can not be restored until the hazard either no longer exist or

is isolated. The inspections under this subsection are not acceptable substitutes for and do not apply to sanitary control requirements under §290.102(a)(5). A customer service inspection is limited and the inspector has no authority nor obligation beyond the scope of these regulations. A customer service inspection is not a plumbing inspection as defined and regulated by the Texas State Board of Plumbing Examiners and a customer service inspector is not permitted to perform plumbing inspections.

Adopted new §290.46(k) prohibits interconnection between a public drinking water supply distribution system and any other water supply unless the other water is of a safe, sanitary quality and the interconnection is approved by the executive director. Adopted new §290.46(l) contains requirements for the flushing of dead-end mains at monthly intervals or more frequently if the disinfectant residuals fall below acceptable levels.

Adopted new §290.46(m) requires that the maintenance and housekeeping practices used by a public water system ensure the reliability and general appearance of the system's facilities and equipment. New paragraph (1) requires the inspection of ground, elevated, and pressure tanks annually. Specific determinations must be made for ground and elevated storage tanks and for pressure tanks during the inspection. The instrumentation and controls on tanks must also be inspected to ensure that they are working properly. New paragraph (2) specifies the inspection requirements for pressure filters. New paragraph (3) requires that the cartridges in cartridge filters be changed as specified by the manufacturer. New paragraph (4) requires that the storage facilities, distribution system lines, and related appurtenances be maintained in a watertight condition and free of excessive solids. New paragraph (5) requires that sedimentation basins be maintained free of excessive solids.

Adopted new §290.46(n) contains the specifications for engineering plans, specifications, maps, and other pertinent information and requires these documents to be maintained to facilitate the operation and maintenance of the facilities and equipment. New paragraph (1) requires public water systems maintain an accurate and up-to-date set of as-built plans and specifications. This requirement aids the system in complying with regulations and operating its system and assists the agency's field inspectors when they perform sanitary surveys of an individual water system. New paragraph (2) requires an accurate and up-to-date map of the distribution system be available so that valves and mains can be easily located during emergencies. New paragraph (3) requires that copies of well construction data, disinfection information, microbiological sample results, and a representative chemical analysis report be kept on file for as long as the well remains in service.

Adopted new §290.46(o) contains specifications for filter backwashing at surface water treatment plants. Filters are required to be backwashed when loss of head differential of six to ten feet is experienced between the influent and effluent loss of head gauges. Backwashing of filters is also required when the turbidity level of the filter effluent reaches 1.0 NTU to facilitate compliance with the 40 CFR §141.173(a).

Adopted new §290.46(p) specifies the information regarding water system ownership and management that must be provided to the agency. New paragraph (1) provides for notice when a water system changes ownership. New paragraph (2) requires annual written notice from each certified operator who supervised more than one system to contain the certificate number, address and telephone number, and the name and identification number of each public water system they supervise.

Adopted new §290.46(q) specifies special precautions to be instituted by the system in event of low distribution pressures, 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. New paragraph (1) contains specifications for the boil water notifications which must be issued to the customers within 24-hours. New paragraph (2) specifies how to determine if a boil water notification must be issued in the event of the loss of distribution system pressure and how long it shall remain in effect. New paragraph (3) specifies that a boil water notification shall be issued if the turbidity of the finished water produced by a surface water treatment plant exceeds 5.0 NTU and specifies how long it shall remain in effect. New paragraph (4) specifies that other protective measure may be required at the discretion of the executive director.

Adopted new §290.46(r) contains provisions for minimum acceptable distribution system operating pressures of 35 pounds per square inch (psi) throughout the distribution system under normal conditions and 20 psi during emergencies such as fire fighting.

Adopted new §290.46(s) contains requirements for testing and monitoring equipment and requires this equipment to be periodically calibrated. In response to comments, this section has been amended to clarify that these calibration requirements apply only to those instruments used to gather data necessary to demonstrate compliance with state and federal regulations. New paragraph (1) requires flow meters to be calibrated once every 12 months. New paragraph (2) provides for the proper calibration of laboratory equipment. pH meters are to be calibrated once each day and checked with at least one buffer when samples are run. In response to comments, paragraph (2)(A) has been amended to include calibration requirements for on-line pH meters. Benchtop turbidimeters are to be calibrated with primary standards once every 90 days and checked with secondary standards every time a series of samples is run. On-line turbidimeters are to be calibrated with primary standards once every 90 days and checked weekly by comparison with a calibrated benchtop turbidimeter. In response to comments, paragraph (2)(B) has been amended to allow the weekly check on on-line turbidimeters to be done using manufacturers specified methods. Disinfectant residual analyzers are to be calibrated to enable systems to achieve compliance with the provisions of 40 CFR §141.173(a). Manual disinfectant residual analyzers are to be checked every 30 days using chlorine solutions of know concentrations. Continuous disinfectant residual analyzers are to be calibrated every 90 days using chlorine solutions of know concentrations and are to be checked at least once each month with a chlorine solution of know concentration or by comparing the results from the on-line analyzer with the results of approved benchtop amperometric, spectrophotometric, or titration method.

Adopted new §290.46(t) provides system ownership signage requirements.

Adopted new §290.46(u) requires abandoned public water supply wells owned by the system to be plugged. Wells that are not in use and are non-deteriorated must be tested every five years or as required by the executive director to prove that they are in a non-deteriorated condition. Test results must be sent to the agency. Deteriorated wells must be plugged or repaired to a non-deteriorated condition.

Adopted new §290.46(v) requires all electrical wiring to be installed in a securely mounted conduit in compliance with a local or national electrical code.

Adopted new §290.47(d), Customer Service Inspection Certificate, contains the requirements for customer service inspections.

Adopted new §290.47(f), Backflow Prevention Assembly Test and Maintenance Report, is the required form that a certified backflow prevention assembly tester must complete when performing annual inspections of backflow prevention assemblies. In response to comments, the form has been modified to add a reference to "spill resistant breaker," to add a line confirming whether the assembly was installed according to the manufacturer's instructions, to add a line for tested pressure under "2nd check," and to clarify that the tester certifies the forms contents to be true only at the time of testing.

Adopted new §290.47(i), Assessment of Hazards and Selection of Assemblies, identifies specific health hazards that are regulated under the provisions of §290.44(h). In response to comments, a statement has been added to the appendix to clarify that the list does not constitute an all-encompassing list of health hazards that can exist. Also, to minimize the need for premises isolation, staff added watering troughs to the list of health hazards requiring internal protection and, in response to comments, steam plants and ornamental fountains have been reclassified.

Adopted new Subchapter F, Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems, contains requirements for each regulated chemical or contaminant, and general analytical, monitoring, and notification requirements.

Adopted new §290.101, Purpose, explains that the purpose of the rules is to assure the safety of public water supplies through control test, laboratory checks, operating records, and reports.

Adopted new §290.102, General Applicability, provides that the subchapter applies to all public water systems unless the system meets the provisions found in this section. Variances and exemptions may be granted by the executive director. Requirements for these variances and exemptions for one or more of the maximum contaminant levels (MCLs) or treatment technique and the application procedures for these are discussed. Modified monitoring may be granted by the executive director. In response to comments, the language has been modified to clarify that the submission of a request for a variance or exemptions must be accompanied by general planning documents, and that if the request is granted, the system must submit detailed plans.

Adopted new §290.103, Definitions, provides definitions for technical terms contained in this subchapter. In response to comments, the definitions of "enhanced coagulation" and "enhanced softening" has been brought into closer correlation with the federal rules. Also in response to comments, the definition of "maximum contaminant level" has been clarified.

Adopted new §290.104, Summary of Maximum Contaminant Levels, Maximum Residual Disinfectant Levels, Treatment Techniques, and Action Levels; summarizes the primary MCLs, maximum residual disinfectant levels (MRDLs), treatment techniques, and action levels. This section provides a listing of all regulated contaminants in a single location. Maximum contaminant levels for inorganic compounds, organic compounds, volatile organic contaminants, radiological contaminants, microbial contaminants, minimum and MRDLs, turbidity, disinfection by-product precursors, disinfection by-products, and lead and copper action levels. In response to comments, the purpose of this section has been clarified. This section is provided as a reference to those who wish to quickly look up a MCL, MRDL, action level, or treatment technique.

Adopted new §290.105, Summary of Secondary Standards, summarizes the secondary constituents and their maximum levels. In response to comments, the purpose of this section has been clarified. In response to comments, the purpose of this section has been clarified. This section is provided as a reference to those who wish to quickly look up a secondary constituent level (SCL).

Adopted new §290.106, Inorganic Contaminants, contains the requirement for inorganic contaminants (IOCs). The applicability, MCLs or treatment technique requirements, monitoring requirements, analytical requirements, reporting requirements, compliance determination, and public notice requirements for inorganic contaminants, and best available technology for treatment are discussed in this section. In response to comments §290.106(c)(7)(A)(i) has been amended to correct a typographical error. In response to comments, §290.106(e) has been amended to clarify that results of chemical analysis must be submitted ten days after the system receives the results of the analysis from the laboratory, not ten days after the sample was taken.

Adopted new §290.107, Organic Contaminants, contains the applicability, MCLs or treatment techniques requirements for synthetic organic contaminants and volatile organic contaminants, monitoring requirements, analytical requirements, reporting requirements, compliance determination, public notice requirements for organic contaminants, and best available technology for treatment for these compounds. In response to comments, §290.107(c)(2)(C)(iv) has been amended to correct a typographical error. In response to comments, §290.107(e) has been amended to clarify that results of chemical analysis must be submitted ten days after the system receives the results of the analysis from the laboratory, not ten days after the sample was taken.

Adopted new §290.108, Radiological Sampling and Analytical Requirements, contains the applicability, MCLs, monitoring requirements, analytical requirements, reporting requirements, compliance determination, and public notification requirements. In response to comments, references within §290.108 to "suppliers of water" were corrected as "public water system." In response to comments, §290.108(e) has been amended to clarify that results of chemical analysis must be submitted ten days after the system receives the results of the analysis from the laboratory, not ten days after the sample was taken.

Adopted new §290.109, Microbial Contaminants, contains provisions for the applicability, MCLs, monitoring requirements, analytical requirements, reporting requirements, compliance determination, and public notification requirements related to these contaminants. In response to comments, §290.109(e) has been amended to clarify that results of microbiological analysis must be submitted ten days after the system receives the results of the analysis from the laboratory, not ten days after the sample was taken.

Adopted new §290.110, Disinfectant Residuals, contains the applicability, minimum and maximum acceptable disinfectant concentrations, monitoring requirements, analytical requirements, reporting requirements, compliance determination,

and public notification requirements. Subsection (b)(3) incorporates the MRDL for the disinfectant chlorine dioxide of 40 CFR §141.65(a). Subsection (b)(5) incorporates the federally imposed MRDL for chlorine and chloramines of 40 CFR §141.65(a). Subsection (c) contains disinfectant monitoring requirements. In response to comments, this subsection has been amended and portions were renumbered to clarify which requirements apply to groundwater systems. The figure that was contained in §290.110(c)(3)(A) was renumbered to §290.110(c)(2)(B)(i) and the text of the figure did not change. Subsection (c)(2) incorporates the federally imposed chlorine dioxide monitoring requirements of 40 CFR §141.132(c)(2). Subsection (e) contains the reporting requirements for disinfectants. In response to comments, subsection (e) has been amended to clarify that results of chemical analysis must be submitted ten days after the system receives the results of the analysis from the laboratory, not ten days after the sample was taken. In response to comments, subsection (e)(2) has been amended to clarify that after January 1, 2001, systems must submit TNRCC Form 00102. Subsection (f)(5) incorporates requirements relating to chlorine dioxide compliance determination in response to 40 CFR §141.133(c)(2). Subsection (f)(7) incorporates requirements relating to chlorine and chloramine compliance determination in response to 40 CFR §141.133(c)(1). Subsection (f)(8) provides that systems shall increase residual disinfectant levels of chlorine or chloramines (but not chlorine dioxide) in the distribution system to a level and for a time necessary to protect public health to address specific microbiological contamination problems caused by circumstances such as distribution line breaks, storm runoff events, source water contamination, or cross-connections as required by 40 CFR §141.130(d). In response to comments, subsection (f)(9) has been added to clarify that if a system's failure to monitor makes it impossible to determine compliance, then the system is in violation of MRDLs. Subsection (g)(1) contains the requirement for public notice in the event of an exceedance of the maximum residual disinfectant residual for chlorine dioxide as required by 40 CFR §141.133(2). Subsection (g)(4) contains the requirement for public notice in the event of an exceedance of the maximum residual disinfectant residual for chlorine and chloramines as required by 40 CFR §141.133(1).

Adopted new §290.111, Turbidity, contains the applicability, treatment technique requirements, monitoring requirements, analytical requirements, reporting requirements, compliance determination, and public notification requirements. The federal requirements of the IESWTR apply to public water systems that service at least 10,000 people and utilize surface water or groundwater under the direct influence of surface water. The state rule applies to all surface water systems and groundwater systems under the direct influence of surface water regardless of the population served. In response to comments, §290.111(c)(5)(A) has been added to specify that filter profiles must be completed within seven days of exceeding the filtered water turbidity levels. In response to comments, §290.111(c)(5)(B) has been added to clarify that each time a filter exceeds the filtered turbidity level under specific timeframes, the system must conduct a filter assessment. In response to comments, §290.111(c)(5)(C) has been added to clarify that each time the filtered water turbidity exceeds specified turbidity levels, the system must participate in a comprehensive performance evaluation.

Adopted new §290.111(b)(2)(C) provides that the executive director may extend the compliance date for the turbidity standards for systems serving fewer than 10,000 people but not beyond January 1, 2004, the effective date of the DBP1R requirements for small systems. Subsection (b)(3) contains the new treatment technique requirements for individual filter effluent at plants serving 10,000 people or more and treating surface water or groundwater under the direct influence of surface water as required under of 40 CFR §141.173(a). Subsection (b)(3)(A) requires that, beginning January 1, 2002, the turbidity from each individual filter at plants serving 10,000 people or more and treating surface water or groundwater under the direct influence of surface water should not exceed 0.5 NTU at four hours after the individual filter is returned to service after backwash or shut down as part of the requirements under 40 CFR §141.175(b)(2). Subsection (b)(3)(B) requires that, beginning January 1, 2002, the turbidity from each individual filter should never exceed 1.0 NTU at plants serving 10,000 people or more and treating surface water or groundwater under the direct influence of surface water as part of the requirements of 40 CFR §141.175(b)(1).

Adopted new §290.111(c) contains turbidity monitoring requirements as required by 40 CFR §141.175(a). Subsection (c)(3) contains the individual filter turbidity monitoring requirements for individual filters at plants serving 10,000 or more people and treating surface water or groundwater under the direct influence of surface water as required by 40 CFR §141.174. Subsection (c)(4) contains individual filter turbidity monitoring requirements for individual filters at plants serving fewer than 10,000 people and treating surface water or groundwater under the direct influence of surface water. Subsection (c)(5) contains special individual filter turbidity monitoring and analysis requirements for individual filters at plants serving 10,000 or more people and treating surface water or groundwater under the direct influence of surface water as required by 40 CFR §141.175(b). Subsection (c)(5)(A) requires that each time a filter exceeds 1.0 NTU anytime during a filter run, or exceeds 0.5 NTU at four hours after backwash, for two consecutive 15-minute readings, the system must either identify the cause of the exceedance or complete a filter profile on the filter as provided in 40 CFR §141.175(b)(2). Subsection (c)(5)(B) requires that each time a filter exceeds 1.0 NTU anytime during a filter run, or exceeds 0.5 NTU at four hours after backwash, for two consecutive 15-minute readings, on three separate occasions during any consecutive three-month period, the public water system must conduct a filter assessment on the filter as provided in 40 CFR §141.175(b)(1). Adopted new §290.111(c)(5)(B) has been revised to clarify that a filter assessment is required only if an individual filter produces water with a turbidity above 1.0 NTU on three separate occasions during any consecutive three-month period. Subsection (c)(5)(C) requires that each time that any combination of filters exceeds 2.0 NTU on two consecutive 15-minute readings during two consecutive months, the public water system must participate in a third-party comprehensive performance evaluation (CPE) as provided in 40 CFR §141.175(b)(2)(4).

Adopted new §290.111(d)(3) requires that plants serving 10,000 or more people and treating surface water or groundwater under the direct influence of surface water must measure turbidity using continuous on-line turbidimeters on each filter as provided in 40 CFR §141.174(a). Subsection (d)(4) requires that individual filter turbidity at plants serving fewer than 10,000 people and treating surface water or groundwater under the direct influence of surface water must be measured using grab sampling and bench-top turbidimeters.

Adopted new §290.111(e) incorporates the reporting requirements for turbidity as provided in 40 CFR §141.175. Adopted

new §290.111(e)(2) - (5) has been modified to clarify that the term "MOR" referred to the current Monthly Operating Report for Surface Water Treatment Plants. Subsection (e)(3) requires that plants serving 10,000 or more people and treating surface water or groundwater under the direct influence of surface water which are required to do a filter profile must submit a Filter Profile Report for Individual Filters with their MOR as provided in 40 CFR §141.175(b)(1) and (2). Subsection (e)(4) requires that plants serving 10,000 people or more and treating surface water or groundwater under the direct influence of surface water that are required to do a filter assessment must submit a Filter Assessment Report for Individual Filters with their MOR as provided in 40 CFR §141.175(b)(3). Subsection (e)(5) requires that plants serving 10,000 people or more and treating surface water or groundwater under the direct influence of surface water that are required to do a CPE must submit a Request for Compliance CPE with their MOR as provided in 40 CFR §141.175(b)(4). Subsection (f) contains the compliance determination procedures for the turbidity regulations and subsection (g) establishes the public notification requirements. In response to comments, §290.111(e)(2) has been modified to clarify that after January 1, 2001, systems must submit the new MOR, TNRCC Form 00102.

Adopted new §290.112, Total Organic Carbon (TOC), contains the provisions needed to implement the provisions of the Stage 1 DBP1R pertaining to the monitoring and control of disinfection by-product precursors. Regulations regarding applicability, treatment technique, monitoring requirements, analytical requirements, reporting requirements, compliance determination, and publication notification are specified. The staff corrected a technical defect in the proposed §290.112(a) by specifying that the adopted subsection is applicable only for those systems that are using sedimentation or clarification facilities as part of their treatment process. In response to comments, §290.112(c)(3) - (5) has been amended to correct typographical errors. In response to comments, §290.112(e)(3)(E) has been amended to require that systems meeting alternative compliance criteria number eight must report the source water and treated water magnesium levels and the average percentage of magnesium that was removed during each of the preceding 12 months. The staff has also clarified the reporting requirements contained in §290.112(e)(3)(C) and (D). In response to comments, §290.112(f)(3)(A) has been amended to meet the federal requirement that the monthly percent removal must be calculated based on the average removal of all TOC sample sets taken in a month. In response to comments, §290.112(f)(3)(D) has been amended to base compliance on the running annual average of the quarterly averages of the monthly averages as required by the federal rule.

Adopted new §290.113, Disinfection By-products (TTHM and HAA5), incorporates the provisions of the Stage 1 DBP1R relating to disinfection by-products (TTHM and HAA5). Regulations regarding applicability, MCL, monitoring requirements, analytical requirements, reporting requirements, compliance determination, and publication notification are specified. In response to comments, §290.113(e) has been amended to clarify that results of chemical analysis must be submitted ten days after the system receives the results of the analysis from the laboratory, not ten days after the sample was taken.

Adopted new §290.114, Disinfection By-products Other than TTHM and HAA5, incorporates the provisions of the Stage 1 DBP1R relating to disinfection by-products other than TTHM and HAA5 and contains regulations for chlorite and bromate. Subsection (a) contains provisions for MCL, monitoring requirements, analytical requirements, reporting requirements, compliance determination, and publication notification. Subsection (b) contains provisions for MCL, monitoring requirements, analytical requirements, reporting requirements, compliance determination, and publication notification. In response to a technical correction in the corresponding federal regulations, new §290.114(a) regarding the applicability of the chlorite regulations has been revised to apply only to community and nontransient, noncommunity public water systems.

Adopted new §290.115, Transition Rule for Disinfection By-products, applies to all public water systems serving at least 10,000 people until January 1, 2002, if a system uses surface water or groundwater under the direct influence of surface water and until January 1, 2004, if the system uses only groundwater sources that are not under the direct influence of surface water. After those dates, systems must comply with §290.113, relating to disinfection by-products (TTHM and HAA5). Regulations regarding applicability, MCL, and sampling and analytical requirements for total trihalomethanes are specified. In response to comments, §290.115(e) has amended to clarify that analysis for TTHM must be performed at a laboratory certified by the TDH Bureau of Laboratories.

Adopted new §290.117, Regulation of Lead and Copper, contains provisions for general requirements, site selection and material survey, tap sampling, computing 90th percentile lead and copper levels, reduced tap monitoring, monitoring requirements for water quality parameters and source water, public education procedures, corrosion control, lead service line replacement, analytical and sample preservation methods, and reporting and record keeping requirements.

Adopted new §290.118, Secondary Constituent Levels, contains provisions for applicability, SCLs, analytical requirements, reporting requirements, compliance determination, and public notification. In response to comments, §290.118(e) has been amended to clarify that results of chemical analysis must be submitted ten days after the system receives the results of the analysis from the laboratory, not ten days after the sample was taken. In response to comments, §290.118(e)(1) has been amended to clarify the monitoring requirements for SCLs. In response to comments, §290.118(e)(3) has been amended to clarify that a system which exceeds a SCL commits a SCL violation. In response to comments, §290.118(f)(1) was reworded to correct word usage.

Adopted new §290.119, Analytical Procedures, contains provisions for acceptable laboratories, acceptable analytical methods, and process control tests.

Adopted new §290.121, Monitoring Plans, contains provisions for applicability, monitoring plan requirements, reporting requirements, compliance determination, and public notification. In response to comments, §290.121(b)(5) has been clarified to include compliance with MRDLs.

Adopted new §290.122, Public Notification, incorporates the provisions of the Stage 1 DBP1R relating to monitoring plans. This section contains provisions for public notification requirements for acute violations; public notification requirements for other MCL or treatment technique violations; public notification requirements for other violations, variances, and exemptions; notice to new billing units and proof of public notification.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.022, and has determined that, except as described in the following paragraph, the rulemaking is not subject to §2001.0225 because it is does not meet any of the four applicability requirements as defined in that statute. The portions of the rules implementing the federal IESWTR and the Stage 1 DBP1R are required by federal law (the Safe Drinking Water Act) and the regulations under 40 CFR Parts 9, 141, and 142.

The portion of the rules which extends a removal requirement for *Cryptosporidium* oocysts to small public water systems, serving fewer than 10,000 people and utilizing surface water or groundwater under the direct influence of surface water, are not covered under the federal rule. This portion of the rules is adopted pursuant to THSC, §§341.031, 341.0315, and 341.035. Because this portion of the rule may meet the requirement for a regulatory impact analysis under Texas Government Code, §2001.0225, the commission has prepared a regulatory impact analysis.

Those portions of the rules that do not implement the federal rules, do not exceed any express requirement of state law. Those requirements are adopted pursuant to the THSC, §341.0315 and §341.035. This does not exceed a requirement of any delegation agreement or contract between the state, TNRCC, and an agency or representative of the federal government. The rules are not adopted solely under the general powers of the agency; the rules are adopted pursuant to the THSC, §341.031, which allows the commission to adopt rules to implement the federal Safe Drinking Water Act, 42 United States Code (USC), §300f et. seq; THSC, §341.0315, which requires public water supply systems to meet the requirements of commission rules, and THSC, §341.035, which requires the executive director of the commission to approve plans and specifications for public water supply systems. The rules are not adopted on an emergency basis.

The current state rules for all public water systems treating surface water or groundwater under the direct influence of surface water requires the removal or inactivation of both *Giardia lamblia* cysts and viruses before the water is supplied to any consumer. Those removal standards will be deemed to be met by systems using conventional media filtration if the system achieves a specific combined filter effluent (CFE) turbidity standard (i.e., the CFE turbidity level that never exceeds 5.0 NTU and is 0.5 NTU or less in at least 95% of the samples tested each month) and provides a specific level of disinfection. The new federal IESWTR requires systems that serve more than 10,000 people, beginning January 1, 2002, to also achieve at least a 2-log removal of *Cryptosporidium* oocysts. Under the federal rules for systems using conventional media filtration, that standard will be deemed to be achieved if the CFE turbidity level never exceeds 1.0 NTU and is 0.3 NTU or less in at least 95% of the samples tested each month. The federal rules also require, beginning January 1, 2002, systems that serve at least 10,000 people to continuously monitor the turbidity of the filtered water from each individual filter with a continuous on-line turbidimeter and a continuous recorder. Under the federal requirements of the IESWTR, systems serving under 10,000 people would continue under the existing turbidity standards.

The adopted rules strengthen the turbidity standards for all public water systems in Texas that treat surface water sources or sources of groundwater that are under the direct influence of surface water. The adopted rules require that, beginning January 1, 2002, small systems treating surface water or groundwater under the direct influence of surface water also achieve a 2-log removal of *Cryptosporidium* oocysts. For plants using conventional media filtration, removal is demonstrated by a combined filter effluent turbidity that never exceeds 1.0 NTU and is 0.3 NTU or less in at least 95% of the samples tested each month. Small systems will be required to measure individual filter turbidity at the effluent of each individual filter and record the turbidity value at least once each day that the plant is in operation. Small systems would be allowed to monitor individual filter turbidity by measuring the turbidity level in grab samples with a benchtop turbidimeter. The rules also provide that for systems serving fewer than 10,000 people, the executive director could extend the compliance date for the new turbidity treatment levels up to January 1, 2004.

The new turbidity treatment levels for public water systems treating surface water or groundwater under the direct influence of surface water are intended to address the risk of *Cryptosporidium* oocysts in drinking water supplies. Ingestion of active *Cryptosporidium* oocysts is the cause of the disease *Cryptosporidiosis*. Symptoms of *Cryptosporidiosis* include diarrhea, abdominal discomfort, nausea, and vomiting. While otherwise healthy persons may expect a complete recovery from *Cryptosporidiosis*, it can be very serious in immuno-compromised persons. Immuno-compromised persons include infants, pregnant women, the elderly, cancer patients undergoing chemotherapy, HIV/AIDS patients, and people on immunosuppressant drugs. There is no effective therapeutic drug to cure *Cryptosporidiosis*. Therefore, the prevention and avoidance of infection is central to minimizing the risks of outbreaks. Infected humans, cattle, deer, and other animals excrete large numbers of *Cryptosporidium* oocysts and consequently, *Cryptosporidium* appears to be common in the environment. Runoff from watersheds allows transport of these microorganisms to water bodies used as intake sites for drinking water treatment plants. While transmission of the disease can result from the direct or indirect contact with infected persons or animals, the majority of large epidemic outbreaks have been the result of ingesting contaminated drinking water.

The commission has determined that the new turbidity treatment levels are necessary to provide protection against *Cryptosporidium* because the current turbidity treatment standards are inadequate to assure adequate removal of oocysts. Increasing the current disinfection treatment levels with common disinfectants does not appear to be an effective control strategy because the *Cryptosporidium* oocysts are especially resistant to those common disinfectants. Not extending the new turbidity treatment levels to small systems would continue to expose approximately 660,000 Texas residents to the risk of *Cryptosporidiosis*.

The commission anticipates the benefits from adoption and implementation of the rules will be improved public health by increasing the level of protection from exposure to *Cryptosporidium* and other pathogens and the avoidance of resulting health costs and avoidance of possible deaths due to *Cryptosporidiosis*.

The commission anticipates that most small public water systems required to meet the new combined filter turbidity treatment standard will be able to meet the new standard with existing personnel and equipment by changes to operating procedures. These changes may increase the operational cost of the plant due to additional chemicals needed. In some cases, the amount of chemicals used to treat the water may be reduced, with a corresponding reduction in chemical costs. A few small public water systems may have to renovate their water treatment plants to

comply with the new combined filter turbidity treatment standard. In those cases, the commission will extend the compliance date for the new turbidity treatment levels to the compliance date of the January 1, 2004. This extended compliance date is to allow those small systems to seek funding, and construct new facilities that would come on-line by January 1, 2004. Therefore, capital costs associated with small system compliance are not anticipated to be incurred until 2003 when systems are building new facilities to be in compliance by 2004.

The estimate of the population served by small water systems was obtained from a database of public drinking water systems maintained by TNRCC. Exposure of that population to *Cryptosporidium* oocysts is estimated at 8.0%. That estimate was obtained from the EPA database on the Information Collection Rule and is based on the December 1997 information of *Cryptosporidium* detects in Texas. The commission used information from a single month because exposure anytime during the year could result in an incidence of *Cryptosporidiosis*. Information from other months was not used because a lack of detection of *Cryptosporidium* in a sample does not indicate an absence of *Cryptosporidium* in the source water due to limitations of the analytical methods used. The 8.0% figure was used because it represents occurrence data specific to Texas. It is much lower than the reported national estimate of 60% *Cryptosporidium* occurrence in source water. The exposure estimate was further reduced by the estimate that only 10% of detected *Cryptosporidium* oocysts would be viable. The probability of occurrence of disease given an exposure to *Cryptosporidium* was estimated at 39% and at that probability, it is estimated there would be one death every five years. The probability of mortality was estimated based on the Milwaukee outbreak data of 50 deaths per 400,000 illnesses. An average cost of medical treatment per illness of $2,000 was used to estimate health damages avoided. This estimate was developed by the Centers for Disease Control (CDC). An average value of $5.6 million per life saved was used to estimate the benefits of death avoided. This national average was developed by the EPA and is used by the EPA for a number of different rules.

The commission has estimated the costs for state agencies, local governments, the public, and the regulated community for the first five years that small public water systems, those serving fewer than 10,000 people, are subject to the new turbidity standard. There are 299 small systems subject to the rules. Most of these systems are owned and operated by local governments. Sixty-one of the small systems are investor-owned utilities. The cost for these small investor-owned utilities to comply with the new turbidity standard do not differ from other small public water systems. Eleven of the small public water systems subject to the new standard are owned and operated by the state.

For the first year (2002) that small public water systems will have to comply with the new turbidity standard, the commission estimates 196 of the 299 small systems subject to the rules will comply with the new standards with no significant costs. Approximately 50 systems will be able to comply with some problems. The commission estimates the total costs of compliance with the new standard for these 50 systems to be $152,000. The total cost was calculated by assuming a 10% increase in chemicals at three cents per 1,000 gallons water usage for 50 plants near compliance and assuming typical values for water usage, the average cost to comply for these systems is $3,040 (50 x $3,040=$152,000). These costs include chemicals only and do not include capital costs. Approximately 53 systems will have major problems complying. The commission will grant compliance waivers under provision of the new rules to systems that require capital improvements. Therefore, no capital costs are anticipated to be incurred by systems in the year 2002.

The State of Texas operates three plants in this category. The estimated cost to the state to comply with the new standard in the year 2002 is $3,600 for chemicals, based upon water usage.

The new standard would require all small public water systems to achieve removal by January 1, 2004. Some small systems will have to undertake capital improvements ranging from installation of new filters to complete construction of new water treatment plants in order to comply with the new standard. The commission estimates that these capital improvements will occur in 2003 so that the improvements will be in place before the January 1, 2004 compliance deadline. Therefore, cost estimates starting in 2003 include capital costs.

For the year 2003 and each year thereafter, total costs for all systems to comply with the new standard is estimated by the commission at $1,900,000. In addition to the chemical costs estimated as described for the year 2002, capital costs were included. Based on monitoring data, 22 small systems were judged to be capable of complying with the new standard by major operation and maintenance changes or minor plant modifications, such as replacement of filter media and changes to flow control devices. Calculation of costs for these plants to comply is difficult because the true costs depends on plant specific modifications. The commission assumed a typical repair cost of $25,000 per system and annualized that cost over an assumed six-year useful life for a filter.

Ten systems were judged to require an entirely new treatment plant. A new plant was estimated to cost $768,268. Plant costs were estimated at $1.20 per gallon per day of plant capacity. Average population served for these systems, typical values for housing occupancy, water consumption and 6.0% cost of capital for 20 years were used to arrive at an estimated average annual cost per plant of $67,000. With the addition of chemical costs, the average annual cost for these systems with the worst compliance history are estimated at $70,651. A telephone survey of the systems judged most likely to require major capital investment to meet these rules found that half of the plants were already in the process of expanding, improving, or replacing their existing facilities for reasons other than these rules.

There are 21 small public water systems that fall in between those systems that will require new plants and those systems that will be able to comply by minor modifications to their plants. The estimated average cost for one of these plants to comply was $39,781. An average annual cost mid-range between the cost of a new plant and a $25,000 per system was used to estimate the cost for these systems to comply with the rules.

The State of Texas owns a total of 11 small plants that will incur capital costs to comply with the new standards. The annual cost to the state to comply is estimated, using the assumptions previously mentioned, at $154,000. These cost figures have not been adjusted for inflation in future years. These costs overstate the cost to comply with the new turbidity standard because the costs for new water treatment plants are not simply to comply with the new standards. Those systems building new plants are in large part systems whose plants have reached the end of their useful lives or that have not performed routine maintenance to keep their plants in good repair and operation. The need for new

plants, in many cases, would still be required to come into compliance with the current drinking water standards. The highest costs are estimated for small systems requiring new plants.

Some of those systems may seek less costly alternatives, such as connecting into a larger regional water system, which may be the only alternative for many.

The commission has estimated the average cost to the public for extending the turbidity standard to small systems is 72 cents per household per month. The public will be subject to a range of possible cost effects of these rules. Well operated and maintained public water systems, the majority of the small systems, will see little increase in costs. Customers of these systems should not experience any increase in their monthly water bill as a result of this new turbidity standard. Other systems that incur small increased costs may be in a financial condition where they are able to avoid passing increased costs on to their customers. At the other end of the spectrum, for small systems building new plants and passing all of these costs on to their customers, the public can expect increases to their monthly water utility bill. The commission's estimates for costs to the public were based on the assumptions that all costs would be passed on to customers, an average of three persons per household, and that annual costs would be spread evenly over all households. Based on these assumptions and the costs developed, the cost to the public for the extension of the turbidity standard to small systems is expected to range from no increase in the monthly water utility bill to an $8 per household per month increase. The high end of the range might be estimated too low because an average value for plant cost for small plants was used. The smallest plants would incur costs higher than the average cost. The high end of the range might be estimated too high because the commission has assumed that all costs for any new plant is due to the rules, when most of any new plant cost must be incurred even without the rules. The average monthly increase for the customers of all small public water systems is expected to be 72 cents per household per month.

The commission believes the adopted rules to physically remove *Cryptosporidium* oocysts is the most reasonable method to reduce the risk of ingestion of *Cryptosporidium* oocysts from drinking water. *Cryptosporidium* oocysts are especially resistant to disinfection practices commonly used at water treatment plants. Simply increasing existing disinfection levels above those most commonly practiced in Texas does not appear to be an effective control strategy for *Cryptosporidium*. The adopted rules strengthen the effectiveness and reliability of physical removal for particulate matter and microorganisms in general, thereby reducing the likelihood of the disinfection barrier being over-challenged. Waterborne disease outbreaks have been associated with a high level of particles passing through a water treatment plant. Hence, there is a need to optimize treatment reliability and to enhance physical removal efficiencies to minimize the *Cryptosporidium* levels in finished water. These rules are formulated to address these public health concerns.

The commission based its facts and cost estimates set out in this final regulatory impact analysis determination on sources that it believes to be reliable. Much of the information on *Cryptosporidium* is from the preamble to the final federal IESWTR. Additional information was obtained from *Benefits and Costs of the IESWTR*, 91 AWWA Journal 148 (April 1999); *Assessing the Risk Posed by Oocysts in Drinking Water*, 88 AWWA Journal 131 (September 1996). *Giardia and Cryptosporidium in Raw and Finished Water*, 87 AWWA Journal 54 (September 1995).

The information on the occurrence of *Cryptosporidiosis* was obtained from the Information Collection Rule database maintained by the EPA. The estimate of the monetary benefits of forgone occurrences of that disease are from the CDC and were reported in the preamble to the federal rules. The information on the number of systems and population potentially effected by the rules was obtained from databases that TNRCC maintains on public drinking water systems in Texas. The judgments of the level of effort necessary for small systems to comply with these rules and associated costs are necessarily estimates. Those estimates are based on staff's experience, particularly with the Texas Optimization Program that has provided technical assistance to over 55 surface water and groundwater systems under the direct influence of surface water in Texas with the aim to lower their system turbidity to levels that will meet or exceed the rule requirements.

The commission considers the turbidity standards for public water systems serving under 10,000 people and utilizing surface water or groundwater under the direct influence of surface water to be a performance-oriented method of compliance. Systems subject to the regulation are granted the regulatory flexibility to select their own method of achieving removal of *Cryptosporidium* oocysts. The tests necessary to demonstrate removal of *Cryptosporidium* oocysts are inaccurate, unreliable, and expensive. Therefore, the rules use a surrogate standard that the commission will accept as demonstrating the appropriate level of removal. For systems using conventional media filtration, the commission will recognize the 0.3 NTU or less in at least 95% of the samples tested each month test and no measurements above 1.0 NTU as a demonstration that the system is meeting the removal standard. For those systems wishing to utilize membrane treatment methods, the executive director will approve site specific treatment technique standards. A more specific surrogate test was not adopted for membrane systems because the technology is changing so rapidly that the commission does not want to exclude from use scientifically acceptable surrogate standards that may be developed shortly. Those systems wishing to utilize other innovative or alternative treatment methods to achieve the removal standards will be allowed to do so using executive director approved alternatives, which is the current practice for innovative or alternative treatment technologies.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to implement the federal IESWTR, and the Stage 1 DBP1R, 40 CFR Parts 9, 141, and 142. The rules also will make changes to the state design criteria for some water treatment plant processes and clarify existing regulatory requirements. The rules will substantially advance these specific purposes by adopting provisions that implement the federal rules cited and by adopting amendments to the state design criteria for water treatment plants. Promulgation and enforcement of these rules will not significantly burden private real property because private real property is not subject to these rules. Moreover, the adopted rules are in response to a real and substantial threat to public health and safety, the proposal is designed to significantly advance the health and safety purpose and does not pose a greater burden than is necessary to achieve the health and safety purpose.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The executive director has reviewed this rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the CMP.

HEARING AND COMMENTERS

The proposed rules were published in the April 21, 2000 issue of the Texas Register (25 TexReg 3420). A public hearing for this rulemaking was held in Austin on May 12, 2000. The comment period closed on May 21, 2000.

A total of 20 commenters provided both general and specific comments on the proposed rules. The following commented on the proposal: Bac-Flo Unlimited (BFU); Cedar Ridge RV Park (CRRV); City of College Station (COCS); City of Fort Worth (COFW) commented by letter and in the hearing; City of Pearland (COP); City of Carrollton (COC); City of Arlington (COAr); City of Austin (COAu); Control Flow, Inc. (CF); Eco-Resources/District Office (Eco/District) commented by letter and in the hearing; Eco-Resources/Donna Office (Eco/Donna); Houston Area Plumbing Joint Apprenticeship Committee (HAPJAC); Northeast Texas Municipal Water District (NETMWD); Safewater Solutions (SS) commented by letter and in the hearing; Texas Department of Insurance (TDI), State Fire Marshal's Office; Texas Chemical Council (TCC); Texas Municipal League (TML); TXU Business Services; and Upper Trinity Basin Water Quality Compact (UTBWQC). One additional comment from the U.S. Environmental Protection Agency (EPA) was received after the close of the comment period and was also considered in the analysis of testimony.

Of these commenters, four indicated that they were generally in favor of the proposal; two of these recommended specific changes. Fourteen expressed no support or opposition but suggested specific changes. Two were opposed to the rules. Of these, CRRV was generally opposed, and TML was opposed to specific portions of the rules and suggested changes.

ANALYSIS OF TESTIMONY

GENERAL COMMENTS

CRRV questioned the overall purpose of the rule changes, with respect to the protection of public health.

The commission responds that the purpose of these rule changes is to comply with federal rules and to protect the public health. The rules primarily address two areas of public health: microbial pathogens and potentially carcinogenic disinfection by-products. Disinfection is necessary to kill many pathogens in drinking water, but it may create potentially carcinogenic disinfection by-products.

A recently identified microbial pathogen, *Cryptosporidium*, is responsible for many cases of gastroenteric illness. In those people who have weakened immune systems, *Cryptosporidiosis* may cause death. Traditional methods of disinfection are ineffective against *Cryptosporidium* oocysts. The EPA estimated that the likelihood of endemic illness from *Cryptosporidium*, will decrease by 20% by reducing the required combined filter effluent turbidity level for systems that serve 10,000 people or more (63 Fed Reg 69500 - 69503, December 16, 1998). *Cryptosporidium* is common in the environment. Turbidity is used as a surrogate measure of the potential presence of pathogens such as *Cryptosporidium*, because waterborne disease outbreaks have been associated with a high level of particles passing through a water treatment plant. Therefore, the rules include turbidity requirements for plants treating surface water or groundwater under the direct influence of surface water.

There is evidence that chlorination of water produces undesirable disinfection by-products. Studies have suggested an association between bladder, rectal and colon cancer, and exposure to chlorinated surface water. A recent study has suggested an association between early term miscarriage and exposure to drinking water with elevated trihalomethane levels. Therefore, the rules include requirements regarding MCLs for disinfection by-products. Phased implementation was agreed upon during the regulatory negotiation process between stakeholders and the EPA, so the rules affect large systems before small systems. The rules will be revisited by congressional mandate, and the Stage 2 Disinfectants and Disinfection By-Products rule will be promulgated by EPA in 2001.

CRRV suggested that the state pay for the changes or offer to purchase economically non-viable systems.

The commission responds that the federal provisions do not allow us to generally exempt systems from the rules based on economic impact. Additionally, the state does not have the statutory authority to operate drinking water systems or to pay for changes to a system. In developing the federal rules, EPA determined that the rules fell under Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4. Under this statute, EPA may not issue regulations that are not required by statute and that create a mandate upon a state, unless the federal government either provides the funds necessary to pay the direct compliance costs, or EPA consults with the affected governments. In developing these rules, EPA consulted with state and local governments. Before promulgating the federal rules, EPA held extensive meetings with a variety of state and local representatives who provided input in the development of the proposed rules. Through that process, EPA determined the likely costs and benefits of various options, and promulgated the option which protected the public health while considering economic costs. Additionally, EPA provides some funds through the Drinking Water State Revolving Fund to help with costs incurred for drinking water systems.

CRRV suggested that the new requirements should not be applied to businesses below some economic level or to systems built prior to this rulemaking. Further, CRRV expressed dissatisfaction with the fiscal implications of the rule changes, and the probable negative impact on the profitability of their system.

The federal provisions do not allow us to exempt public water systems from meeting the regulations on the basis of age, profitability, or economic level, because all citizens are deemed equally deserving of safe potable water regardless of the size of their community. Smaller systems are required to do less sampling than large systems because of the fiscal impact, but the standards for the water they deliver to the public are the same as for large systems.

CF commented that there are many water wells for private use and that it would be unfair to place excessive financial burdens on these users who do not sell water.

The commission responds that the adopted rules only apply to public water systems, not to water well users who do not sell water or operate a public water system. The definition of "public water system" does not include private domestic wells.

COC commented that the version of the document in the *Texas Register* was not the same as the version of the document posted on the TNRCC web page, which calls into question whether any changes to the section should be allowed, and whether other inconsistencies may be present.

The commission responds that the web page version was posted in advance of the official publication. The commission's intent in providing the early draft version to the regulated community was to provide both advance notice and to maximize the comment period. The web page link clearly stated that the proposal was "DRAFT." The official proposal for comment is the *Texas Register* version.

SPECIFIC COMMENTS

§290.38. Definitions

HAPJAC commented that the definition of ABPA (American Backflow Prevention Association) in §290.38(1) should remain in the rules, and that it should be expanded to describe APBA as an organization accredited to provide profession Backflow Prevention Assembly Tester (BPAT) certification and approved 40-hour backflow prevention assembly testing course.

The commission disagrees with this comment. Since the term APBA has been removed from the rules, it should not be in the definitions. The TNRCC Compliance Support Division, Operator Certification Section determines who can provide backflow prevention assembly testing certification.

HAPJAC commented that the definition of ASSE (American Society of Sanitary Engineers) in §290.38(5) should remain in the rule, that the address should be corrected, and that the definition should explicitly state that programs that meet ASSE Series 5000 standards are accredited to provide professional backflow prevention assembly testing certification and to provide approved backflow prevention assembly testing training.

The commission disagrees with this comment. Since the rules do not use any ASSE standards and make no references to the ASSE, the term ASSE is not included in the definitions. The TNRCC Compliance Support Division, Operator Certification Section provides requirements for backflow prevention assembly testing certification.

§290.39. General Provisions

COAu requested clarification on whether §290.39(j)(4) refers to additional pumping capacity or to additional connections. Specifically, the commenter asks if they are required to notify TNRCC every time they sell 250 new taps. In addition, they request clarification of whether the distribution capacity is calculated based on the number of connections, pumping capacity, or some other parameter.

The commission responds that this paragraph requires that whenever a public water system either sells 250 new taps, or if the system makes an addition of 10% of the system's distribution capacity, for instance, ten taps to a system with 100 connections, the system must notify the executive director. These two conditions refer to the number of connections. Additionally, if a system makes a change to the distribution system that will result in their failure to comply with the capacity requirements of §290.45, the system must notify the executive director.

§290.41. Water Sources

Eco/District commented that, while §290.41(c)(1)(F) is not changed under the current rule proposal, the commenter wishes to note some problems with it. The commenter states that the commission has recently interpreted that this requirement for a sanitary easement is not met by simple ownership by the utility of the land within a 150-foot radius of a well, because the utility can not legally grant an easement to themselves. The commenter suggests that it is in the best interest of the utility to protect the water in a well they own, and that owning the land around the well seems to meet that goal better than any form of easement. The commenter requested that language be added to §290.41(c)(1) which would allow ownership by the utility to meet the requirement for an easement, as long as the other applicable parts of the rules are met.

The commission recognizes the concern with the legal definition of "sanitary easement." The commission's intent with this provision was to ensure that the area around a well would not be used for activities that could contaminate the drinking water source. Case law provides that if the same entity owns both the utility and the land, that entity cannot grant himself/herself an easement. The commission is working on a solution to this issue and plans to address this issue in the next changes to Chapter 290, anticipated to be within the next two years.

TCC suggested that in §290.41(e)(1)(F) fecal coliform be replaced with *Escherichia coli* as one of the parameters considered when evaluating source water quality prior to using that source. The commenter notes that this change would correspond with the parameters proposed as part of the Texas water quality standards for identification of human contamination.

The commission agrees with this comment and has made this change.

COAu requested an explanation of how TNRCC will use the information that §290.41(e)(1)(F) requires regarding water quality parameters for a new water source.

The commission will use the information about the source water proposed for development to determine the appropriateness of the proposed treatment technology.

§290.42. Water Treatment

COAu requested that §290.42(d)(6)(A) be expanded to state the possibility that the executive director may approve keeping less than a 15-day supply of chemical storage for large-volume chemicals, such as lime for softening.

The commission retains the ability to grant exemptions to the requirements for chemical storage capacity, or any of the provisions in §290.42, on a case-by-case basis in §290.39(l). If we were to include a statement under the provision for chemical storage, it could easily be interpreted to mean that other provisions under §290.42 were not eligible for exceptions. Exceptions to the rule are granted only if the exception will not compromise public health or result in a degradation of service or water quality.

COAu recommended that TNRCC include additional language in §290.42(d)(10)(C) to allow a facility to use existing data when re-rating a treatment plant. Specifically, the commenter recommends that the following text be added to this paragraph: "Where shorter detention times are desired, engineering data, pilot plant test data, full-scale installation data and other information as required by the Commission shall be submitted to the executive director for review and approval."

The commission retains the ability to grant exemptions to the requirements for sedimentation basin capacity, or any of the provisions in §290.42, on a case-by-case basis in §290.39(l). If the commission were to include a statement under the provision for sedimentation basin capacity, it could easily be interpreted to mean that other provisions under §290.42 were not eligible for exceptions. Exceptions to the rules are granted only if the exception will not compromise public health or result in a degradation of service or water quality.

COAu commented that good science does not support allowing filtration facilities to be designed with the design flow based on all filters in operation, even if the system has other sources of potable water, and that the exemption provided in §290.42(d)(11)(B) should be removed. The commenter noted that although a system may have other potable water sources for normal operation, filtration facilities must be expected to treat the maximum flow while one filter is off line for backwashing. The alternative would be either to fail to backwash during high flow period, to change overall plant flow during backwash, or to coordinate with other potable water sources during backwash. None of these alternatives are acceptable. Failure to backwash could result in filter runs extending into turbidity breakthrough. Changing overall plant flow during backwash, except in highly automated plants, would likely cause chemical feed upset. Coordination with other sources of potable water would be operationally difficult. The commenter recommended that the exemption be removed.

The commission agrees with this comment. Proper design of filtration facilities should be based on peak flow with the largest filter out of service. As a result of this comment, the adopted new rule was reorganized to group all of the provisions related to design capacity of the filtration facilities in a single paragraph and eliminate the reference to other production facilities.

TCC commented that the regulations for piping color codes applicable to stand-alone facilities in §290.42(d)(13)(A) and (B), should be rewritten to allow facilities that primarily use chemicals for purposes other than potable water treatment to maintain a piping color code consistent with the overall facility requirements. Specifically, TCC recommends that the requirement that piping repainted after October 1, 2000, be painted in the approved colors be amended to apply only to facilities that are stand-alone water treatment facilities.

The commission agrees, in part, with this comment. It is intended that all facilities that are primarily engaged in the production of potable water have the same color code to reduce the possibility of operator error. However, the commission agrees that in industrial facilities there may be a need to retain certain pipe colors for congruence between process and potable treatment pipes. These plants may seek an exception to the rule under the provisions of §290.39(l).

§290.44. Water Distribution

COAu, SS, and COC commented on the types of backflow prevention assemblies that should be required to have annual testing under §290.44(h)(4)(A). COAu recommended that TNRCC require annual testing of all backflow prevention assemblies, regardless of whether they are located on a non-health hazard line or on a health-hazard line. COAu noted that national backflow prevention standards (i.e. Uniform Plumbing Code, National Standard Plumbing Code, Southern Standard Plumbing Code and the University of Southern California's Foundation for Cross-Connection Control and Hydraulic Research, Manual for Cross Connection Control, 9th Edition) recommend annual testing of all backflow prevention assemblies. COAu commented that potable water lines should be protected from both health hazards and non-health hazards, and that annual testing would contribute to this protection. SS commented that the rule should clarify that each detector assembly must be tested. COC expressed concern that elimination of the classifications for health hazard and non-health hazards would impose a financial hardship on distribution systems. This concern was based on the perception that elimination of these classifications would mean that all backflow prevention devices would have to be tested annually. COC suggested that the commission let utilities determine which backflow prevention assemblies should be tested annually.

The commission responds that the current rules were not promulgated with the intent to address non-health hazard installations. Local entities retain the authority to determine whether annual testing of non-health hazard assemblies is appropriate for their system and to require that these be tested. The current changes to the rules regarding backflow prevention were predicated by an instance where a utility interpreted the previous rule language in a manner that created a hardship to its customers; for that reason, §290.47(i) has been added to specify conditions that represented health hazards and non-health hazards. The specific testing requirements of §290.44(h)(A) apply only to the health hazards identified in §290.47(i) and are only minimum compliance requirements; they may not describe all hazards that must be controlled or isolated from the public water system under the provisions of the local plumbing codes or restrictions. Although public water systems are to be commended for increasing the vigilance with which they protect the public health, the commission's regulations only require annual testing of backflow prevention assemblies which are needed to protect the system from the health hazards identified in §290.47(i) and do not address those devices installed at connections which are considered to be non-health hazards.

COCS commented that §290.44(h)(1)(B)(ii) states that copies of backflow prevention device test reports must be filed by the public water system, but §290.44(h)(4)(C) states that the original must be "submitted to the public water system for record keeping purposes." Currently the original form is kept by the water system. The commenter recommends that the rule be consistent.

The commission responds that the rules are consistent. In §290.44(h)(1)(B)(ii), the rules require that the water system must obtain a copy of the test report. In §290.44(h)(4)(C), the rules require that the tester must give the original copy of the test report to the water purveyor.

TDI, COCS, COC, and BFU commented on the language in §290.44(h)(4)(A) differentiating between backflow prevention assembly testers who are allowed to work on firelines, as compared with those who are not. TDI requested that the rules be amended to clarify the requirement that only certified backflow prevention device testers who service firelines comply with the applicable codes. Specifically, the commenter requested that the following language be added to the rule: "The inspection, servicing, or testing of a backflow preventer, which is part of a fire sprinkler system, may require the individual to comply with the Texas fire sprinkler licensing laws, according to the Texas Insurance Code, Article 5.43-3 et seq. as administered through the Texas State Fire Marshal's Office." COCS commented that §290.44(h)(4)(A) eliminating the distinction between general testers and fireline testers needs to be clarified to make explicit the requirements regarding certification for backflow prevention

device testers. COC commented that the language regarding fireline and general tester classifications in §290.46(h)(4) should remain as it is in the existing rules. COCS stated that the change standardizes all testers into one classification. Specifically, the commenter suggests that "§290.46(j)(l)(a)(i) should remain the same as in current rules," and "§290.46(j)(l)(a)(ii) should be changed to expand and clarify the requirements for fireline testers." BFU commented that removal of the language regarding fireline testing will cause undue confusion and may result in unqualified personnel performing backflow device testing on firelines.

The commission does not agree that the prior language should be reinstated. The commission does agree that the proposed language should be modified to provide further clarification, especially in regard to fireline testing. New text for §290.44(h)(4)(A)(i) and (ii) is contained in the adopted rules to provide clarification. The text of §290.44(h)(4)(A)(ii) has been changed to read "Backflow prevention assembly testers may test and repair assemblies on firelines only if they are permanently employed by an Approved Fireline Contractor. The State Fire Marshall's office requires that any person performing maintenance on firelines must be employed by an Approved Fireline Contractor."

COAu recommended that TNRCC retain the references to state licensing laws in §290.44(h)(4). The commenter expressed concern that removing these references would make it appear that the regulated community was not required to follow these other rules.

The commission disagrees because the references are not mentioned in the original §290.44(h) or §290.46(j), and the regulated community has been aware that they must comply with all applicable regulations, in addition to those contained in Chapter 290.

COAu recommended that TNRCC create classifications of backflow testers under §290.44(h)(4)(A) which would assist the testers to comply with other state agencies' regulations. The commenter states that the classification and limitation of backflow prevention assembly testers is imperative to the success of the backflow tester and the water supplier in developing an enforceable cross-connection control program.

The commission responds that operator certification and testing are administered by TNRCC Compliance Support Division under §290.46(e). TNRCC will provide this comment and information to that section for their consideration in the certification of backflow assembly testers.

COAu, COC, and SS commented on the types of backflow prevention assemblies that should be required to have annual testing under §290.44(h)(4)(A). COAu recommended that TNRCC require annual testing of all backflow prevention assemblies, regardless of whether they are located on a non-health hazard line or on a health hazard line. COAu noted that national backflow prevention standards (i.e., Uniform Plumbing Code, National Standard Plumbing Code, Southern Standard Plumbing Code and the University of Southern California's Foundation for Cross-Connection Control and Hydraulic Research, Manual for Cross Connection Control, 9th Edition) recommend annual testing of all backflow prevention assemblies. COAu commented that potable water lines should be protected from both health hazards and non-health hazards, and that annual testing would contribute to this protection. COC expressed concern that elimination of the classifications for health hazard and non-health hazards would impose a financial hardship and political upheaval of distribution systems; this concern was based on the perception that elimination of these classifications would mean that all backflow prevention devices would have to be tested annually. COC suggested that the commission let utilities determine which backflow prevention assemblies should be tested annually. SS commented that the rule should clarify that each detector assembly must be tested.

The commission disagrees. The current rules were not promulgated with the intent to address non-health hazard installations. However, local entities retain the authority to determine whether annual testing of non-health hazard assemblies is appropriate for their system and to require that these be tested. Although public water systems are to be commended for increasing the vigilance with which they protect the public health, the commission's regulations only require annual testing of backflow prevention assemblies that are needed to protect the system from the health hazards identified in §290.47(i) and do not address those devices installed at connections that are considered to be non-health hazards. The current changes to the rules regarding backflow prevention were predicated by an instance where a utility interpreted the previous rule language in a manner that created a hardship to its customers. For that reason, §290.47(i) has been added to specify conditions that represented health hazards and non-health hazards.

HAPJAC commented that the word "approved" should be added before the words "backflow prevention assembly" in §290.44(h)(1)(A) to make it more clear that only assemblies that have been manufactured and tested according to industry standards may be used in water distribution systems.

The commission disagrees with this comment and has decided not to modify the language.

HAPJAC commented that approved course and current professional certification should be defined in the rule and that current backflow prevention course providers and professional organizations that provide certification should be listed and approved in the adopted rule under §290.44(h)(4)(A). Specifically, the commenter suggests that the American Society for Sanitary Engineering (ASSE) Series 5000 Professional Qualification Standards for Backflow Prevention Assemblies Testers, Repairers and Surveyors, the American Backflow Prevention Association (APBA) and Texas A & M University should be recognized as accredited in the rule. The commenter recommends that approval by TNRCC should not be the basis for course approval, rather, courses should be considered approved if the course providers meets ASSE or ABPA standards.

The commission responds that requirements for backflow assembly tester certification are addressed in §290.46(e), which is administered by the TNRCC Compliance Support Division, Operator Certification Section. TNRCC will provide this comment and information to that section for their consideration in the certification of backflow assembly testers.

HAPJAC commented that the rule should recognize organizations that write procedures for gauge testing and recognize manufacturers written gauge calibration procedures in §290.44(h)(4)(B).

The commission disagrees with this comment. The regulations require that all gauges must be tested in accordance with the University of Southern California's Manual of Cross-Connection Control or the American Water Works Association Recommended Practice for Backflow Prevention and Cross-Connection Control (Manual M14). These manuals are widely recognized

as the standard in the industry, provide thorough and easily readable procedures, including clear illustrations, and are widely available to gauge testers.

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

COAu requested clarification of the frequency with which the residual disinfectant must be measured in finished water storage tanks in §290.46(d)(2). In addition, the commenter requested clarification of the consequences of a case in which the water in the top of a storage tank failed to carry a residual although the water in the bottom of the tank contained an acceptable concentration of a disinfectant.

The commission requires the residual disinfectant in a storage tank to be measured upon the request of TNRCC staff. If a sample taken at the request of TNRCC staff contained no disinfectant residual, regardless of the sampling location in the tank, the system would be considered in violation of the requirement that they retain a disinfectant residual in storage tanks.

Eco/Donna noted that if different turbidity standards are approved for different sized systems, then different certification levels for operators should be required at these different sized systems under §290.46(e).

The commission responds that the adopted rules require all systems to meet the same combined filter effluent turbidity requirements. The commission recommends that the commenter address concerns with respect to operator certification to the TNRCC's operator certification program.

TCC requested that §290.46(f)(3) be amended to make more clear which public water systems must comply with the record keeping requirements.

The commission responds that the language has been changed from "The public water system..." to "All public water systems..." in order to make it clear that all public water systems must keep records of their operation.

Eco/District and TXU commented on the interpretation of daily reporting requirements in §290.46(f)(3)(A). Eco/District requests clarification of the daily reporting requirements for public water systems. This commenter interprets the statement that public water systems must maintain a daily record of operations to mean that systems that have no daily reporting requirements must visit the plant daily, and requests further elucidation of the intent of this provision. TXU commented that, while there is merit in maintaining daily records of chemical use and water volumes treated for large community systems, there is not a need for daily record keeping for small noncommunity systems. The commenter suggested that it would be less onerous and more feasible to require weekly record keeping for small noncommunity systems.

The commission notes that the rules have not been changed, the daily record keeping requirement has not changed from previously existing requirements in the adopted rules. Nevertheless, the commission recognizes that this comment has merit. However, before making a change to this regulation, the TNRCC would like to receive guidance from the regulated community on what systems could reasonably be required to keep records of chemical use and flow rate on a weekly basis based on the size of the system. Consequently, the staff of the public drinking water program will discuss this issue with the Drinking Water Advisory Workgroup. In addition, the EPA is in the process of promulgating Stage 1 of the Long-Term Enhanced Surface Water Treatment Rule. The commission will address this comment in approximately six months when it begins developing the implementation strategy for the upcoming federal rule.

TCC requested that §290.46(f)(3)(B)(v) be amended to clarify the specific records that constitute records of backflow device programs.

The commission responds that all the record storage requirements for public water systems are contained in §290.46(f)(3) of the adopted rules, including the record retention requirements for backflow device programs. No change is intended to the requirement that records of backflow prevention assembly testing be retained for at least three years and that records of customer service inspections be retained for at least ten years.

TCC recommended that the TNRCC review the data retention requirements of §290.46(f)(3)(E) and reduce the amount of retained information to the minimum to demonstrate compliance. The commenter stated that the specific need to retain some of the data for an extended time is not clear.

The commission responds that many of the records retention periods are specified by federal regulations and that the data retention requirements for other records were negotiated with a stakeholder group that included representatives of Texas Municipal League; Texas AIDS Network; Texas League of Women Voters; Texas Rural Water Association; Texas Water Utilities Association; Texas Section of the American Water Works Association; Clean Water Action; TNRCC Field Operations staff; representatives from small utilities, medium sized utilities, large utilities, utilities treating groundwater, and utilities treating surface water; during four eight-hour meetings in the summer of 1999. The commission believes that the data retention requirements are consistent with the minimum amount of time necessary to demonstrate compliance.

TCC requested that the phrase "other pertinent data" in §290.46(f)(3)(E)(v) be replaced with a specific listing of records the TNRCC requires to be kept, and states that the interpretation of this phrase could change over time, such that what is deemed pertinent now might not include records the agency deems pertinent in the future.

The commission agrees that the proposed language did not provide sufficient guidance regarding the additional records that might be required by the executive director. Furthermore, the staff determined that the "other pertinent data" that might be required might not need to be retained for ten years. Consequently, the adopted new rules clarify what additional records might be required on a case-by-case basis and allows the executive director to establish retention periods for data not addressed in paragraphs (A) through (E).

Eco/District requested that the deadline for submittal of MORs in §290.46(f)(4)(A) be extended from ten days to either ten working days or to 15 calendar days.

The commission responds that the requirement for submitting MORs by the tenth of the month is a specific requirement of the Surface Water Treatment Rule (54 Fed Reg 27535, June 29, 1989).

TCC requested that the effective date of the requirement that systems submit any monthly or quarterly reports required by the executive director in §290.46(f)(4)(A) be delayed until December 17, 2001, and cited this date as the date required by EPA.

The commission responds that no change was intended to this requirement that systems submit any reports required by the TNRCC, or is made from the requirement previously contained in §290.46(d). There is no new applicability deadline.

TXU requested that sodium hypochlorite be allowed as a emergency distribution system disinfectant, as well as calcium hypochlorite in §290.46(h).

The commission responds that, because calcium hypochlorite is a solid, it is possible to deliver the high doses needed in the event of emergency distribution system line breaks. Because sodium hypochlorite is a liquid, it is not always possible to deliver the required concentration of free chlorine to the contaminated area. Therefore, the commission continues to require that a supply of calcium hypochlorite be kept on hand in the event of a line break.

TXU commented that noncommunity systems, such as industrial facilities, have no mechanism for creation of plumbing ordinances, regulations, or service agreement, as required in §290.46(i). The commenter noted that proper cross-connection control is achieved through procedures and postings, as appropriate, for these systems. TXU recommended that transient and nontransient noncommunity water systems that do not possess governmental or contractual authority should be exempted from this requirement.

The commission disagrees with this comment. The employees of an industrial nontransient facility or the customers of a transient facility deserve the same public health protection at work and while in transient facilities that they receive from their community water system at home. The facility can modify their procedures, with approval, but their procedures must be protective of public health. The commission decided not to provide an exemption.

COC commented that, in §290.46(j), the language regarding "health hazard" and "high health hazard" should not be changed as proposed, but that the definitions should remain as they are. The commenter stated that utilities should be allowed to determine whether a hazard is high or not.

The commission disagrees with the commenter. The changed terminology in the definitions in the adopted rules are consistent with widely accepted and used industry terminology and the revision was needed to clarify the specific minimum requirements of the regulation.

TXU commented that noncommunity systems such as industrial facilities, do not sell water to customers and that they own the facility that is being provided with water. The commenter noted that proper cross-connection control is achieved through procedures and postings, as appropriate, for these systems. The commenter recommended that transient and nontransient noncommunity water systems which do not possess governmental or contractual authority should be exempted from the requirement contained in §290.46(j).

The commission disagrees with the comment. The language in §290.46(j) requires that a customer service inspection report be completed if water is provided to new customers or construction, if a contamination hazard is identified, or if there are additions to a private water distribution facility. While the commission agrees that an industrial facility may be unlikely to add new customers, the facility should still utilize a systematic method of identifying and correcting potential contamination hazards. As noted in §290.46(j), the commission does not object if the public water system modifies the customer inspection form contained in §290.47(d) to address site-specific requisites provided that the executive director has reviewed and approved the alternate format.

COAu commented that the requirement in §290.46(m)(5) that settling basins be kept free of an excessive buildup of solids should not be considered a maintenance issue, based on interpretation of this section as addressing "maintenance/housekeeping" issues.

The commission disagrees with the recommendation to move or remove the requirement that settling basins be kept free from an excessive build-up of solids. The purpose of §290.46(m)(5) is to require systems to explicitly address maintenance issues as part of operational requirements, not merely to require good housekeeping. Excessive buildup of solids in a settling basin can severely limit the ability of the settling basins to remove pathogens from the water. Removal of excessive build-up of solids from settling basins is a periodic activity performed by the operations staff, and as such, is properly located in this section.

COP is opposed to the requirement in §290.46(n) that systems retain engineering plans. For wells drilled ten to 15 years ago, the city has no engineering plans except possibly drilling logs.

The commission responds that the adopted rules require that a pubic water system retain the well logs and completion reports for active wells but does not require the retention of engineering plans for all wells. The requirement that a system maintain a record of the engineering drawings applies only to treatment facilities, pump stations, and storage tanks.

COAu commented that if a surface water treatment plant must backwash a filter at 1.0 NTU, as specified in §290.46(o), this requirement could eliminate the requirement for an exception report on an individual filter, as required for plants treating surface water or groundwater under the direct influence of surface water and serving 10,000 people or more specified in §290.111(e)(3) of the adopted rules.

The commission responds that the provisions of §290.46(o) address an operational constraint imposed by the requirements of §290.111. The commission agrees that a system that continuously complies with the requirements of §290.46 should never need to submit an exceptions report required by §290.111(e)(3). However, §290.111(e)(3) currently applies only to systems serving at least 10,000 people and does not establish operating constraints for small systems. Backwashing of filters is a periodic activity performed by the operations staff, and is properly located in this section. The backwash criteria established by the section is consistent with good operating practices.

COAu commented that the notice to boil water required by §290.46(q)(3) should be issued when the turbidity of the water entering the distribution system exceeds 1.0 NTU, rather than 5.0 NTU. In addition, the commenter recommends that the notice remain in effect until the water entering the distribution system has a turbidity of 0.5 NTU or less.

The commission disagrees with the commenter and responds that a notice to boil water is absolutely required when the turbidity of the water entering distribution system exceeds 5.0 NTU. In addition, the adopted regulation allows the executive director to require a public water system to institute a variety of protective measures with the intent to protect public health. Finally, the adopted rule does not restrict a public water system from initiating an advisory to boil water at turbidity levels lower than the

5.0 NTU limit or retaining the notice after the turbidity level drops below 5.0 NTU.

TXU commented that it is not possible to calibrate some flow measurement devices as required by §290.46(s)(1) except by isolation of the well and meter for a qualitative check of the volume pumped.

The commission disagrees with this comment. The commission readily acknowledges that the physical measurement of the amount of water pumped is a very effective method to calibrate a flow meter. However, this test will only be acceptable if the test utilizes a quantitative, not qualitative, methodology.

COP estimated that the proposed changes in testing and calibration contained in §290.46(s)(2) will have a financial impact of $25,000 on their annual budget, and commented that this was a burdensome fiscal impact.

The commission responds that no change is intended or made to the current requirements for calibration of pH meters, turbidimeters, and chlorine residual analyzers. The requirements in the adopted rules were previously contained in regulatory guidance (Monthly Reporting Requirements for Surface Water Treatment Plants, RG211). The purpose in requiring systems to calibrate equipment used to measure turbidity, disinfectant residuals, and pH, is to make certain the data obtained is accurate. Required measurements made with these devices ensure that the water provided to customers is protective of public health. The adopted rules add the requirement that flow measuring devices and flow rate controllers be calibrated annually. Further, the commission disagrees with the likely magnitude of fiscal impact. The requirement in the adopted rules that systems calibrate flow measuring devices annually is expected to have a fiscal impact of approximately $200 to $300 per meter per year. Calibration of flow measuring devices ensures that a system feeds chemicals correctly and determines system water losses accurately.

COAu questioned how a "series of samples" would be defined under §290.46(s)(2)(A), with respect to the requirement that pH meters be checked with at least one buffer each time a series of samples is run.

The commission responds that a series of samples is defined as the group of samples that an operator runs in a continuous sequence. For example: if an operator analyzes a group of samples, leaves the laboratory for lunch, and returns an hour later, calibration of the pH meter must be checked before proceeding with additional measurements. If, however, the operator leaves for only a moment, the series could reasonably be considered as one group. Although the adopted rules established minimum acceptable operating practices for public water systems, they do not prohibit a laboratory from implementing more rigorous quality control and assurance procedures.

COAu recommended that calibration requirements for on-line pH meters be included in the rules under §290.46(s)(2).

The commission agrees with the comment and the rule language has been revised to address both bench top and on-line pH analyzers.

COAu questioned whether TNRCC would accept Hach ICP/PIC Calibration/Verification Modules for on-line Hach 1720C or D Turbidimeters as a substitute for comparing the results of the on-line unit with a bench top unit as required by §290.46(s)(2)(B).

The commission responds that the Hach ICP/PIC Calibration/Verification Modules may be used to check on-line turbidimeters, but not for primary calibration. Consequently, the adopted new rules allow public water systems to confirm the calibration using a primary standard, a secondary standard, a proprietary calibration-verification device or the comparison method.

COAu questioned how a "series of samples" would be defined in §290.46(s)(2)(B)(ii), with respect to the requirement that bench top turbidimeters be checked with secondary standards each time a series of samples is tested and, if necessary, recalibrated with primary standards.

The commission responds that a series of samples is defined as the group of samples an operator runs in a continuous sequence. If an operator has a group of samples, analyzes some portion of them, leaves the laboratory for lunch, and returns, the turbidimeter calibration should be verified before proceeding with additional measurements. If however, the operator leaves for only a moment, the series could reasonably be considered as one group. Although the adopted rules established minimum acceptable operating practices for public water systems, they do not prohibit a laboratory from implementing more rigorous quality control and assurance procedures.

TXU commented that an exemption from the calibration requirements of §290.46(s)(2)(C)(ii) and (iii) should be included for continuous residual monitors that are used for process control and not for reporting purposes.

The commission responds that it was not intended that process control meters be included in the requirement. The language has been changed to clarify that only those meters which are used to obtain data required for compliance with these regulations must be calibrated in the manner designated.

§290.47. Appendices

COC commented that on the customer service inspection form in §290.47(d), the requirement that water service shall not be provided to the private distribution facilities until certain conditions are met should remain in the rules. The commenter stated that this provision gives the utility the ability to control who will receive service and that removing the language makes it impossible to deny service to inappropriate connections.

The commission notes that the wording referenced by the commenter was removed from the form because it provided the basis for customer abuse and harassment by a small number of public water suppliers. In addition, independent customer service inspectors lack the authority to terminate service. This power resides with the water supplier. Instead, §290.46(j)(2) has been modified to clarify when service can be terminated and restored.

COC commented that on the backflow prevention assembly test form, §290.47(f), a line should be added for the tested pressure under the "2nd Check" column, as is included under the "1st Check" column.

The commission agrees that this information may be useful and has revised the form accordingly.

COCS commented that there should be a place on the new form contained in §290.47(f), for gauge certification information required by §290.44(h)(4)(B), method of installation (vertical or horizontal), and the reason for installation (i.e. domestic use, fireline, irrigation use, etc.).

The commission agrees with this comment and has amended the form to include a line for the tester to respond to the question "Is the assembly installed in accordance with manufacturer recommendations and/or local codes?"

COC recommended that on the backflow prevention assembly form in §290.47(f), a question be added addressing spill resistance or reduced pressure.

The commission agrees that this is a concern and has added a general question on the form concerning compliance with manufacturers installation recommendations and/or local codes.

SS commented that TNRCC should allow electronic storage and transfer of the backflow prevention assembly test form.

The commission responds that the rules do not prohibit electronic storage or providing additional information on the form. The commission notes that any form which varies from that included in the rules must have agency approval. This includes test reports in electronic format. Submission or electronic transfer of an electronic form with a format that is identical to that of the form shown in §290.47(f) is not necessary or required.

SS commented that the "time in" and "time out" should be included on the backflow prevention assembly form in §290.47(f).

The commission disagrees with the comment, but notes that the commenter may use a form other than that provided in §290.47(f), if the commenter requests and obtains commission approval under the provisions of §290.44(h)(4)(C).

SS commented that on the changes to the form contained in §290.47(f), the commission should remove "atmospheric vacuum breaker" as one of the "types of assembly," and that "atmospheric vacuum breaker" should be replaced with "spill resistant breaker."

The commission agrees that it is appropriate to list spill resistant vacuum breakers as well as detector assemblies in the form contained in §290.47(f) because they are considered acceptable backflow prevention assemblies and are required to be tested. The form has been revised to include spill resistant pressure vacuum breakers, double check detector, and reduced pressure principle detector assemblies.

SS commented that on the form contained in §290.47(f), the certified tester should be allowed to use their certification number rather than their social security number.

The commission notes that the form requires the tester to provide their certified tester number, not a social security number, when completing the report.

SS commented that on the form contained in §290.47(f), a line should be added next to "initial test" to show whether the assembly passed or failed.

The commission disagrees with the comment because pass/fail information is superfluous because the assembly must be repaired if it fails the initial test. The form is a certification that the assembly is operating within acceptable parameters.

SS commented that on the form contained in §290.47(f), just below the "remarks" section, the section that reads "The above is certified to be true." should be revised to read "The above is certified to be true at the time of testing only." The reason for this is to limit the liability of the tester.

The commission agrees that there is justification for this suggestion and the language has been changed.

Two commenters opposed inclusion of the table of assessments and hazards contained in §290.47(i). COAu commented that the table of assessments of hazards and selection of assemblies was obtained from AWWA Manual M-14, copyrighted in 1966 and reprinted in 1990. The commenter opined that the manual is 34 years old and outdated. Additionally, COAu noted that the table is not consistent with the national backflow prevention standards (i.e. Uniform Plumbing Code, National Standard Plumbing Code, Southern Standard Plumbing Code and the University of Southern California's Foundation for Cross Connection Control and Hydraulic Research, Manual for Cross-Connection Control, 9th Edition). In addition, COAu stated that the application and designation of hazards in the list is not consistent with the state adopted plumbing codes. COAu therefore expressed concern that adoption of the table would put water suppliers in the position of trying to comply with competing state regulations: those legislated in the state plumbing licensing law, and those in Chapter 290. The commenter suggested that if TNRCC chooses to include a table of this type, the table be obtained from the proposed update to AWWA Manual M-14, which incorporates the national updates and is a recommended practice manual. COC commented that in the appendix §290.47(i), Assessment of Hazards and Selection of Assemblies, inclusion of this table pigeonholes potential hazards. The commenter stated that the utilities will be too limited by this list of hazards. In addition, the commenter stated that smaller systems will think they are in compliance if they don't have any of the hazards listed on the form, but they may be at risk from some hazard that is not listed in the table.

The commission responds that the Table of Assessments was developed using references from the AWWA M14 Manual, the University of Southern California's Manual of Cross-Connection Control, and staff input. The commission realizes that the table is not an all-inclusive list and has incorporated an introductory paragraph at the top of the list. The paragraph states "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." The commission also acknowledges that the list is not intended to be a surrogate for local, comprehensive plumbing regulations and ordinances required by adopted new §290.46(i). However, the list defines conditions under which a public water system is required to comply with the provisions of new §290.44(h) and provides guidance to assist the regulated community in determining types of hazards and backflow prevention assemblies that might be appropriate under other conditions. The commission reclassified some items as health hazards rather then non-health hazards after reviewing data in the AWWA Manual and USC Cross-Connection Control Manual. The commission added watering troughs to the list of health hazards requiring internal protection.

BFU commented that the difference between reclaim water and recycle water (treated effluent) on the Table of Assessments located in §290.47(i) should be made clear.

The commission responds that from the perspective of backflow prevention, there is little difference between reclaim water and recycle water. Neither are suitable for distribution as public drinking water without extensive treatment, and without an internal protection provided in accordance with the requirements of §290.44(h) and §290.47(i) an appropriate backflow prevention device must be installed at the service connection.

BFU commented that steam plants should be classified as a health hazard on the table in §290.47(i).

The commission agrees. Steam plants will be classified as health hazards in the adopted rule.

BFU commented that ornamental fountains should be classified as a health hazard and that the DCVA should be eliminated, allowing only AVB-PVB-R/P-A/G on the table in §290.47(i).

The commission agrees that ornamental fountains should be classified as a health hazard because the anti-algal, anti-fungal, and colorant compounds that may be added to the water could cause a public health risk if cross-connection occurred. The commission also changed DCVA to AVB - PVB in the adopted rule.

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

Four commenters (Eco/District, TCC, NETMWD, and COP) requested clarification of how purchased water systems and wholesalers would be considered with respect to the sampling requirements of this subsection. Eco/District commented that the rules appear to ignore systems which use only purchased water or these are being required to do an unreasonable amount of sampling. The commenter requested clarification on the testing required of wholesalers and purchasers. Eco/District also commented that the rules do not make it clear whether systems that use only purchased water are required to comply with the new requirements regarding TTHM and HAA5. TCC requested guidance from TNRCC on how a nontransient noncommunity water system utilizing purchased water will address excessive disinfection by-products (TTHM and HAA5) in their water. NETMWD commented that it will be impossible for water wholesalers to control the water quality in the distribution systems of their purchasers. COP commented that since all the surface water used by their city will be purchased from other public water systems, it seems that there is a large amount of unnecessary costly duplication.

The commission responds that systems purchasing surface water completely treated by another public water system are not required to meet the requirements of the rules that apply to systems which treat surface water. The requirements of the rule that apply to systems which purchase treated water are intended to ensure public health protection within that system's distribution system. Previous federal rules have based sampling requirements on the number of connections that a system serves. Now, however, EPA is basing sampling requirements on the number of individuals that a system serves. Obviously, changes will be necessary to the sampling plans of some systems. Nevertheless, the commission recognizes that with respect to distribution system samples, such as TTHM and HAA5, a system that rechlorinates treated water is at least partially in control of these disinfection by-products. As implementation of these rules progresses, the commission will gain knowledge of the relationships between various systems, and will make every effort to apply the sampling requirements in an equitable manner. It is important for systems which are participants in contracts involving the sale or purchase of water, to look to the future and work together to ensure that their shared distribution systems are sampled appropriately.

§290.102. General Applicability

UTBWQC commented that the TNRCC should explicitly include provisions for granting extensions of up to two years for systems to comply with new MCLs or treatment technique requirements for systems that must make capital improvements to comply with the rules. The commenter correctly notes that this authority is granted to the state in §1412(b)(10) of the Safe Drinking Water Act (42 USC §300g-1(b)(10)). Specifically, UTBWQC recommends that the following language be included as §290.102(d): "The executive director may grant an extension of up to two years to a compliance date for a MCL or treatment technique if the executive director determines that additional time is necessary for capital improvements. Applications for extensions must be submitted to the executive director in writing by the owner of the water system. The request must include a statement of the compliance date for which an extension is needed; a description of the capital improvements necessary to meet the MCL or treatment technique and the efforts made by the system to construct the needed facilities; and a schedule for completing the capital improvements. The executive director shall extend the compliance deadline (to the date included in the application) for a public water system if the executive director determines that the system is diligently working to comply."

The commission believes this comment is meritorious. However, before adopting this provision which is a significant change to the proposed rules, the commission plans to receive guidance from the regulated community and various consumer groups on the scope and applicability of this provision, as well as provide an opportunity for all affected persons to comment. Consequently, the commission's staff will discuss this issue with the Drinking Water Advisory Work Group and will seek public comment on the proposal the next time that Chapter 290 is opened for comments. Since the EPA is in the process of promulgating Stage 1 of the Long-Term Enhanced Surface Water Treatment Rule, the commission expects this chapter of the rules to be reopened in approximately six months.

TCC commented that §290.102(b)(3)(C) states that a long range plan must be submitted within one year of notification that a variance or exemption has been granted, but §290.102(b)(3) states that the long range plan must be submitted with the application. TCC recommends that the phrase "The request must include the following:..." in §290.102(b)(3) be changed to "The request must include, or a schedule to submit, the following:..."

The commission responds that the intent of the provision is to ensure that sufficient planning takes place before the system makes changes. The commission has revised the language to clarify that the plans submitted with the initial request should be general, and that a more specific plan including details of the system's actions should be submitted after the variance or exemption is granted.

§290.103 Definitions

COAu commented that the definition of "enhanced coagulation" in §290.103(6) is not clear. The commenter recommended that based on discussion between the regulated community and the EPA during the regulatory negotiation process, the definition should read: "Enhanced coagulation--the removal of disinfection by-product precursors to a specified level by conventional coagulation and sedimentation."

The commission agrees with this comment and has revised the rule to the language recommended in this comment.

COAu commented that the definition of "enhanced softening" in §290.103(7) is not clear. The commenter recommended that, based on discussion between the regulated community and the EPA during the regulatory negotiation process, the definition should read: "Enhanced softening--the removal of disinfection by-product precursors to a specified level by softening."

The commission agrees with this comment and has revised the rule to the language recommended in this comment.

COAu commented that the definition of "maximum contaminant level" in §290.103(13) is not clear. The commenter also suggested that the second and third sentences describing acute and nonacute health effects be removed.

The commission agrees with this comment and has revised the rule language.

TCC commented that the sentence, "There is convincing evidence that addition of a disinfectant is necessary for control of waterborne diseases," in the definition of "maximum residual disinfectant level" in §290.103(14) is confusing and recommends that it be struck.

The commission responds that inclusion of this sentence is motivated by the need to make it extremely clear to persons using disinfectants that although there is a maximum regulatory limit, it is not desirable to reduce the concentration to zero. For other chemicals (e.g. SOCs) that have a maximum limit, the desired concentration is zero. For disinfectants, it is necessary to have a non-zero residual.

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

TCC commented that although §290.104 states that the purpose of the section is to provide a list of all MCLs or SCLs in a single location, they found the repetition of the tables to be confusing and that inclusion of the tables created the potential for errors during the reproduction of the tables in other locations. The commenter stated that they understood the desire to consolidate the information into one single location, but they recommend that a separate guidance document that includes all of the MCLs and SCLs be created and referenced in the rule.

The commission responds that the language has been changed to clarify the purpose of including these sections. The drinking water standards are very complex, and there have been many requests from consumers as well as the regulated community to make the rules easier to use by summarizing the MCLs for easier reference.

TCC, COAu, and Eco/District noted that the MCL for fluoride is listed twice in the table contained in §290.104(b) and recommends that the second listing be removed.

The commission agrees with this comment and has revised the rule.

COAu commented that the definition of "annual dose equivalent to the total body" in §290.104(d)(3) was confusing. The commenter requested that the language be changed for clarity.

The commission responds that the determination of whether the concentration of radionuclides other than tritium or strontium 90, is based on a flow chart presented in EPA's Radioactivity in Drinking Water Report (EPA 570/9-81-002, page 53). The use of the "annual dose equivalent to the total body" was intended as a simplification of the rather complicated process discussed by EPA. The language presented in this section has not been changed from the regulation currently contained in §290.110(a)(2). However, new federal regulations regarding radionuclides are imminent, and the commission will reconsider this comment in future rulemaking.

§290.105. Summary of Secondary Standards

TCC commented that although the rule states that the purpose of these sections is to provide a list of all MCLs or SCLs in a single location, they found the repetition of the tables to be confusing and that inclusion of the tables created the potential for errors during the reproduction of the tables in other locations. The commenter stated that they understood the desire to consolidate the information into one single location, but they recommend that a separate guidance document that includes all of the MCLs and SCLs be created and referenced in the rule.

The commission responds that the language has been changed to clarify the purpose of including these sections. The drinking water standards are very complex, and there have been many requests from the regulated community to make the rules easier to use by summarizing the MCLs for easier reference.

Eco/District noted that the allowable concentration of aluminum in water is stated as a range (0.05 to 0.20 mg/L) in §290.105, rather than as a single value, and questioned whether that was necessary.

The commission responds that this is a specific requirement of the federal rules.

§290.106. Inorganic Contaminants

Eco/District requested clarification of whether the samples used in compositing should be point of entry samples or random distribution samples. The commenter states that the language used in §290.106(c)(1)(C) is more confusing than the language used under §290.107 for organic contaminants.

As stated in §290.106(c), all inorganic sampling for the listed parameters is performed at the point of entry to the distribution system. The commission acknowledges that the compositing requirements of new §290.106(c)(1)(C) are more complex than those of new §290.107(c)(1)(E) and (2)(E). However, some provisions of the inorganic regulation (i.e. compositing may be done in either the field or in the laboratory) are more flexible than those for the organic regulations while other provisions (i.e. samples from multiple surface water sources cannot be composited) are more restrictive.

Eco/District recommended that the compositing described in §290.106(c)(1)(C)(ii) be allowed for wholesale receiving systems (purchased water systems) as well as groundwater systems.

The commission responds that it would be inappropriate to include purchased water sources in a composite sample because the purchased water sources will already have been sampled at the point of entry to the distribution system. Essentially, purchased water systems with no other source of water are exempt from the inorganic monitoring required by §290.106(c)(1).

TXU and Eco/District noted that the word "nitrite" was incorrectly spelled as "nitrate" in §290.106(c)(7)(A)(iii).

The commission responds that this typographical error has been corrected in the adopted rule.

Eco/District requested clarification of whether a repeat sample as required by §290.106(c)(7)(A)(iii), will be collected by TNRCC's contractor within the required 24 hours, or may the system choose to collect the repeat sample.

The commission responds that, although current practice is that the repeat sampling is performed by TNRCC's contractor, sample collection scheduling is coordinated by the public drinking

water program and results are submitted to TNRCC by the contract laboratory, it remains the responsibility of the system to comply with these rules.

Eco/District questioned whether inclusion of the language in §290.106(e) regarding submittal of analytical results meant that TNRCC's contract laboratory would no longer be submitting results directly to TNRCC.

The commission responds that although current practice is for sampling to be performed by TNRCC's contractor and results submitted to TNRCC by the contract laboratory, it remains the responsibility of the system to comply with these rules.

Eco/District commented that the wording regarding submittal of analytical results in §290.106(e) should be changed to require submittal of this data within ten days of receipt of the results from the analytical laboratory, instead of requiring submittal of results ten days after the sample is collected.

The commission agrees with the comment and has revised the rule.

§290.107. Organic Contaminants

Eco/District recommended that the requirements for compositing of samples be moved from (E) to (A) under §290.107(c)(1).

The commission acknowledges the merit of this comment. However, the commission has decided not to change the sequence of §290.107(c)(1) because the current analytical limitations preclude the use of composite samples when conducting synthetic organic chemical (SOC) analyses. Basically, the detection limits for current analytical methods do not allow the use of composite samples. Consequently, the commission has decided to leave composite sampling near the end of the SOC subsection.

COAu requested that the definition "detect" in §290.107(c)(1)(B)(ii) be clarified. The commenter questioned whether "detect" was defined as a concentration greater than the MCL or a concentration greater than the analytical detection limit listed in the federal regulations (40 CFR §141.24(H)(18)).

The commission responds that "detect" corresponds to the presence of a constituent at a concentration that exceeds the reported analytical detection limit of the certified laboratory which is performing the analysis.

TXU commented that the proposed change in the rule language in §290.107(c)(1)(D) regarding waivers for SOC monitoring appears to nullify previously submitted vulnerability assessments.

The commission responds that the intent was not to change the meaning of the rule, but to add clarity. It is not intended that the changes nullify previously submitted and approved vulnerability assessments.

Eco/District recommended that the requirements for compositing of samples contained in §290.107(c)(2) be moved from (E) to (A).

The commission acknowledges the merit of this comment. However, the commission has decided not to change the sequence of §290.107(c)(2) because the current analytical limitations preclude the use of composite samples when conducting volatile organic compound (VOC) analyses. Basically, the detection limits of the current analytical methods do not allow the use of composite samples. Consequently, the commission has decided to leave composite sampling near the end of the VOC subsection.

COAu requested that the definition "detect" in §290.107(c)(2)(B)(iv) be clarified with respect to VOCs. The commenter questioned whether "detect" was defined as a concentration greater than the MCL or a concentration greater than the analytical detection limit listed in the federal regulations (40 CFR §141.24(H)(18)). The commenter suggested that if the definition is that given in 40 CFR §141.24(H)(18), labs reporting compliance results should use these detection limits as their reporting limit to the water system.

The commission responds that "detect" corresponds to the presence of a constituent at a concentration that exceeds the reported analytical detection limit of the certified laboratory which is performing the analysis.

Eco/District and TXU commented that the acronym "SOC" is used erroneously in §290.107(c)(2)(C)(iv), and that the correct acronym is "VOC."

The commission responds that this typographical error has been corrected in the adopted rule.

TXU commented that the proposed language of §290.107(c)(2)(D)(vi) requires the executive director to reconfirm a VOC waiver for a groundwater system within three years of the initial determination. The commenter interprets this to mean that if a reconfirmation is not performed during this timeframe, the waiver is invalid and the system is required to sample on an annual basis. The commenter stated that the denial of reconfirmation of a waiver on the part of the executive director should require a positive action from the executive director, not inaction.

The commission responds that federal rules currently require a VOC monitoring waiver to lapse unless the primacy agency takes positive action to renew it. Although federal regulations preclude the automatic reconfirmation of an existing waiver, the commission responds that it is current practice to notify the system whenever a VOC waiver is bestowed, reconfirmed, or denied.

Eco/District questioned whether inclusion of the language regarding submittal of analytical results under §290.107(e) meant that TNRCC's contract laboratory would no longer be submitting results directly to TNRCC.

The commission responds that although current practice is for sampling to be done by TNRCC's contractor, it remains the responsibility of the system to comply with these rules.

Eco/District and TXU commented that the wording contained in §290.107(c)(1) regarding submittal of analytical results should be changed to require submittal of this data within ten days of receipt of the results from the analytical laboratory, instead of requiring submittal of results ten days after the sample is collected.

The commission agrees with the comment and has revised the rule.

§290.108. Radiological Sampling and Analytical Requirements

Eco/District commented that the phrase "supplier of water" is often used in this section. The commenter requested clarification on whether "supplier of water" is synonymous with "producer(s) of water," and recommends that if this is the case, the rule should be rewritten to use the phrase "producer of water," because it is less ambiguous.

The commission agrees with the comment and the phrase "supplier of water" has been replaced with "public water system" rather than "producer of water."

COAu commented that the locations for monitoring of radionuclides contained in §290.108(c) are not made clear in the proposed rule.

The commission sympathizes with the commenter. Monitoring plans are unique to each facility., and are required to be approved by TNRCC. Sampling locations are specified in a system's monitoring plan based on the quality of the sources of drinking water for that system. It is anticipated that within a year, TNRCC will reopen these regulations to incorporate provisions of new federal radionuclide regulations, and TNRCC hopes to provide further guidance on monitoring location requirements at that time.

Eco/District and TXU commented that the wording regarding submittal of analytical results in §290.108(e) should be changed to require submittal of this data within ten days of receipt of the results from the analytical laboratory, instead of requiring submittal of results ten days after the sample is collected.

The commission agrees with the comment and has revised the rule.

Eco/District questioned whether inclusion of the language contained in §290.108(e) regarding submittal of analytical results meant that TNRCC's contract laboratory would no longer be submitting results directly to TNRCC.

The commission responds that, although current practice is that sampling is done by TNRCC's contractor, it remains the responsibility of the system.

§290.109. Microbial Contaminants

COAu requested clarification of the monitoring requirements for bacteriological samples, as required in §290.109(c)(2)(B). The commenter questioned whether systems of a certain size fall under any requirement to take daily samples.

The commission responds that THSC, §341.033, requires systems serving at least 25,000 persons to test the water at least once daily to determine its sanitary quality. In addition, the adopted new regulation requires these public water systems to collect bacteriological samples at regular intervals throughout the month and to monitor the disinfectant residual of the water in the distribution system on a daily basis. The commission is aware that most public water systems either operate or utilize microbiological laboratories that operate during a five-day workweek with microbiological samples only analyzed four days each week. The commission believes that systems can comply with both statutory and regulatory requirements if the public water system: 1) verifies on a daily basis (i.e. seven days per week), that the disinfectant residual of the water in the distribution exceeds minimum regulatory requirements; and 2) collects the required number of monthly microbiological sample at intervals that evenly distribute samples throughout the sampling days of the month.

For example, a system collecting 40 samples per month (i.e., ten samples per week) could collect three microbiological samples daily on Monday and Thursday and two microbiological samples daily on Tuesday and Wednesday. The system could also conduct two or three chlorine residual tests in the distribution system during each day of the week (i.e. Sunday through Saturday) to confirm that the disinfectant residual has not fallen below minimum acceptable levels.

Eco/District questioned whether inclusion of the language in §290.109(e) regarding submittal of analytical results meant that TNRCC's contract laboratory would no longer be submitting results directly to TNRCC.

The commission responds that although current practice is for sampling to be done by TNRCC's contractor, it remains the responsibility of the system to comply with these rules.

Eco/District and TXU commented that the wording regarding submittal of analytical results in §290.109(e) should be changed to require submittal of this data within ten days of receipt of the results from the analytical laboratory, instead of requiring submittal of results ten days after the sample is collected.

The commission agrees with the comment and has revised the rule.

§290.110. Disinfectant Residuals

Eco/District, COAu and TXU commented on the sampling requirements of §290.110(c) for disinfectants entering the distributions system. Eco/District noted that as written, these rules do not specify that they apply to systems treating surface water or groundwater under the direct influence of surface water. COAu commented that the disinfectant concentrations should be clarified in §290.110(c)(5)(A) and (C). TXU noted that groundwater systems were erroneously included in language intended to refer to systems treating surface water or groundwater under the direct influence of surface water. Additionally, TXU noted that some noncommunity groundwater systems may not have a consistent demand on a daily basis, therefore distribution inlet samples would not be representative of residuals in use.

The commission responds that the referenced section applies only to systems treating surface water or groundwater under the direct influence of surface water, and has revised the rule.

COAu requested clarification of the type of systems that are required to take daily samples under §290.110(c)(5).

The commission responds that systems which treat surface water or groundwater under the direct influence of surface water must take daily samples. Systems which treat groundwater and serve at least 750 people on a daily basis must take daily samples. Systems that purchase potable water and serve at least 750 people on a daily basis must take daily samples. Systems that use only groundwater or purchased water and serve fewer than 750 people are not required to take daily samples; they must take samples once a week.

TXU, COAu, and Eco/District commented that the language in §290.110(e) makes the reporting requirements that follow unclear.

The commission agrees with the comment and has changed the wording to clarify the reporting requirements.

EPA commented that there was no date in the proposed rules by which public water systems were to begin disinfection profile monitoring, although the rules do specify that monitoring plans must be submitted by January 1, 2001.

The commission responds that §290.110(e)(2) has been revised to specify that public water systems must use new TNRCC Form 00102 after January 1, 2001. The new form requires data on disinfection profile monitoring.

EPA commented that no accompanying regulatory language for determining compliance was proposed for chlorines and chloramines.

The commission has added new §290.110(f)(9) to clarify that chlorines and chloramines are included in determining compliance with MRDLs.

COP commented that the requirement for public notification in §290.110(g)(5)(B) with regard to new maximum residual levels is undesirable because that notification will serve no purpose except to scare residents who have no technical knowledge of the system.

The commission responds that the public notification requirements for violation of the MRDLs contained in the adopted rule are explicitly required as part of the federal rules.

§290.111. Turbidity

NETMWD, Eco/Donna, and COAu supported the requirement of §290.111(a) that systems serving less than 10,000 people meet the combined filter effluent turbidity limits on the same schedule as systems serving at least 10,000 people. TML opposed this provision. NETMWD further commented that systems would be wise to go an additional step and optimize their systems to provide even better protection. COAu noted that reducing turbidity levels at all sizes of systems is in the best interest of public health, and reduces confusion among water suppliers regarding the standard that must be met. Eco/Donna commented that customers in small towns deserve equal treatment with customers in large cities. The commenter noted that in Milwaukee, Wisconsin in 1995, 400,000 people became ill and more than 100 died from *Cryptosporidiosis*.

The commission appreciates the support that the regulated community has shown for protection of public health for all citizens, not merely in this rulemaking process, but as a daily activity for many years.

In extensive comments, TML opposed making the combined filter effluent turbidity provisions of the Interim Enhanced Surface Water Treatment Rule applicable to systems serving less than 10,000 people at the same time that the provisions become effective for systems serving more than 10,000 people.

First, TML commented that city officials in Texas take fierce pride in the quality of their drinking water and their city's reputation for meeting health, safety and environmental requirements. The commenter further states that a sign at the edge of a town identifying the water system as "superior" is often considered essential for attracting new citizens and businesses. Finally, TML explained, the stigma of being identified as non-compliant may generate grave debate in a city.

The commission recognizes and appreciates the dedication of drinking water professionals in municipalities throughout Texas. The quality of these systems is demonstrated by the fact that 85% of the surface water systems in Texas serving less than 10,000 people already produce treated water with a combined filter effluent turbidity less than 0.3 NTU on a regular basis. While the stigma associated with higher turbidity levels may generate a vigorous debate within the local community, the commission believes that such a debate will serve to accelerate efforts to improve water quality while the lack of such debate will only leave the citizens unaware that their water treatment facility needs to improve its design or operations and that they are at increased risk of waterborne disease. Since 1995, the public drinking water program through the Texas Optimization Program, has been helping systems identify the cause of performance problems and offering a variety of technical assistance opportunities to systems that have turbidity over 0.3 NTU. The commission intends to continue to work directly with these smaller systems prior to the effective date of the rules and work together to achieve a solution which will simultaneously keep a system in compliance while ensuring that its customers receive water as safe as the water received by citizens of larger cities.

Second, TML commented that city officials will be put in the defensive posture of trying to explain and assure citizens that their drinking water is safe. TML states "The real or perceived linkage of these rules to *Cryptosoridiosis* will make the officials' task more daunting."

The commission responds that the link between turbidity and increased risk to public health is well established. Serious public epidemics such as the one that affected the population of Milwaukee, Wisconsin in 1995, have been associated with even slight turbidity increases. Neither the scientific community nor the regulatory community questions the relationship between higher turbidity and higher risk to public health. The commission will continue to work with the water utilities industry in their efforts to educate its customers on the nature and magnitude of the risks posed by *Cryptosporidium*.

Third, TML commented on the availability of funds from the Drinking Water State Revolving Fund (DWSRF) for projects designed to help systems achieve lower filtered water turbidity. Currently, DWSRF loans are prioritized based on failure to comply with existing rules. One of the commission's motivations for proposing to make the combined filter effluent provisions apply to small systems at the same time they apply to large systems was to improve these systems' access to funding. TML recommended that the procedure for obtaining DWSRF funds be altered to make funds available to systems that are likely to be out of compliance with an upcoming rule.

The commission agrees with the commenter's concern regarding funding for capital improvements needed to meet the new turbidity rules. For that reason, the commission intends to extend the compliance deadline for the new turbidity standards until January 1, 2004, for systems needing capital funding. In addition, our staff is pursuing options to revise the DWSRF funding procedures so that systems that cannot comply with a promulgated rule can access DWSRF funds even before the effective date of the rule. In addition, the commission notes that there are several funding sources which may provide funds to comply with existing rules.

Fourth, TML commented on the likelihood that provisions other than those contained within this rule will be applicable to small systems serving less than 10,000 people in the future. The commenter stated, "Two years from now there may be a different public health threat or need..."

The commission responds that the Long Term Stage 1 Enhanced Surface Water Treatment Rule (LT1ESWTR) proposed by the EPA on April 10, 2000, contains the requirement that systems serving fewer than 10,000 people achieve a turbidity of 0.3 NTU or less in 95% of their combined filter effluent compliance samples. The commission expects that the final rule will be promulgated this fall. TNRCC will bring together a stakeholder group to develop draft language for the corresponding Texas rules in the fall of 2000. It is extremely unlikely that this provision will change when the federal rule is promulgated, because EPA's cost benefit analysis shows that the benefits from increased public health protection exceed the costs of implementation.

Finally, TML commented that in the course of preparing their comments, they contacted seven of the thirteen small cities identified by TNRCC as most likely to require capital improvements to meet the lower turbidity requirements. These cities and officials had previously spoken with TNRCC staff. TML states that the preference of these cities was to find a way to compete for funding without going through the process of being out of compliance.

The commission responds that the agency has an ongoing commitment to including stakeholder input in rule development and for that reason assembled the stakeholder group which included representatives of Texas Municipal League; Texas AIDS Network; Texas League of Women Voters; Texas Rural Water Association; Texas Water Utilities Association; Texas Section of the American Water Works Association; Clean Water Action; TNRCC Field Operations staff; representatives from small utilities, medium sized utilities, large utilities, utilities treating groundwater, and utilities treating surface water, were asked to participate in an series of meetings to develop the draft proposed rules. The individuals representing the entities who chose to participate in that process reached a consensus that customers of small systems deserved the same public health protection as customers of large systems, that elevated turbidity represents an acute public health threat, and that the fiscal impacts to small systems should be addressed through the availability of an extension for those systems needing capital improvements to meet the new turbidity requirements. The commission appreciates the efforts of its stakeholder groups and believes that the adopted rule incorporates the best option available for ensuring compliance.

In summary, the commission reiterates its dedication to provide extensions to those public water systems which will require capital improvements to meet the turbidity requirements, and to provide technical assistance to those systems which will require operational changes to meet the new rules.

COAu noted that small systems (serving less than 10,000 people) which receive an extension to the turbidity requirements under §290.111(c)(2)(i), should be required to meet those turbidity requirements at the time mandated by the federal government in the proposed Long Term Stage 1 Enhanced Surface Water Treatment Rule.

The commission agrees with the comment and believes that the adopted rules will conform with federal requirements for turbidity levels in combined filter effluent.

EPA commented that follow-up activities for individual filter performance triggers have distinct timeframes in which they must be completed. These timeframes were not in the proposed rules.

The commission has revised §290.111(c)(5)(A) - (C) to include timeframes for exceeding filtered water turbidity levels.

COAu commented that §290.111(d)(3)(B) essentially requires every plant to have at least one spare turbidimeter on-site because it takes seven to ten days to get a turbidimeter repaired by a major manufacturer and in order to have the turbidimeter repaired, it must be uninstalled. The commenter suggested that the requirement for a spare turbidimeter be stated explicitly in the rule.

The commission responds that the intent is to comply with the minimum requirements contained in the federal requirements. The commission notes that the availability of turbidimeter repair may vary based on local conditions, so the commission has not altered the language.

EPA commented that there was no date in the proposed rules by which public water systems were to begin disinfection profile monitoring, although the rules do specify that monitoring plans must be submitted by January1, 2001.

The commission responds that §290.111(e)(2) has been revised to specify that public water systems must new TNRCC Form 00102 after January 1, 2001. The new form requires data on disinfection profile monitoring.

COAu commented that the turbidity level for public notification in §290.111(g)(1) should be 1.0 NTU.

The commission disagrees with the comment. A turbidity level of 5.0 NTU is specified under §290.42 as the level at which a system is absolutely required to issue a notice to boil water. The commission's field operations staff may require a notice to boil water at lower turbidity levels if field conditions indicate that public health may be at risk. Additionally, regardless of the turbidity level, the system may issue a notice to boil water under conditions that they deem may endanger the public health.

§290.112. Total Organic Carbon (TOC)

COAr commented that although the rules requiring that total organic carbon purport to address lowering of disinfection by-products, there is no recourse for a system that has virtually no disinfection by-products under current operating conditions. The commenter suggests that alternative compliance criteria number four be revised to include systems with total trihalomethanes less than 40 ug/L and haloacetic acids (group of five) less than 30ug/L, regardless as to whether only chlorine is used in the plant and distribution system. Specifically, COAr requested that the rule be revised for systems which use primary disinfection with ozone and residual disinfection with chloramines, to add an alternative to alternative compliance criteria number four under §290.112(b)(2).

The commission agrees in principle with the commenter and would note that the specific process used by COAr (ozone and chloramines) is not the only disinfection protocol that can achieve significantly reduced levels of disinfection by-products in the distribution system. In fact, the commission raised a similar issue and comments on the proposed federal rule, however, EPA did not revised the rule in response to the comment. In addition, we note that in the federal rule, consideration is given to systems that make a financial commitment to install technology to lower the levels of disinfection by-products. We suggest that the act of producing water with low levels of disinfection by-products on an on-going basis represents an implicit commitment to technology that produces fewer disinfection by-products. Under new §290.102(b), the executive director may grant a variance or exemption to one or more of the MCLs or treatment technique requirements in this chapter when a system is unable to comply with a specified allowable level because of compelling factors (including economic). The variance or exemption may be granted if the variance or exemption will not result in an unreasonable risk to public health, and the system must establish a schedule to bring the system into compliance with the standard. Public comment and public hearing procedures in 40 USC §300g are applicable to such variances and exemptions, and such variances and exemptions are subject to the provisions of 40 CFR §141 and §142. Since the executive director may grant a variance or exemption under §290.102, the commission has decided not to

revise the rule to add an alternative criteria to §290.112(b)(2) as requested by COAr.

COAu noted that in §290.112(c)(3) the word "at" was used where the word "and" should have been used.

The commission agrees with the comment and has revised the rule.

COAu noted that in §290.112(c)(4) the word "at" was used where the word "and" should have been used.

The commission agrees with the comment and has revised the rule.

COAu noted that in §290.112(c)(5) the word "at" was used where the word "and" should have been used.

The commission agrees with the comment and has revised the rule.

EPA commented that federal reporting requirements state that systems must report to the state within ten days after the end of each monitoring period. The proposed rules grant 20 days.

The commission has revised §290.112(e)(1) to require systems to report within ten days after each monitoring period.

COAu noted that the reporting requirements for magnesium in §290.112(e)(3)(E) appear to be incorrect. The commenter noted that to meet this alternative compliance criteria, the system must measure and report the running annual average source water magnesium concentration.

The commission agrees with the comment and has revised the rule.

COAu noted that the compliance calculation in §290.112(f)(3)(A) is incorrect. The commenter referenced the federal requirement that the monthly percent removal must be calculated based on the average removal of all TOC sample sets taken in a month.

The commission agrees with the comment and has revised the rule.

COAu requested clarification of whether all TOC sample sets taken in a month must be used to determine compliance.

The commission responds that as required by federal rule, all samples taken in accordance with the system's monitoring plan must be considered in determining compliance.

COAu requested guidance on whether the sum of monthly removal ratios for the previous 12 months divided by 12, as provided in §290.112(f)(3)(D), was equivalent to the running annual average of the quarterly averages of the monthly averages required by the federal rule.

The commission responds that although the intent of this language was equivalency with the federal rule, the commenter's point is well-taken, and the language referred to has been revised in the adopted rule to clarify the calculation method. The running annual average of quarterly averages of monthly averages is calculated as follows: determine the average for each month, then determine the average for the quarter based on the monthly averages. The running annual average is the average of the last four quarterly averages.

§290.113. Disinfection By-products (TTHM and HAA5)

TCC commented that only one laboratory in Texas is certified by the TDH, Bureau of Laboratories to analyze samples for both trihalomethanes and haloacetic acids, and stated that requiring all the water treatment plants in the state to use this laboratory would be a burden.

The commission responds that the samples must be analyzed at a certified laboratory to meet the federal rule requirements.

COP commented that the requirement for public notification with regard to disinfection by-products should not be included in the adopted rule because that notification will serve no purpose except to scare residents who have no technical knowledge of the system.

The commission responds that the public notification requirements for violations of the new MCLs for disinfection by-products contained in the adopted rule, are explicitly set out as part of the federal rules, and the commission is required to adopt this portion of the rule.

Eco/District commented that the either the phrase "and use surface water sources or groundwater sources that are under the direct influence of surface water" should appear after the phrase "serve fewer than 10,000 persons" in §290.113(a)(2), or the rule should be rewritten to state that all systems must comply with the rule.

The commission responds that federal Stage 1 Disinfectants and Disinfection By-products Rule requires all systems to comply with the regulations regarding total trihalomethanes and haloacetic acids (group of 5). However, the effective dates for compliance differ for large systems and all other systems. Therefore, the specific compliance dates for specific types of systems are specified in this paragraph.

TCC requested that §290.113(a)(3), requiring groundwater systems serving more than 10,000 people to comply with §290.115 (relating to Transition Rule for Disinfection By-products) until January 1, 2004, remain current with the federal rule.

The commission responds that the federal Stage 1 Disinfectants and Disinfection By-products Rule requires all systems to comply with the regulations regarding total trihalomethanes and haloacetic acids (group of 5). However, the effective dates for compliance differ for large systems and all other systems. Therefore, the specific compliance dates for specific types of system are given in this paragraph.

COAu questioned whether there was some method that would allow for a system to obtain information for proper operation of the system without sampling in such a manner that the samples collected would be considered when calculating the system's compliance.

Although the federal rule requires that all samples taken at the sampling sites designated in the system's monitoring plan must be considered in calculating compliance. Samples taken at any other locations not designated as sampling sites in the monitoring plan, may be used as process control samples. The results from process control samples will not be included in calculating compliance.

COAu questioned why TTHM and HAA5 levels of 0.060 mg/L and 0.045 mg/L, respectively, are required by §290.113(c)(4)(B) for remaining on reduced monitoring while TTHM and HAA5 levels of 0.040 mg/L and 0.030 mg/L, respectively, are required to be placed on reduced monitoring.

The commission responds that the intent is to comply with the federal requirements. The federal rule recognizes that the reduced monitoring protocol is a worse case protocol than the routine monitoring protocol. The samples that are eliminated when a

system is placed on reduced monitoring are those that are likely to have lower concentrations of TTHM or HAA5.

TCC requested clarification under §290.113(d) that trihalomethane and haloacetic acid samples will be collected by TNRCC or its contractor.

The commission responds that current practice is for sampling to be done by TNRCC's contractor, it remains the responsibility of the system to comply with these rules. The TNRCC currently employs a contractor to collect these samples. This sample collection is performed as a service to the utilities, to ensure that sampling is done in a timely manner, and to ensure that samples are collected correctly. However, it is not within the scope of these regulations to shift responsibility away from the utility. It is possible that sampling practices may change in the future, and the regulations must allow for any possible changes.

Eco/District questioned whether inclusion of the language in §290.113(e) regarding submittal of analytical results meant that TNRCC's contract laboratory would no longer be submitting results directly to TNRCC.

The commission responds that although current practice is for sampling to be done by TNRCC's contractor, it remains the responsibility of the system to comply with these rules.

TCC recommended that the results of trihalomethane and haloacetic acid analysis required by §290.113(e) be reported on the Surface Water Monthly Operating Report.

The commission responds that current practice is for TNRCC to receive the results of trihalomethane and haloacetic acid analyses from the certified contract laboratory which performs the analyses. Furthermore, since TTHM and HAA5 samples are not required monthly, submission of the results with the MOR seems inappropriate.

Eco/District commented that the wording regarding submittal of analytical results in §290.113(e) should be changed to require submittal of this data within ten days of receipt of the results from the analytical laboratory, instead of requiring submittal of results ten days after the sample is collected.

The commission agrees with the commenter and the language has been revised.

TCC requested that TNRCC provide guidance on whether quality control and quality assurance samples need to be reported under §290.113(e), and if so, why, since TNRCC can audit these results at the water treatment plant.

Currently, TNRCC receives the results of quality assurance and quality control analyses from the certified contract laboratory that performs the analyses. If for some reason the public water system was directly sampling, analyzing, and reporting sampling results, then the results of quality assurance and quality control analyses would also be required.

COAu asked whether compliance with the MCLs for TTHM and HAA5 described in §290.113(f)(3) was calculated based on "per plant" samples, or whether compliance was calculated based on the average of all the samples taken in the distribution system. The commenter expressed concern that averaging all the samples for the distribution system could cause a failure to note that the samples associated with a plant fell outside the MCL.

The commission responds that its intent is to comply with the minimum federal requirements. Compliance with the MCLs for TTHM and HAA5 are based on the average of all samples taken in a distribution system.

§290.114. Disinfection By-products Other Than TTHM and HAA5

COP commented that the requirement for public notification with regard to disinfection by-products should not be included in the adopted rule because that notification will serve no purpose except to scare residents who have no technical knowledge of the system.

The commission responds that the public notification requirements for violations of the new MCLs for disinfection by-products contained in the adopted rule are explicitly set out as part of the federal rules.

§290.115. Transition Rule for Disinfection By-Products

COAu stated that §290.115(a)(1) incorrectly represents the effective date for applicability of the regulations regarding TTHM and HAA5 for groundwater systems serving more than 10,000 people.

The commission responds that the effective dates in the rule are correct. Groundwater systems serving 10,000 people or more must comply with the MCLs of the Stage 1 Disinfectants and Disinfection By-Products rule on December 16, 2003. Until then, groundwater systems serving 10,000 people or more must comply with the previously existing MCL for TTHM (0.10 mg/L). Section 141.130(b)(1) of the Stage 1 Disinfectants and Disinfection By-Products Rule, Code of Federal Regulations, states that "systems using only groundwater not under the direct influence of surface water must comply with this suppart beginning December 16, 2003." The technical corrections to the Stage 1 Disinfectants and Disinfection By-Products Rule will revise this date to January 1, 2004. The adopted rule contains two sections giving requirements for TTHM. Section 290.113 (relating to Disinfection By-Products: TTHM and HAA5) provides the new requirements resulting from the Stage 1 Disinfectants and Disinfection By-Products Rule. Section 290.115 (relating to Transition Rule for Disinfection By-Products) provides the previously existing rule requirements that will remain in place until the effective dates given in §290.113.

COAu questioned whether all samples throughout the distribution system are averaged together for the compliance calculations of §290.115(c)(2) or whether the samples associated with each plant are averaged for compliance.

The commission responds that the samples throughout the distribution system are averaged together for compliance.

COAu requested clarification regarding whether §290.115(c)(3) refers to this one sample per plant or to one sample per system. The commenter questioned, if it is one sample per system, why the other reductions for THMs are stated as number of samples per plant per quarter?

The commission responds that this refers to one sample per system. Other reductions are based on levels existing at individual plants, whereas this reduction is for the system as a whole, as long as all the plants in the system are consistently below the MCL.

COAu commented that if §290.115(c)(6) also applies to changes made under §290.114, it should be so stated.

The commission agrees with the comment and has revised the rule. The referenced language has been added to §290.114(f).

COAu commented that sections for IOCs, SOCs, VOCs, HAA5, microbiological, etc., state that testing for compliance shall be performed at a laboratory certified by the TDH, Bureau of Laboratories, and asked whether this should also be the case for current THM samples under §290.115(c)(7).

The commission agrees with the comment and has revised the rule.

§290.117. Regulation of Lead and Copper

TXU commented that a mechanism needs to be provided in §290.117(b) to allow for replacement of previously selected sites when these sample points are no longer valid or cease to exist.

The commission responds that this mechanism is in place, see §290.117(c)(3). Public water systems must notify TNRCC of the change and why it is needed.

COAu requested clarification on how a system can determine the "range of values for water quality parameters as approved by the executive director," as required by §290.117(f)(1)(H).

The commission responds that the system should consult with an engineer or chemical supplier that specializes in corrosion control to set a proposed range of water quality parameters. The system should present this proposed range to the TNRCC. Upon approval, this range will become the "range of values for water quality parameters as approved by the executive director."

TXU noted that §290.117(i) recognizes that the removal of lead-containing materials from the system is an appropriate means to reduce potential lead contamination, but only addresses the distribution system. The commenter recommended that a provision be added to address the special circumstances of noncommunity systems that own and control the entire system. Specifically, the commenter stated that systems of this type have the ability to eliminate lead-containing materials beyond the distribution system, and thereby may be capable of minimizing all possible sources of lead, up to and including the tap. The commenter suggested that the regulations be modified to recognize this as a viable response to an action level exceedance.

The commission responds that the installation of fittings and appurtenance containing more than 8% lead and solders that contain more than 0.2% lead at any service connection supplied by a public water system have been prohibited since 1988, see §290.46(i). In addition, although §290.117(i) does not require the replacement of internal lead-containing piping and fittings (including the tap), the subsection does not prohibit a public water system from taking such action as part of its overall lead abatement and corrosion-control strategy.

§290.118. Secondary Constituent Levels

Eco/District questioned whether inclusion of the language regarding submittal of analytical results under §290.118(d) meant that TNRCC's contract laboratory would no longer be submitting results directly to TNRCC.

The commission responds that although current practice is that sampling is done by TNRCC's contractor and results are reported to TNRCC by the laboratory, it remains the responsibility of the system to ensure that TNRCC has been notified of the results, comply with this section of the rule, see §290.118(e). No change in current practice is anticipated at this time.

Eco/District commented that the wording in §290.118(d) regarding submittal of analytical results should be changed to require submittal of this data within ten days of receipt of the results from the analytical laboratory, instead of requiring submittal of results ten days after the sample is collected.

The commission agrees with this comment and has revised the rule.

COAu asked where the monitoring requirements referred to in §290.118(e)(1) are located.

The commission responds that the language has been changed to clarify the monitoring requirements.

COAu requested clarification of the type of violation indicated by §290.118(e)(3).

The commission responds that the language has been changed to clarify that when a system exceeds a SCL for a constituent other than fluoride, they commit a SCL violation.

COAu commented that after the phrase "exceed the secondary maximum constituent level," the next two uses of the word "constituent" should be replaced with the word "contaminant."

The commission agrees and has revised the rule.

COAu commented that in §290.118(f)(1) after the phrase "exceed the secondary maximum constituent level," the next two uses of the word "constituent" should be replaced with the word "contaminant."

The commission agrees and has revised the rule.

COAu requested clarification of what kind of notification would be required by §290.118(f) in the event of a violation of the SCLs.

The commission responds that this requirement is contained in §290.118(g)(2), which states that the system must report the exceedance to new customers and in their consumer confidence report.

§290.119. Analytical Procedures

Eco/District commented that the commission should clarify the method by which laboratories will be approved by TNRCC, and how approved labs differ from certified labs. The commenter requested that §290.119(a)(2) should require that samples used to determine compliance with pH, alkalinity, chlorine residual, chloramine residual, turbidity, and total organic carbon, be required to be tested using a method approved by the executive director instead of at a laboratory approved by the executive director.

The commission has not yet established the method it will use to approve laboratories. The TNRCC's staff intends to create a workgroup to identify and develop a reasonable approval process that will assure the reliability of the results obtained from the approved labs. The requirement to use state-approved laboratories is contained in federal regulations which provide some guidance regarding minimum approval requirements.

Eco/District requested clarification regarding the approval of process control tests in §290.119(c).

The commission responds that clarification has been provided by removing the paragraph. The meaning of "process control test" is a test run by the system, for the system, to determine anything that the system chooses to determine, as distinct from compliance sampling. The agency does not regulate process control tests, the system chooses its own testing method. However, systems should note that all samples taken at sampling points designated in the monitoring plan are considered compliance samples and are used in calculating compliance. The

system should have other locations available to perform process control (non-compliance) testing.

§290.121. Monitoring Plans

Eco/District commented that because TNRCC's contractor is doing sampling, the utility should not be held responsible for the actions of that contractor, for example, if the contractor took a sample to an uncertified lab, or if the contract lab used an unapproved method.

The commission responds that, although current practice is that sampling is done by TNRCC's contractor, it remains the responsibility of the system to comply with these rules. As long as TNRCC continues to use a contractor, the contract will specify which labs are appropriate.

EPA commented that the monitoring plan under §290.121(b)(5) also applies to MRDLs which was not specified in the rule.

The commission also revised §290.121(b)(5) to include MRDLs.

COAu commented that the effective dates for submittal of monitoring plans in §290.121(c)(3) are incorrect and stated that the federal rule requires public water systems serving 10,000 people or more and treating groundwater to submit monitoring plans by 2002.

The commission responds that the federal Stage 1 Disinfectants and Disinfection By-Products Rule contains the requirement that all public water systems, regardless of size or source, must develop, implement and maintain a monitoring plan, but the federal rule does not require any groundwater systems to submit these monitoring plans to the state.

§290.122. Public Notification

COFW commented that the commission should include the provisions of the EPA public notice rules, promulgated May 4, 2000, in the current rulemaking.

The commission responds we will seek and receive comment from the regulated community on those provisions when the new federal public notice requirements are addressed during future rulemaking.

COAu commented that the turbidity level at which a system must issue a notice of an acute violation as required by §290.122(a)(1)(B) should be 1.0 NTU.

The commission disagrees with the commenter and responds that a notice to boil water is absolutely required when the turbidity of the water entering a distribution system exceeds 5.0 NTU. A field representative of the TNRCC may require that a notice to boil water be issued on a case-by-case basis, at a turbidity lower than 5.0 NTU, if he or she determines that public health protection requires it. In addition, the system may issue a notice to boil water at any time the system so desires.

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 new and amended sections are adopted under the 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; under THSC, §341.031, which allows the commission to adopt rules to implement the federal Safe Drinking Water Act, 42 USC §300f et. seq.; under THSC, §341.0315, which requires public water supply systems to meet the requirements of commission rules; and under THSC, §341.035, which requires the executive director of the commission to approve plans and specifications for public water supplies.

§290.39. General Provisions.

(a) Authority for requirements. The Texas Health and Safety Code, Chapter 341, Subchapter C prescribes the duties of the commission relating to the regulation and control of public drinking water systems in the State. These statutes require that the commission ensure that public water systems: supply safe drinking water in adequate quantities, are financially stable and technically sound, promote use of regional and area-wide drinking water systems, and review completed plans and specifications and business plans for all contemplated public water systems not exempted by Health and Safety Code §341.035(d). The statutes also require the commission be notified of any subsequent material changes, improvements, additions, or alterations in existing systems and, consider compliance history in approving new or modified public water systems.

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

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

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

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

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

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

(3) A person who is not required to complete the steps in paragraph (1) of this subsection, or who completes the steps in paragraph (1) of this subsection and is denied service or determines that the existing provider's cost estimate is not feasible for the development to be served, shall submit to the executive director:

(A) plans and specifications for the system; and

(B) a business plan for the system.

(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) Detailed plans must be submitted for examination at least 30 days prior to the time that approval, comments or recommendations are desired. From this, it is not to be inferred that final action will be forthcoming within the time mentioned.

(3) The limits of approval are as follows.

(A) The commission's public drinking water program furnishes consultation services as a reviewing body only, and its licensed professional engineers may neither act as design engineers nor furnish detailed estimates.

(B) The commission's public drinking water program does not examine plans and specifications in regard to the structural features of design, such as strength of concrete or adequacy of reinforcing. Only the features covered by these sections will be reviewed.

(C) The consulting engineer and/or owner must provide surveillance adequate to assure that facilities will be constructed according to approved plans and must notify the commission's public drinking water program in writing upon completion of all work.

(e) Submission of planning material. In general, the planning material submitted shall conform to the following requirements.

(1) Engineering reports are required for new water systems and all surface water treatment plants. Engineering reports are also required when design or capacity deficiencies are identified in an existing system. The engineering report shall include, at least, coverage of the following items:

(A) statement of the problem or problems;

(B) present and future areas to be served, with population data;

(C) the source, with quantity and quality of water available;

(D) present and estimated future maximum and minimum water quantity demands;

(E) description of proposed site and surroundings for the water works facilities;

(F) type of treatment, equipment, and capacity of facilities;

(G) basic design data, including pumping capacities, water storage and flexibility of system operation under normal and emergency conditions; and

(H) the adequacy of the facilities with regard to delivery capacity and pressure throughout the system.

(2) All plans and drawings submitted may be printed on any of the various papers which give distinct lines. All prints must be clear, legible and assembled to facilitate review.

(A) The relative location of all facilities which are pertinent to the specific project shall be shown.

(B) The location of all abandoned or inactive wells within 1/4 mile of a proposed wellsite shall be shown or reported.

(C) If staged construction is anticipated, the overall plan shall be presented, even though a portion of the construction may be deferred.

(D) A general map or plan of the municipality, water district, or area to be served shall accompany each proposal for a new water supply system.

(3) Specifications for construction of facilities shall accompany all plans. If a process or equipment which may be subject to probationary acceptance because of limited application or use in Texas is proposed, the executive director may give limited approval. In such a case, the owner must be given a bonded guarantee from the manufacturer covering acceptable performance. The specifications shall include a statement that such a bonded guarantee will be provided to the owner and shall also specify those conditions under which the bond will be forfeited. Such a bond will be transferrable. The bond shall be retained by the owner and transferred when a change in ownership occurs.

(4) Copies of each fully executed sanitary control easement shall be provided to the executive director prior to placing the well into service. Each original easement document must be recorded in the deed records at the county courthouse. See §290.47(c) of this title (relating to Appendices) for a suggested form.

(5) Construction features and siting of all facilities for new water systems and for major improvements to existing water systems must be in conformity with applicable commission rules.

(f) Submission of business plans. The prospective owner of the system or the person responsible for managing and operating the system must submit a business plan to the executive director that demonstrates that the owner or operator of the 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) description of areas and population to be served by the potential system;

(2) description of drinking water supply systems within a two mile radius of the proposed system, copies of written requests seeking to obtain service from each of those drinking water supply systems, and copies of the responses to the written requests;

(3) time line for construction of the system and commencement of operations;

(4) identification of and costs of alternative sources of supply;

(5) selection of the alternative to be used and the basis for that selection;

(6) identification of the person or entity which owns or will own the drinking water system and any identifiable future owners of the drinking water system;

(7) identification of any other businesses and public drinking water system(s) owned or operated by the applicant, owner(s), parent organization, and affiliated organization(s);

(8) an operations and maintenance plan which includes sufficient detail to support the budget estimate for operation and maintenance of the facilities;

(9) assurances that the commitments and resources needed for proper operation and maintenance of the system are, and will continue to be, available, including the qualifications of the organization and each individual associated with the proposed system;

(10) for retail public utilities as defined by Texas Water Code, §13.002:

(A) projected rate revenue from residential, commercial, and industrial customers; and

(B) pro forma income, expense, and cash flow statements;

(11) identification of any appropriate financial assurance, including those being offered to capital providers;

(12) a notarized statement signed by the owner or responsible person that the business plan has been prepared under his direction and that he is responsible for the accuracy of the information; and

(13) other information required by the executive director to determine the adequacy of the business plan or financial assurance.

(g) Business plans not required. A person is not required to file a business plan if the person:

(1) is a county;

(2) is a retail public utility as defined by Texas Water Code, §13.002, unless that person is a utility as defined by that section;

(3) has executed an agreement with a political subdivision to transfer the ownership and operation of the water supply system to the political subdivision; or

(4) is a noncommunity nontransient water system and the person has demonstrated financial assurance under Texas Health & Safety Code, Chapter 361 or 382 or Texas Water Code, Chapter 26.

(h) Beginning and completion of work.

(1) No person may begin construction on a new public water system before receiving written approval of plans and specifications and, if required, approval of a business plan from the executive director. No person may begin construction of modifications to a public water system without providing notification to the executive director and submitting and receiving approval of plans and specifications if requested in accordance with subsection (j) of this section.

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

(3) Upon completion of the water works project, the engineer or owner will notify the 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) Changes in plans and specifications. Any addenda or change orders which may involve a health hazard or relocation of facilities, such as wells, treatment units, and storage tanks, shall be submitted to the executive director for review and approval.

(j) Changes in existing systems or supplies. Public water systems shall notify the executive director prior to making any significant change or addition to the system's production, treatment, storage, or distribution facilities. Public water systems shall submit plans and specifications for the proposed changes upon request.

(1) 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.

(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).

(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 the 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) The executive director will not require planning material on distribution line improvements 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.

(k) Planning material acceptance. Planning material for improvements to an existing system which does not meet the requirements of all sections of these regulations will not be considered unless the necessary modifications for correcting the deficiencies are included in the proposed improvements, or unless the executive director determines that reasonable progress is being made toward correcting the deficiencies and no immediate health hazard will be caused by the delay.

(l) Exceptions. Requests for exceptions to one or more of 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 should precede the submission of engineering plans and specifications for a proposed project.

(2) Any exception granted by the commission is subject to revocation.

(3) Any request for an exception which is not approved by the commission in writing is denied.

(m) Notification of system startup or reactivation. The owner or responsible official must provide written notification to the commission of the startup of a new public water supply system or reactivation of an existing public water supply system. This notification must be made immediately upon meeting the definition of a public water system as defined in §290.38 of this title (relating to Definitions).

(n) The commission may require the owner or operator of a public drinking water supply system that was constructed without the approval required by Texas Health & Safety Code, §341.035, that has a history of noncompliance with Texas Health and Safety Code, Chapter 341, Subchapter C or commission rules, or that is subject to a commission enforcement action to take the following action:

(1) Provide the executive director with a business plan that demonstrates that the system has available the financial, managerial, and technical resources adequate to ensure future operation of the system in accordance with applicable laws and rules. The business plan must fulfill all the requirements for a business plan as set forth in subsection (f) of this section.

(2) Provide adequate financial assurance of the ability to operate the system in accordance with applicable laws and rules. The executive director will set the amount of the financial assurance, after the business plan has been reviewed and approved by the executive director. The amount of the financial assurance will equal the difference between the amount of projected system revenues and the projected cash needs for the period of time prescribed by the executive director. The form of the financial assurance will be as specified in Chapter 37, Subchapter O of this title (relating to Financial Assurance for Public Drinking Water Systems and Utilities), and will be as specified by the executive director.

(3) If the executive director relies on rate increases or customer surcharges as the form of financial assurance, such funds shall be deposited in an escrow account as specified in Chapter 37, Subchapter O of this title (relating to Financial Assurance for Public Drinking Water Systems and Utilities), and released only with the approval of the executive director.

§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.

(b) Water quantity. Sources of supply, both ground and surface, shall have a safe yield capable of supplying the maximum daily demands of the distribution system during extended periods of peak usage and critical hydrologic conditions. The pipe lines and pumping capacities to treatment plants or distribution systems shall be adequate for such water delivery. Minimum capacities required are specified in §290.45 of this title (relating to Minimum Water System Capacity Requirements).

(c) Groundwater sources and development.

(1) 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) No well site which is within 50 feet of a tile or concrete sanitary sewer, sewerage appurtenance, septic tank, storm sewer, or cemetery; or which is within 150 feet of a septic tank perforated drainfield, areas irrigated by low dosage, low angle spray on-site sewage facilities, absorption bed, evapotranspiration bed, improperly constructed water well or underground petroleum and chemical storage tank or liquid transmission pipeline will be acceptable for use as a public drinking water supply. Sanitary or storm sewers constructed of ductile iron or PVC pipe meeting AWWA standards, having a minimum working pressure of 150 psi or greater, and equipped with pressure type joints may be located at distances of less than 50 feet from a proposed well site but in no case shall the distance be less than ten feet.

(B) No well site shall be located within 500 feet of a sewage treatment plant or within 300 feet of a sewage wet well, sewage pumping station or a drainage ditch which contains industrial waste discharges or the wastes from sewage treatment systems.

(C) No water wells shall be located within 500 feet of animal feed lots, solid waste disposal sites, lands on which sewage plant or septic tank sludge is applied, or lands irrigated by sewage plant effluent.

(D) Livestock in pastures shall not be allowed within 50 feet of water supply wells.

(E) All known abandoned or inoperative wells (unused wells that have not been plugged) within one quarter mile of a proposed wellsite shall be reported to the Commission along with existing or potential pollution hazards. These reports are required for community and nontransient, noncommunity ground water sources. Examples of existing or potential pollution hazards which may affect ground water quality include, but are not limited to: landfill and dump sites, animal feedlots, military facilities, industrial facilities, wood-treatment facilities, liquid petroleum and petrochemical production, storage, and transmission facilities, Class 1, 2, 3, and 4 injection wells, and pesticide storage and mixing facilities. This information must be submitted prior to construction or as required by the executive director.

(F) A sanitary control easement covering that portion of the land within 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.

(2) The premises, materials, tools, and drilling equipment shall be maintained so as to minimize contamination of the underground water during drilling operation.

(A) Water used in any drilling operation shall be of safe sanitary quality. Water used in the mixing of drilling fluids or mud shall contain a chlorine residual of at least 0.5 mg/l.

(B) The slush pit shall be constructed and maintained so as to minimize contamination of the drilling mud.

(C) No temporary toilet facilities shall be maintained within 150 feet of the well being constructed unless they are of a sealed, leakproof type.

(3) Special attention must be given to the construction, disinfection, protection, and testing of a well to be used as a public water supply source.

(A) Before placing the well into service, 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. All the documents listed in this paragraph must be approved by the executive director before final approval is granted for the use of the well.

(B) The casing material used in the construction of wells for public use shall be new carbon steel, high-strength low-alloy steel, stainless steel or plastic. The material shall conform to AWWA standards. The casing shall extend a minimum of 18 inches above the elevation of the finished floor of the pump room or natural ground surface and a minimum of one inch above the sealing block or pump motor foundation block when provided. The casing shall extend at least to the depth of the shallowest water formation to be developed and deeper, if necessary, in order to eliminate all undesirable water-bearing strata. Well construction materials containing more than 8.0% lead are prohibited.

(C) The space between the casing and drill hole shall be sealed by using enough cement under pressure to completely fill and seal the annular space between the casing and the drill hole. The well casing shall be cemented in this manner from the top of the shallowest formation to be developed to the earth's surface. The driller 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 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) When a gravel packed well is constructed, all gravel shall be of selected and graded quality and shall be thoroughly disinfected with a 50 mg/l chlorine solution as it is added to the well cavity.

(E) Safeguards shall be taken to prevent possible contamination of the water or damage by trespassers following the completion of the well and prior to installation of permanent pumping equipment.

(F) Upon well completion, or after an existing well has been reworked, the well shall be disinfected in accordance with current AWWA standards for well disinfection except that the disinfectant shall remain in the well for at least six hours.

(i) Before placing the well in service, the water containing the disinfectant shall be flushed from the well and then samples of water shall be collected and submitted for microbiological analysis until three successive daily raw water samples are free of coliform organisms. The analysis of these samples must be conducted by a laboratory approved by the Texas Department of Health.

(ii) Appropriate facilities for treatment of the water shall be provided where a satisfactory microbiological record cannot be established after repeated disinfection. The extent of water treatment required will be determined on the basis of geological data, well construction features, nearby sources of contamination and, perhaps, on the basis of quantitative microbiological analyses.

(G) A complete physical and chemical analysis of the water produced from a new well shall be made after 36 hours of continuous pumping at the design withdrawal rate. Shorter pump test periods can be accepted for large capacity wells producing from areas of known groundwater production and quality so as to prevent wasting of water. Samples must be submitted to 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 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 commission's public drinking water program conducts a vulnerability assessment of the well.

(H) Below ground-level pump rooms and pump pits will not be allowed in connection with water supply installations.

(I) The well site shall be fine graded so that the site is free from depressions, reverse grades or areas too rough for proper ground maintenance so as to ensure that surface water will drain away from the well. In all cases, arrangements shall be made to convey well pump drainage, packing gland leakage, and floor drainage away from the wellhead. Suitable drain pipes located at the outer edge of the concrete floor shall be provided to collect this water and prevent its ponding or collecting around the wellhead. This waste water shall be disposed of in a manner that will not cause any nuisance from mosquito breeding or stagnation. Drains shall not be directly connected to storm or sanitary sewers.

(J) In all cases, a concrete sealing block extending at least three feet from the well casing in all directions, with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inches per foot shall be provided around the wellhead.

(K) Wellheads and pump bases shall be sealed by a gasket or sealing compound and properly vented to prevent the possibility of contaminating the well water. A well casing vent shall be provided with an opening that is covered with 16-mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the well. Wellheads and well vents shall be at least two feet above the highest known watermark or 100-year flood elevation, if available, or adequately protected from possible flood damage by levees.

(L) If a well blow-off line is provided, its discharge shall terminate in a downward direction and at a point which will not be submerged by flood waters.

(M) A suitable sampling cock shall be provided on the discharge pipe of each well pump prior to any treatment.

(N) Flow measuring devices shall be provided for each well to measure production yields and provide for the accumulation of water production data. These devices shall be located to facilitate daily reading.

(O) All completed well units shall be protected by intruder-resistant fences, the gates of which are provided with locks or shall be enclosed in locked, ventilated well houses to exclude possible contamination or damage to the facilities by trespassers. The gates or wellhouses shall be locked during periods of darkness and when the plant is unattended.

(P) An all-weather access road shall be provided to each well site.

(Q) If an air release device is provided on the discharge piping, it shall be installed in such a manner as to preclude the possibility of submergence or possible entrance of contaminants. In this respect, all openings to the atmosphere shall be covered with 16-mesh or finer, corrosion-resistant screening material or an acceptable equivalent.

(4) Pitless well units may be desirable in areas subject to vandalism or extended periods of subfreezing weather.

(A) Pitless units shall be shop fabricated from the point of connection with the well casing to the unit cap or cover, be threaded or welded to the well casing, be of watertight construction throughout and be of materials and weight at least equivalent and compatible to the casing. The units must have a field connection to the lateral discharge from the pitless unit of threaded, flanged or mechanical joint connection. Each unit must terminate at least 18 inches above the concrete sealing block and at least two feet above the highest known water mark or 100-year flood elevation, whichever is higher.

(B) The design of the pitless unit shall make provisions for an access to disinfect the well, a properly designed casing vent, a cover at the upper terminal of the well that will prevent the entrance of contamination, a sealed entrance connection for electrical cable, and at least one check valve within the well casing. The unit shall have an inside diameter as great as that of the well casing up to and including casing diameters of 12 inches.

(C) If the connection to the casing is by field weld, the shop-assembled unit must be designed specifically for field welding to the casing. The only field welding permitted will be that needed to connect a pitless unit to the well casing.

(D) Completed pitless well unit installations must be provided with above ground level raw water sampling cocks, concrete sealing blocks and flow measuring devices.

(E) The well casing and pitless unit must be properly sealed and cemented in accordance with paragraph (3)(C) of this subsection.

(d) Springs and other water sources.

(1) Springs and other similar sources of flowing artesian water shall be protected from potential contaminant sources in accordance with the requirements of subsection (c)(1) of this section.

(2) Before placing the spring or similar source into service, completion data similar to that required by subsection (c)(3)(A) of this section must be submitted to the commission's public drinking water program for review and approval.

(3) Springs and similar sources shall be constructed in a manner which will preclude the entrance of surface water and debris.

(A) The site shall be fine graded so that it is free from depressions, reverse grades or areas too rough for proper ground maintenance in order to ensure that surface water will drain away from the source.

(B) The spring or similar source shall be encased in an open-bottomed, watertight basin which intercepts the flowing water below the surface of the ground. The basin shall extend at least 18 inches above ground level. The top of the basin shall also be at least two feet above the highest known watermark or 100-year flood elevation, if available, or adequately protected from possible flood damage by levees.

(C) In all cases, a concrete sealing block shall be provided which extends at least three feet from the encasement in all directions. The sealing block shall be at least six inches thick and be sloped to drain away from the encasement at not less than 0.25 inches per foot.

(D) The top of the encasement shall be provided with a sloped, watertight roof which prevents the ponding of water and precludes the entrance of animals, insects, and other sources of contamination.

(E) The roof of the encasement shall be provided with a hatch that is not less than 30 inches in diameter. The hatch shall have a raised curbing at least four inches in height with a lockable cover that overlaps the curbing at least two inches in a downward direction. Where necessary, a gasket shall be used to make a positive seal when the hatch is closed. All hatches shall remain locked except during inspections and maintenance.

(F) The encasement shall be provided with a gooseneck vent or roof ventilator which is equipped with approved screens to prevent entry of animals, birds, insects and heavy air contaminants. Screens shall be fabricated of corrosion-resistant material and shall be 16-mesh or finer. Screens shall be securely clamped in place with stainless or galvanized bands or wires.

(G) The encasement shall be provided with an overflow which is designed to prevent the entry of animals, birds, insects, and debris. The discharge opening of the overflow shall be above the surface of the ground and shall not be subject to submergence.

(4) Springs and similar sources must be provided with the appurtenances required by subsection (c)(3)(M) - (P) of this section.

(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 impoundment or flowing supply in the area of diversion and its tributary streams.

(A) Where surface water sources are subject to continuous or intermittent contamination by municipal, agricultural, or industrial wastes and/or treated effluent, the adverse effects of the contamination on the quality of the raw water reaching the treatment plant shall be determined by site evaluations and laboratory procedures.

(B) The disposal of all liquid or solid wastes from any source on the watershed must be in conformity with applicable regulations and state statutes.

(C) Shore installations, marinas, boats and all habitations on the watershed shall be provided with satisfactory sewage disposal facilities. Septic tanks and soil absorption fields, tile or concrete sanitary sewers, sewer manholes, or other approved toilet facilities shall not be located in an area within 75 feet horizontally from the lake water surface at the uncontrolled spillway elevation of the lake or 75 feet horizontally from the 50-year flood elevation, whichever is lower.

(D) Disposal of wastes from boats or any other watercraft shall be in accordance with the Texas Water Code, §§321.1 - 321.18.

(E) Pesticides or herbicides which are used within the watershed shall be applied in strict accordance with the product label restrictions.

(F) Before approval of a new surface water source, the system shall provide the executive director with information regarding specific water quality parameters of the potential source water. These parameters are pH, total coliform, *Eserichia coli*, turbidity, alkalinity, hardness, bromide, total organic carbon, temperature, color, taste and odor, regulated volatile organic compounds, regulated synthetic organic compounds, regulated inorganic compounds, and possible sources of contamination. If data on the incidence of *Giardia* cysts and *Cryptosporidium* oocysts has been collected, the information shall be provided to the executive director. This data shall be provided to the executive director as part of the approval process for a new surface water source.

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

(A) Intakes shall not be located in areas subject to excessive siltation or in areas subject to receiving immediate runoff from wooded sloughs or swamps.

(B) Raw water intakes shall not be located within 1,000 feet of boat launching ramps, marinas, docks or floating fishing piers which are accessible by the public.

(C) A restricted zone of 200 feet radius from the raw water intake works shall be established and all recreational activities and trespassing shall be prohibited in this area. Regulations governing this zone shall be in the city ordinances or the rules and regulations promulgated by a water district or similar regulatory agency. The restricted zone shall be designated with signs recounting these restrictions. The signs shall be maintained in plain view of the public and shall be visible from all parts of the restricted area. In addition, special buoys may be required as deemed necessary by the executive director. Provisions shall be made for the strict enforcement of such ordinances or regulations.

(D) Commission staff shall make an on-site evaluation of any proposed raw water intake location. The evaluation must be requested prior to final design and must be supported by preliminary design drawings. Once the final intake location has been selected, the 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) Intakes shall be located and constructed in a manner which will allow raw water to be taken from a variety of depths and which will permit withdrawal of water when reservoir levels are very low. Fixed level intakes are acceptable if water quality data is available to establish that the effect on raw water quality will be minimal.

(F) Water intake works shall be provided with screens or grates to minimize the amount of debris entering the plant.

(3) The water treatment plant and all pumping units shall be located in well-drained areas not subject to flooding and away from seepage areas or where the underground water table is near the surface.

(A) Water treatment plants shall not be located within 500 feet of a sewage treatment plant or lands irrigated with sewage effluent. A minimum distance of 150 feet must be maintained between any septic tank drainfield line and any underground treatment or storage unit. Any sanitary sewers located within 50 feet of any underground treatment or storage units shall be constructed of ductile iron or PVC pipe with a minimum pressure rating of 150 psi and have watertight joints.

(B) Plant site selection shall also take into consideration the need for disposition of all plant wastes in accordance with all applicable regulations and state statutes including both liquid and solid waste or by-product material from operation and/or maintenance.

(C) The water treatment plant and all appurtenances thereof shall be enclosed by an intruder-resistant fence. The gates shall be locked during periods of darkness and when the plant is unattended. A locked building in the fence line may satisfy this requirement or serve as a gate.

(D) An all weather road shall be provided to the treatment plant and to the raw water pump station.

§290.42. Water Treatment.

(a) Capacity. Based on current acceptable design standards, the total capacity of the public water system's production and treatment facilities must always be greater than its anticipated maximum daily demand.

(b) Groundwaters.

(1) Disinfection facilities shall be provided for all groundwater supplies for the purpose of microbiological control and distribution protection and shall be in conformity with applicable disinfection requirements in subsection (e) of this section.

(2) Treatment facilities shall be provided for ground water if the water does not meet the drinking water standards. The facilities provided shall be in conformance with established and proven methods.

(A) Filters provided for turbidity and microbiological quality control shall be preceded by coagulant addition and shall conform to the requirements of subsection (d)(10) of this section. Filtration rates for iron and manganese removal, regardless of the media or type of filter, shall be based on a maximum rate of five gallons per square foot per minute.

(B) The removal of iron and manganese may not be required if it can be demonstrated that these metals can be sequestered so that the discoloration problems they cause do not exist in the distribution system.

(C) All processes involving exposure of the water to atmospheric contamination shall provide for subsequent disinfection of the water ahead of ground storage tanks. Likewise, all exposure of water to atmospheric contamination shall be accomplished in a manner such that insects, birds, and other foreign materials will be excluded from the water. Aerators and all other such openings shall be screened with 16-mesh or finer corrosion-resistant screen.

(3) Any proposed change in the extent of water treatment required will be determined on the basis of geological data, well construction features, nearby sources of contamination, and on qualitative and quantitative microbiological and chemical analyses.

(4) Appropriate laboratory facilities shall be provided for controls as well as to check the effectiveness of disinfection or any other treatment processes employed.

(c) Springs and other water sources.

(1) Water obtained from springs, infiltration galleries, wells in fissured areas, wells in carbonate rock formations, or wells that do not penetrate an impermeable strata or any other source subject to surface or near surface contamination of recent origin shall be evaluated for the provision of treatment facilities. Minimum treatment shall consist of coagulation with direct filtration and adequate

disinfection. In all cases, the treatment process shall be designed to achieve at least a 3-log removal or inactivation of Giardia cysts and a 4-log removal or inactivation of viruses before the water is supplied to any consumer. Effective January 1, 2002, the treatment process shall also be designed to provide a 2-log removal of *Cryptosporidium* oocysts. Treatment facilities constructed after October 1, 2000 shall be designed to achieve at least a 2-log removal of *Cryptosporidium* oocysts. The executive director may require additional levels of treatment in cases of poor source water quality.

(A) Filters provided for turbidity and microbiological quality control shall conform to the requirements of subsection (d)(11) of this section.

(B) All processes involving exposure of the water to atmospheric contamination shall provide for subsequent disinfection of the water ahead of ground storage tanks. Likewise, all exposure of water to atmospheric contamination shall be accomplished in a manner such that insects, birds, and other foreign materials will be excluded from the water. Aerators and all other such openings shall be screened with 16-mesh or finer corrosion-resistant screen.

(2) Any proposed change in the extent of water treatment required will be determined on the basis of geological data, well construction features, nearby sources of contamination, and qualitative and quantitative microbiological and chemical analyses.

(3) Appropriate laboratory facilities shall be provided for controls as well as for checking the effectiveness of disinfection or any other treatment processes employed.

(d) Surface water.

(1) All water secured from surface sources shall be given complete treatment at a plant which provides facilities for pretreatment disinfection, taste and odor control, continuous coagulation, sedimentation, filtration, covered clearwell storage and terminal disinfection of the water with chlorine or suitable chlorine compounds. In all cases, the treatment process shall be designed to achieve at least a 3-log removal or inactivation of Giardia cysts and a 4-log removal or inactivation of viruses before the water is supplied to any consumer. Effective January 1, 2002, the treatment process shall also be designed to achieve at least a 2-log removal of *Cryptosporidium* oocysts. Treatment facilities constructed after October 1, 2000 shall be designed to achieve at least a 2-log removal of *Cryptosporidium* oocysts. The executive director may require additional levels of treatment in cases of poor source water quality.

(2) All plant piping shall be constructed so as to be thoroughly tight against leakage. No cross-connection or interconnection shall be permitted to exist in a filtration plant between a conduit carrying filtered or post-chlorinated water and another conduit carrying raw water or water in any prior stage of treatment.

(A) Vacuum breakers must be provided on each hose bibb within the plant facility.

(B) No conduit or basin containing raw water or any water in a prior stage of treatment shall be located directly above, or be permitted to have a single common partition wall with another conduit or basin containing finished water.

(C) Make-up water supply lines to chemical feeder solution mixing chambers shall be provided with an air gap or other acceptable backflow prevention device.

(D) Filters shall be located so that common walls will not exist between them and aerators, mixing and sedimentation basins or clear wells. This rule is not strictly applicable, however, to partitions open to view and readily accessible for inspection and repair.

(E) Filter-to-waste connections, if included, shall be provided with an air gap connection to waste.

(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 the appropriate statutes and regulations.

(4) Reservoirs for pretreatment or selective quality control shall be provided where complete treatment facilities fail to operate satisfactorily at times of maximum turbidities or other abnormal raw water quality conditions exist. Recreational activities at such reservoirs shall be prohibited.

(5) Flow measuring devices shall be provided to measure the raw water supplied to the plant, the recycled decant water, the treated water used to backwash the filters, and the treated water discharged from the plant. Additional metering devices shall be provided as appropriate to monitor the flow rate through specific treatment processes. Metering devices shall be located to facilitate use and to assist in the determination of chemical dosages, the accumulation of water production data, and the operation of plant facilities.

(6) Chemical storage facilities shall be designed to ensure a reliable supply of chemicals to the feeders, minimize the possibility and impact of accidental spills, and facilitate good housekeeping.

(A) Bulk storage facilities at the plant shall be adequate to store at least 15 days supply of chemicals at design capacity. However, the executive director may require a larger stock of chemicals based on local resupply ability.

(B) Day tanks shall be provided to minimize the possibility of severely overfeeding liquid chemicals. Day tanks will not be required if adequate process control instrumentation and procedures are employed to prevent chemical overfeed incidents.

(C) All chemical bulk storage facilities and day tanks shall be clearly labeled to indicate each tank's contents.

(D) Dry chemicals shall be stored off the floor in a dry room that is located above ground and protected against flooding or wetting from floors, walls, and ceilings.

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

(i) The materials used to construct bulk storage and day tanks must be compatible with the chemicals being stored and resistant to corrosion.

(ii) Adequate containment facilities shall be provided for all liquid chemical storage tanks.

(I) 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) The materials used to construct containment structures must be compatible with the chemicals stored in the tanks.

(III) Incompatible chemicals shall not be stored within the same containment structure.

(F) Chemical transfer pumps and control systems must be designed to minimize the possibility of leaks and spills.

(G) Piping, pumps, and valves used for chemical storage and transfer must be compatible with the chemical being fed.

(7) Chemical feed and metering facilities shall be designed so that chemicals shall be applied in a manner which will maximize reliability, facilitate maintenance, and ensure optimal finished water quality.

(A) Each chemical feeder shall have a standby or reserve unit. Common standby feeders are permissible, but, generally, more than one standby feeder must be provided due to the incompatibility of chemicals or the state in which they are being fed (solid, liquid or gas).

(B) Chemical feed equipment shall be sized to provide proper dosage under all operating conditions.

(i) Devices designed for determining the chemical feed rate shall be provided for all chemical feeders.

(ii) The capacity of the chemical feeders shall be such that accurate control of the dosage can be achieved at the full range of feed rates expected to occur at the facility.

(iii) Chemical feeders shall be provided with tanks for chemical dissolution when applicable.

(C) Chemical feeders, valves, and piping must be compatible with the chemical being fed.

(D) Chemical feed systems shall be designed to minimize the possibility of leaks and spills and provide protection against backpressure and siphoning.

(E) If enclosed feed lines are used, they shall be designed and installed so as to prevent clogging and be easily maintained.

(F) Dry chemical feeders shall be located in a separate room that is provided with facilities for dust control.

(G) Coagulant feed systems shall be designed so that coagulants are applied to the water prior to or within the mixing basins or chambers so as to permit their complete mixing with the water.

(i) Coagulant feed points shall be located downstream of the raw water sampling tap.

(ii) Coagulants shall be applied continuously during treatment plant operation.

(H) Chlorine feed units, ammonia feed units, and storage facilities shall be separated by solid, sealed walls.

(I) Chemical application points shall be provided to achieve acceptable finished water quality, adequate taste and odor control, corrosion control and disinfection.

(8) Flash mixing equipment shall be provided.

(A) Plants with a design capacity greater than 3.0 million gallons per day must provide at least one hydraulic mixing unit or at least two sets of mechanical flash mixing equipment designed to operate in parallel. Public water systems with other surface water treatment plants, interconnections with other systems, or wells that can meet the system's average daily demand are exempt from the requirement for redundant mechanical flash mixing equipment.

(B) Flash mixing equipment shall have sufficient flexibility to ensure adequate dispersion and mixing of coagulants and other chemicals under varying raw water characteristics and raw water flow rates.

(9) Flocculation equipment shall be provided.

(A) Plants with a design capacity greater than 3.0 million gallons per day must provide at least two sets of flocculation equipment which are designed to operate in parallel. Public water systems with other surface water treatment plants, interconnections with other systems, or wells that can meet the system's average daily demand are exempt from the requirement for redundant flocculation equipment.

(B) Flocculation facilities shall be designed to provide adequate time and mixing intensity to produce a settleable floc under varying raw water characteristics and raw water flow rates.

(i) Flocculation facilities for straight-flow and up-flow sedimentation basins shall provide a minimum theoretical detention time of at least 20 minutes when operated at their design capacity. Flocculation facilities constructed prior to October 1, 2000 are exempt from this requirement if the settled water turbidity of each sedimentation basin remains below 10.0 NTU and the treatment plant meets with turbidity requirements of §290.111 of this title (relating to Turbidity).

(ii) The mixing intensity in multiple-stage flocculators shall decrease as the coagulated water passes from one stage to the next.

(C) Coagulated water or water from flocculators shall flow to sedimentation basins in such a manner as to prevent destruction of floc. Piping, flumes and troughs shall be designed to provide a flow velocity of 0.5 to 1.5 feet per second. Gates, ports and valves shall be designed at a maximum flow velocity of 4.0 feet per second in the transfer of water between units.

(10) Clarification facilities shall be provided.

(A) Plants with a design capacity greater than 3.0 million gallons per day must provide at least two sedimentation basins or clarification units which are designed to operate in parallel. Public water systems with other surface water treatment plants, interconnections with other systems, or wells that can meet the system's average daily demand are exempt from the requirement for redundant sedimentation basins or clarification units.

(B) The inlet and outlet of clarification facilities shall be designed to prevent short-circuiting of flow or the destruction of floc.

(C) Clarification facilities shall be designed to remove flocculated particles effectively.

(i) When operated at their design capacity, basins for straight-flow or up-flow sedimentation of coagulated waters shall provide either a theoretical detention time of at least six hours in the flocculation and sedimentation chambers or a maximum surface overflow rate of 0.6 gallons per minute per square foot of surface area in the sedimentation chamber.

(ii) When operated at their design capacity, basins for straight-flow or up-flow sedimentation of softened waters shall provide either a theoretical detention time of at least 4.5 hours in the flocculation and sedimentation chambers or a maximum surface overflow rate of 1.0 gallon per minute per square foot of surface area in the sedimentation chamber.

(iii) When operated at their design capacity, sludge-blanket and solids-recirculation clarifiers shall provide either a theoretical detention time of at least two hours in the flocculation and sedimentation chambers or a maximum surface overflow rate of 1.0 gallons per minute per square foot in the settling chamber.

(iv) A side wall water depth of at least 12 feet shall be provided in clarification basins that are not equipped with mechanical sludge removal facilities.

(v) The effective length of a straight-flow sedimentation basin shall be at least twice its effective width.

(D) Clarification facilities shall be designed to prevent the accumulation of settled solids.

(i) At treatment plants with a single clarification basin, facilities shall be provided to drain the basin within six hours. In the event that the plant site topography is such that gravity draining cannot be realized, a permanently installed electric powered pump station shall be provided to dewater the basin. Public water systems with other potable water sources that can meet the system's average daily demand are exempt from this requirement.

(ii) Facilities for sludge removal shall be provided by mechanical means or by hopper-bottomed basins with valves capable of complete draining of the units.

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

(A) The use of pressure filters shall be limited to installations with a treatment capacity of less than 0.50 million gallons per day.

(B) Filtration facilities shall be designed to operate at filtration rates which assure effective filtration at all times.

(i) The design of gravity rapid sand filters shall 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, 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 of pressure filters shall be based on a maximum filtration rate of 2.0 gallons per square foot per minute.

(iv) The design capacity of filtration facilities shall be based on the cumulative filter capacity with the largest filter out of service.

(C) The depth and condition of the media and support material shall be sufficient to provide effective filtration.

(i) The filtering material shall conform to AWWA standards and be free from clay, dirt, organic matter and other impurities.

(ii) The grain size distribution of the filtering material shall be as prescribed by AWWA standards.

(iii) The depth of filter sand, anthracite, granular activated carbon, or other filtering materials shall be 24 inches or greater and provide an L/d ratio of at least 1,000.

(I) Rapid sand filters typically contain a minimum of eight inches of fine sand with an effective size of 0.35 to 0.45 mm, eight inches of medium sand with an effective size of 0.45 to 0.55 mm, and eight inches of coarse sand with an effective size of 0.55 to 0.65 mm. The uniformity coefficient of each size range should not exceed 1.6.

(II) High-rate dual media filters typically contain a minimum of twelve inches of sand with an effective size of 0.45 to 0.55 mm and twenty-four inches of anthracite with an effective size of 0.9 to 1.1 mm. The uniformity coefficient of each material should not exceed 1.6.

(III) High-rate multi-media filters typically contain a minimum of three inches of garnet media with an effective size of 0.2 to 0.3 mm, nine inches of sand with an effective size of 0.5 to 0.6 mm, and twenty-four inches of anthracite with an effective size of 0.9 to 1.1 mm. The uniformity coefficient of each size range should not exceed 1.6.

(IV) High-rate mono-media anthracite or granular activated carbon filters typically contain a minimum of 48 inches of anthracite or granular activated carbon with an effective size of 1.0 to 1.2 mm. The uniformity coefficient of each size range should not exceed 1.6.

(iv) Under the filtering material, at least 12 inches of support gravel shall be placed varying in size from 1/16 inch to 2.5 inches. The gravel may be arranged in three to five layers such that each layer contains material about twice the size of the material above it. Other support material may be approved on an individual basis.

(D) The filter shall be provided with facilities to regulate the filtration rate.

(i) With the exception of declining rate filters, each filter unit shall be equipped with a manually adjustable rate-of-flow controller with rate-of-flow indication or flow control valves with indicators.

(ii) Each declining rate filter shall be equipped with a rate-of-flow limiting device or an adjustable flow control valve with a rate-of-flow indicator.

(iii) The effluent line of each filter installed after January 1, 1996, must be equipped with a slow opening valve or another means of automatically preventing flow surges when the filter begins operation.

(E) The filters shall be provided with facilities to monitor the performance of the filter. Monitoring devices shall be designed to provide the ability to measure and record turbidity as required by §290.111 of this title (relating to Turbidity).

(i) Each filter shall be equipped with a sampling tap so that the effluent turbidity of the filter can be individually monitored.

(ii) Each filter with a capacity of 1.0 million gallons per day or more shall be equipped with an on-line turbidimeter.

(iii) Each filter operated by a public water system that serves at least 10,000 people shall be equipped with an on-line turbidimeter and recorder which will allow the operator to determine the turbidity at 15-minute intervals.

(iv) Each filter installed after October 1, 2000 shall be equipped with an on-line turbidimeter and recorder which will allow the operator to determine the turbidity at 15-minute intervals.

(v) Each filter unit shall be equipped with a device to indicate loss of head through the filter. In lieu of loss-of-head indicators, declining rate filter units may be equipped with rate-of-flow indicators.

(F) Filters shall be designed to ensure adequate cleaning during the backwash cycle.

(i) Only filtered water shall be used to backwash the filters. This water may be supplied by elevated wash water tanks, by the effluent of other filters, or by pumps which take suction from the clearwell and are provided for backwashing filters only. For installations having a treatment capacity no greater than 150,000 gallons per day, water for backwashing may be secured directly from the distribution system if proper controls and rate-of-flow limiters are provided.

(ii) The rate of filter backwashing shall be regulated by a rate-of-flow controller or flow control valve.

(iii) The rate of flow of backwash water shall not be less than 20 inches vertical rise per minute (12.5 gpm/sq. ft.) and usually not more than 35 inches vertical rise per minute (21.8 gpm/sq. ft.).

(iv) The backwash facilities shall be capable of expanding the filtering bed during the backwash cycle.

(I) For facilities equipped with air scour, the backwash facilities shall be capable of expanding the filtering bed at least 15% during the backwash cycle.

(II) For mixed-media filters without air scour, the backwash facilities shall be capable of expanding the filtering bed at least 25% during the backwash cycle.

(III) For mono-media sand filters without air scour, the backwash facilities shall be capable of expanding the filtering bed at least 40% during the backwash cycle.

(v) The filter freeboard in inches shall exceed the wash rate in inches of vertical rise per minute.

(vi) When used, surface filter wash systems shall be installed with an atmospheric vacuum breaker or a reduced pressure principle backflow assembly in the supply line. If an atmospheric vacuum breaker is used it shall be installed in a section of the supply line through which all the water passes and which is located above the overflow level of the filter.

(vii) Gravity filters installed after January 1, 1996 shall be equipped with air scour backwash or surface wash facilities.

(G) Each filter installed after October 1, 2000 shall be equipped with facilities that allow the filter to be completely drained without removing other filters from service.

(12) Pipe galleries shall provide ample working room, good lighting and good drainage provided by sloping floors, gutters and sumps. Adequate ventilation to prevent condensation and to provide humidity control is also required.

(13) The identification of influent, effluent, waste backwash, and chemical feed lines shall be accomplished by the use of labels or various colors of paint. Where labels are used, they shall be placed along the pipe at no greater than five foot intervals. Color coding must be by solid color or banding. If bands are used, they shall be placed along the pipe at no greater than five foot intervals.

(A) A plant that is built or repainted after October 1, 2000 must use the following color code. The color code to be used in labeling pipes is as follows:
Figure: 30 TAC §290.42(d)(13)(A)

(B) A plant that was repainted before October 1, 2000 may use an alternate color code. The alternate color code must provide clear visual distinction between process streams.

(C) The system must maintain clear, current documentation of its color code in a location easily accessed by all personnel.

(14) All surface water treatment plants shall provide sampling taps for raw, settled, individual filter effluent, and clearwell discharge. Additional sampling taps shall be provided as appropriate to monitor specific treatment processes.

(15) An adequately equipped laboratory shall be available locally so that daily microbiological and chemical tests can be conducted.

(A) For plants serving 25,000 persons or more, the local laboratory used to conduct the required daily microbiological analyses must be certified by the Texas Department of Health to conduct coliform analyses.

(B) For plants serving populations of less than 25,000, the facilities for making microbiological tests may be omitted if the required microbiological samples can be submitted to one of the Texas Department of Health's certified laboratories on a timely basis.

(C) All surface water treatment plants shall be provided with equipment for making at least the following determinations:

(i) pH;

(ii) temperature;

(iii) disinfectant residual;

(iv) alkalinity;

(v) turbidity;

(vi) jar tests for determining the optimum coagulant dose; and

(vii) other tests deemed necessary to monitor specific water quality problems or to evaluate specific water treatment processes.

(D) An amperometric titrator with platinum-platinum electrodes shall be provided at all surface water treatment plants that use chlorine dioxide.

(E) Each surface water treatment plant that uses sludge-blanket clarifiers shall be equipped with facilities to monitor the depth of the sludge blanket.

(F) Each surface water treatment plant that uses solids-recirculation clarifiers shall be equipped with facilities to monitor the solids concentration in the slurry.

(G) Effective January 1, 2002, each surface water treatment plant shall be provided with a computer and software for recording performance data, maintaining records and submitting reports to the executive director.

(e) Disinfection.

(1) All water obtained from surface sources or groundwater sources that are under the direct influence of surface water must be disinfected in a manner consistent with the requirements of §290.110 of this title (relating to Disinfectant Residuals).

(2) All groundwater must be disinfected prior to distribution. The point of application must be ahead of the water storage tank(s) if storage is provided prior to distribution. Permission to use alternate disinfectant application points must be obtained in writing from the executive director.

(3) Disinfection equipment shall be selected and installed so that continuous and effective disinfection can be secured under all conditions.

(A) Disinfection equipment shall have a capacity at least 50% greater than the highest expected dosage to be applied at any time. It shall be capable of satisfactory operation under every prevailing hydraulic condition.

(B) Automatic proportioning of the disinfectant dosage to the flow rate of the water being treated shall be provided at plants where the treatment rate varies automatically, and at all plants where the treatment rate varies more than 50% above or below the average flow. Manual control shall be permissible at surface water treatment plants or plants treating groundwater under the direct influence of surface water only if an operator is always on hand to make adjustments promptly.

(C) All disinfecting equipment in surface water treatment plants shall include at least one functional standby unit of each capacity for ensuring uninterrupted operation. Common standby units are permissible, but, generally, more than one standby unit must be provided because of the differences in feed rates or the physical state in which the disinfectants are being fed (solid, liquid, or gas).

(D) Facilities shall be provided for determining the amount of disinfectant used daily as well as the amount of disinfectant remaining for use.

(E) When used, solutions of calcium hypochlorite shall be prepared in a separate mixing tank and allowed to settle so that only a clear supernatant liquid is transferred to the hypochlorinator container.

(F) Provisions shall be made for both pretreatment disinfection and post-disinfection in all surface water treatment plants. Additional application points shall be installed if they are required to adequately control the quality of the treated water.

(G) The use of disinfectants other than chlorine will be considered on a case-by-case basis under the exception guidelines of §290.39(l) of this title (relating to General Provisions).

(4) 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.

(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).

(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.

(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) Other treatment processes. The adjustment of fluoride ion content, special treatment for iron and manganese reduction, special methods for taste and odor control, demineralization, corrosion control processes, and other proposals covering other treatment processes will be considered on an individual basis, pursuant to §290.39(l) of this title (relating to General Provisions). Package-type treatment systems and their components shall be subject to all applicable design criteria in this section. Where innovative/alternate treatment systems are proposed, the licensed professional engineer must provide pilot test data or data collected at similar full-scale operations demonstrating that the system will produce water that meets the requirements of Subchapter F of this title (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Drinking Water Supply Systems). Pilot test data must be representative of the actual operating conditions which can be expected over the course of the year. The executive director may require proof of a one-year manufacturers performance warrantee or guarantee assuring that the plant will produce treated water which meets minimum state and federal standards for drinking water quality.

(g) Sanitary facilities for water works installations. Toilet and hand washing facilities provided in accordance with established standards of good public health engineering practices shall be available at all installations requiring frequent visits by operating personnel.

(h) Permits for waste discharges. Permits for discharging wastes from water treatment processes shall be obtained from the agency, if necessary.

(i) Treatment chemicals and media. All chemicals and any additional or replacement process media used in treatment of water supplied by public water systems must conform to American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 60 for direct additives and ANSI/NSF Standard 61 for indirect additives. Conformance with these standards must be obtained by certification of the product by an organization accredited by ANSI.

(j) Safety.

(1) Safety equipment 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.

(2) Systems must comply with United States Environmental Protection Agency (EPA) requirements for Risk Management Plans.

(k) Plant operations manual. A thorough plant operations manual must be compiled and kept up to date for operator review and reference. This manual should be of sufficient detail to provide the operator with routine maintenance and repair procedures as well as provide telephone numbers of water system personnel, system officials, and local/state/federal agencies to be contacted in the event of an emergency.

§290.44. Water Distribution.

(a) Design and standards. All potable water distribution systems including pump stations, mains, and both ground and elevated storage tanks, shall be designed, installed and constructed in accordance with current American Water Works Association (AWWA) standards with reference to materials to be used and construction procedures to be followed. In the absence of AWWA standards, commission review may be based upon the standards of the American Society for Testing and Materials (ASTM), commercial and other recognized standards utilized by licensed professional engineers.

(1) All newly installed pipes and related products must conform to American National Standards Institute/National Sanitation

Foundation (ANSI/NSF) Standard 61 and must be certified by an organization accredited by ANSI.

(2) All plastic pipe for use in public water systems must also bear the National Sanitation Foundation Seal of Approval (NSF-pw) and have an ASTM design pressure rating of at least 150 psi or a standard dimension ratio of 26 or less.

(3) No pipe which has been used for any purpose other than the conveyance of drinking water shall be accepted or relocated for use in any public drinking water supply.

(4) Water transmission and distribution lines must be installed in accordance with the manufacturer's instructions. However, the top of the water line must be located below the frost line and in no case shall the top of the water line be less than 24 inches below ground surface.

(5) The hydrostatic leakage rate shall not exceed the amount allowed or recommended by AWWA formulas.

(b) Lead ban. The following provisions apply to the use of lead in plumbing.

(1) The use of pipes and pipe fittings that contain more than 8.0% lead or solders and flux that contains more than 0.2% lead is prohibited in the following circumstances:

(A) For installation or repair of any public water supply, and

(B) For installation or repair of any plumbing in a residential or nonresidential facility providing water for human consumption and connected to a public drinking water supply system.

(2) This requirement will be waived for lead joints that are necessary for repairs to cast iron pipe.

(c) Minimum water line sizes. These are minimum requirements for domestic flows only and do not consider fire flows. 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) Air release devices shall be installed in the distribution system at all points where topography or other factors may create air locks in the lines. Air release devices shall be installed in such a manner as to preclude the possibility of submergence or possible entrance of contaminants. In this respect, all openings to the atmosphere shall be covered with 16-mesh or finer, corrosion-resistant screening material or an acceptable equivalent.

(2) When service is to be provided to more than one pressure plane or when distribution system conditions and demands are such that low pressures develop, the method of providing increased pressure shall be by means of booster pumps taking suction from storage tanks. If an exception to this requirement is desired, the designing engineer must furnish for the executive director's review all planning material for booster pumps taking suction from other than a storage tank. The planning material must contain a full description of the supply to the point of suction, maximum demands on this part of the system, location of pressure recorders, safety controls and other pertinent information. Where booster pumps are installed to take suction directly from the distribution system, a minimum residual pressure of 20 pounds per square inch (psi) must be maintained on the suction line at all times. Such installations must be equipped with automatic pressure cut-off devices so that the pumping units become inoperative at a suction pressure of less than 20 psi. In addition, a continuous pressure recording device may be required at a predetermined suspected critical pressure point on the suction line in order to record the hydraulic conditions in the line at all times. If such a record indicates critical minimum pressures (less than 20 psi), adequate storage facilities must be installed with the booster pumps taking suction from the storage facility. Fire pumps used to maintain pressure on automatic sprinkler systems only for fire protection purposes are not considered as in-line booster pumps.

(3) Service connections that require booster pumps taking suction from the public water system lines must be equipped with automatic pressure cut-off devices so that the pumping units become inoperative at a suction pressure of less than 20 psi. Where these types of installations are necessary, the preferred method of pressure maintenance consists of an air gapped connection with a storage tank and subsequent repressurization facilities.

(4) Each community public water system shall provide accurate metering devices at each service connection for the accumulation of water usage data. Systems where no direct charge is made for the water shall be exempted from this requirement.

(5) The system shall be provided with sufficient valves and blowoffs so that necessary repairs can be made without undue interruption of service over any considerable area and for flushing the system when required. The engineering report shall establish criteria for this design.

(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 connecting them to provide circulation.

(e) Location of water lines.

(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.

(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.

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

(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.

(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 and the licensed professional engineer is able to determine that the existing line is not leaking, the new potable waterline shall be located at least two feet above the existing line, measured vertically, and at least four feet away, measured horizontally, from the existing line. Every effort shall be exerted not to disturb the bedding and backfill of the existing wastewater line.

(ii) Where a new potable waterline parallels an existing pressure rated wastewater line and it cannot be determined by the licensed professional engineer if the existing line is leaking, the existing wastewater line shall be replaced with 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 line.

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

(B) New Waterline Installation--Crossing Lines

(i) Where a new potable waterline crosses an existing, non-pressure rated wastewater 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 line. The potable waterline shall be at least two feet above the wastewater line. Whenever possible, the crossing shall be centered between the joints of the wastewater line. If the existing wastewater line is disturbed or shows signs of leaking, it shall be replaced for at least nine feet in both directions (18 feet total) with 150 psi pressure rated pipe.

(ii) Where a new potable waterline crosses an existing, pressure rated wastewater 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 line. The potable waterline shall be at least six inches above the wastewater line. Whenever possible, the crossing shall be centered between the joints of the wastewater line. If the existing wastewater line shows signs of leaking, it shall be replaced for at least nine feet in both directions (18 feet total) with 150 psi pressure rated pipe.

(iii) Where a new potable waterline crosses a new, non-pressure rated wastewater line and the standard pipe segment length of the wastewater line is at least 18 feet, 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 line. The potable waterline shall be at least two feet above the wastewater line. Whenever possible, the crossing shall be centered between the joints of the wastewater line. The wastewater pipe shall have a minimum pipe stiffness of 115 psi at 5.0% deflection. The wastewater line shall be embedded in cement stabilized sand (see §290.44(e)(5)(B)(vi) of this 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 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 150 psi. An absolute minimum vertical separation distance of two feet shall be provided. The wastewater line shall be located below the waterline.

(II) All sections of wastewater 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 line. The space around the carrier pipe shall be supported at 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 line, the waterline will be encased as described for wastewater lines in section (II) 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 line shall be provided. Both the waterline and wastewater 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 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 line. The potable waterline shall be at least six inches above the wastewater line. Whenever possible, the crossing should be centered between the joints of the wastewater line. The wastewater pipe shall have a minimum pressure rating of 150 psi. The wastewater line shall be embedded in cement stabilized sand 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 sewer pipe. The use of brown coloring in cement stabilized sand for wastewater line bedding is recommended for the identification of wastewater force mains during future construction.

(6) Waterline and Manhole Separation. The separation distance from a potable waterline to a manhole shall be a minimum of nine feet. Where the nine foot separation distance cannot be achieved, the potable waterline shall be encased in a joint of 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 seal.

(7) Location of Fire hydrants. Fire hydrants shall not be installed within nine feet vertically or horizontally of any sanitary sewer line regardless of construction.

(8) Location of Supply/Suction Lines. Suction mains to pumping equipment shall not cross wastewater lines carrying domestic or industrial wastes. Raw water supply lines shall not be installed within five feet of any tile or concrete wastewater line.

(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 water lines.

(1) Pipe shall not be laid in water or placed where it can be flooded with water or sewage during its storage or installation.

(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, 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 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) Interconnections.

(1) Each proposal for a direct connection between public drinking water systems under separate administrative authority will be considered on an individual basis.

(A) Documents covering the responsibility for sanitary control shall accompany the submitted planning material.

(B) Each water supply shall be of a safe, potable quality.

(2) Where an interconnection between systems is proposed to provide a second source of supply for one or both systems, the system being utilized as a second source of supply must be capable of supplying a minimum of 0.35 gallons per minute per connection for the total number of connections in the combined distribution systems.

(h) Backflow, siphonage.

(1) No water connection from any public drinking water supply system shall be allowed to any residence or establishment where an actual or potential contamination hazard exists unless the public water facilities are protected from contamination.

(A) At any residence or establishment where an actual or potential contamination hazard exists, additional protection shall be required at the meter in the form of an air gap or backflow prevention assembly. The type of backflow prevention assembly required shall be determined by the specific potential hazard identified in §290.47(i) of this title (relating to Appendices).

(B) At any residence or establishment where an actual or potential contamination hazard exists and an adequate internal cross-connection control program is in effect, backflow protection at the water service entrance or meter is not required.

(i) An adequate internal cross-connection control program shall include an annual inspection and testing by a certified backflow prevention assembly tester on all backflow prevention assemblies used for health hazard protection.

(ii) Copies of all such inspection and test reports must be obtained and kept on file by the water purveyor.

(iii) It will be the responsibility of the water purveyor to ensure that these requirements are met.

(2) No water connection from any public drinking water supply system shall be allowed to any condensing, cooling or industrial process or any other system of nonpotable usage over which the public water supply system officials do not have sanitary control, unless the said connection is made in accordance with the requirements of paragraph (1) of this subsection. Water from such systems cannot be returned to the potable water supply.

(3) Overhead bulk water dispensing stations must be provided with an air gap between the filling outlet hose and the receiving tank to protect against back siphonage and cross-contamination.

(4) All backflow prevention assemblies that are required according to this section and associated table §290.47(i) of this title shall be tested upon installation by a recognized backflow prevention assembly tester and certified to be operating within specifications. Backflow prevention assemblies which are installed to provide protection against health hazards must also be tested and certified to be operating within specifications at least annually by a recognized backflow prevention assembly tester.

(A) Recognized backflow prevention assembly testers shall have completed a executive director approved course on cross-connection control and backflow prevention assembly testing, pass an examination administered by the TNRCC or its designated agent and hold current professional certification as a backflow prevention assembly tester.

(i) Backflow prevention assembly testers are qualified to test and repair assemblies on any domestic, commercial, industrial, or irrigation service.

(ii) Backflow prevention assembly testers may test and repair assemblies on firelines only if they are permanently employed by an Approved Fireline Contractor. The State Fire Marshall's office requires that any person performing maintenance on firelines must be employed by an Approved Fireline Contractor.

(B) Gauges used in the testing of backflow prevention assemblies shall be tested for accuracy annually in accordance with the University of Southern California's Manual of Cross-Connection Control or the American Water Works Association Recommended Practice for Backflow Prevention and Cross-Connection Control (Manual M14). Public water systems shall require testers to include test gauge serial numbers on "Test and Maintenance" report forms and ensure testers have gauges tested for accuracy.

(C) A Test Report must be completed by the recognized backflow prevention assembly tester for each assembly tested. The signed and dated original must be submitted to the public water supplier for record keeping purposes. Any form which varies from the format specified in Appendix F of this title (relating to Backflow Prevention Assembly Test and Maintenance Report) must be approved by the executive director prior to being placed in use.

(5) The use of a backflow prevention assembly at the service connection shall be considered as additional backflow protection and shall not negate the use of backflow protection on internal hazards as outlined and enforced by local plumbing codes.

(6) At any residence or establishment where there is no actual or potential contamination hazard, a backflow prevention assembly is not required.

(i) Water hauling. When drinking water is distributed by tank truck or trailer, it must be accomplished in the following manner:

(1) Water shall be obtained from an approved source.

(2) The equipment used to haul the water must be approved by the executive director and must be constructed as follows:

(A) The tank truck or trailer shall be used for transporting drinking water only and shall be labeled "Drinking Water." Tanks which have been used previously for purposes other than transporting potable liquids shall not be used for hauling drinking water.

(B) The tank shall be watertight and of an approved material which is impervious and easily cleaned and disinfected. Any paint or coating and any plastic or fiberglass materials used as contact surfaces must be approved by the United States Environmental Protection Agency, the United States Food and Drug Administration, or the National Sanitation Foundation. Effective January 1, 1993, any newly installed surfaces shall conform to ANSI/NSF Standard 61 and must be certified by an organization accredited by ANSI.

(C) The tank shall have a manhole and a manhole cover which overlaps the raised manhole opening by a minimum of two inches and terminates in a downward direction. The cover shall fit firmly on the manhole opening and shall be kept locked.

(D) The tank shall have a vent which is faced downward and located to minimize the possibility of drawing contaminants into the stored water. The vent must be screened with 16-mesh or finer corrosion-resistant material.

(E) Connections for filling and emptying the tank shall be properly protected to prevent the possible entrance of contamination. These openings must be provided with caps and keeper chains.

(F) A drain shall be provided which will completely empty the tank for cleaning or repairs.

(G) When a pump is used to transfer the water from the tank, the pump shall be permanently mounted with a permanent connection to the tank. The discharge side of the pump shall be properly protected between uses by a protective cap and keeper chain.

(H) Hoses used for the transfer of drinking water to and from the tank shall be used only for that purpose and labeled for drinking water only. The hoses shall conform to ANSI/NSF Standard 61 and must be certified by an entity recognized by the Commission. Hoses and related appurtenances must be cleaned and disinfected on a regular basis during prolonged use or before start-up during intermittent use. Hoses must be properly stored between uses and must be provided with caps and keeper chains or have the ends connected together.

(I) The tank shall be disinfected monthly and at any time that contamination is suspected.

(J) At least one sample per month from each tank shall be collected and submitted for microbiological analysis to one of the Commission's approved laboratories for each month of operation.

(K) A minimum free chlorine residual of 0.5 mg/l or, if chloramines are used as the primary disinfectant, a chloramine residual of 1.0 mg/l (measured as total chlorine) shall be maintained in the water being hauled. Chlorine or chlorine containing compounds may be added on a "batch" basis to maintain the required residual.

(L) Operational records detailing the amount of water hauled, purchases, microbiological sampling results, chlorine residual readings, dates of disinfection and source of water shall be maintained.

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

(a) General. When a public drinking water supply system is to be established, plans shall be submitted to the executive director for review and approval prior to the construction of the system. All public water systems are to be constructed in conformance with these sections and maintained and operated in accordance with the following minimum acceptable operating practices. Owners and operators shall allow entry to members of the commission and employees and agents of the commission onto any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to public water systems in the state. Members, employees, or agents acting under this authority shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials.

(b) Microbiological. Submission of samples for microbiological analysis shall be as required by Subchapter F of this 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 the Texas Department of Health Bureau of Laboratories or one of its approved laboratories. (A list of the approved laboratories can be obtained by contacting the Texas Department of Health Bureau of Laboratories).

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

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

(1) Disinfection 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 in the far reaches of the distribution system at all times:

(A) a free chlorine residual of 0.2 mg/l; or

(B) a chloramine residual of 0.5 mg/l (measured as total chlorine) for those systems that feed ammonia.

(e) Operation by certified personnel. All systems, except transient noncommunity systems 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) 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) 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) 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) 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) 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) Those systems which utilize complete surface water treatment must comply with the requirements of paragraph (2) of this subsection.

(4) 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) 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.

(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) The public water system's operating records must be organized, and copies must be kept on file or stored electronically.

(2) The public water system's operating records must be accessible for review during inspections.

(3) All public water systems shall maintain a record of operations.

(A) The following records shall be retained for at least two years:

(i) the amount of chemicals used each day;

(ii) the volume of water treated each day;

(iii) the date, location, and nature of water quality, pressure, or outage complaints received by the system and the results of any subsequent complaint investigation;

(iv) the dates that dead-end mains were flushed;

(v) the dates that storage tanks and other facilities were cleaned; and

(vi) the maintenance records for water system equipment and facilities.

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

(i) copies of notices of violation and any resulting corrective actions. The records of the actions taken to correct violations of primary drinking water regulations must be retained for at least three years after the last action taken with respect to the particular violation involved;

(ii) copies of any public notice issued by the water system;

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

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

(v) the records of backflow prevention device programs.

(C) The following records shall be retained for a period of five years after they are no longer in effect:

(i) the records concerning a variance or exemption granted to the system; and

(ii) Concentration Time (CT) studies for surface water treatment plants.

(D) The results of microbiological analyses shall be retained for at least five years.

(E) The following records shall be retained for at least 10 years:

(i) copies of Monthly Operating Reports and any supporting documentation including turbidity monitoring results of the combined filter effluent;

(ii) the results of chemical analyses;

(iii) any written reports, summaries, or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by the executive director shall be kept for a period not less than 10 years after completion of the survey involved; and

(iv) copies of the Customer Service Inspection reports required by subsection (j) of this section.

(F) A public water system shall maintain records relating to special studies and pilot projects, special monitoring, and other system-specific matters as directed by the executive director.

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

(A) The reports must be submitted to the Texas Natural Resource Conservation Commission, 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.

(B) The reports must contain all the information required by the drinking water standards and the results of any special monitoring tests which have been required.

(C) The reports must be completed in ink, typed, or computer-printed and must be signed by the certified water works operator.

(g) Disinfection of new or repaired facilities. Disinfection by or under the direction of water system personnel must be performed when repairs are made to existing facilities and before new facilities are placed into service. Disinfection must be performed in accordance with AWWA requirements and water samples must be submitted to a laboratory approved by the Texas Department of Health. The sample results must indicate that the facility is free of microbiological contamination before it is placed into service. When it is necessary to return repaired mains to service as rapidly as possible, doses may be increased to 500 mg/l and the contact time reduced to one-half hour.

(h) Calcium hypochlorite. A supply of calcium hypochlorite disinfectant shall be kept on hand for use when making repairs, setting meters, and disinfecting new mains prior to placing them in service.

(i) Plumbing ordinance. Public water systems must adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to insure that neither cross-connections nor other unacceptable plumbing practices are permitted. See §290.47(b) of this title (relating to Appendices). Should sanitary control of the distribution system not reside with the purveyor, the entity retaining sanitary control shall be responsible for establishing and enforcing adequate regulations in this regard. The use of pipes and pipe fittings that contain more than 8.0% lead or solders and flux that contain more than 0.2% lead is prohibited for installation or repair of any public water supply and for installation or repair of any plumbing in a residential or nonresidential facility providing water for human consumption and connected to a public drinking water supply system. This requirement may be waived for lead joints that are necessary for repairs to cast iron pipe.

(j) Customer service inspections. A customer service inspection certificate shall be completed prior to providing continuous water service to new construction, on any existing service 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) Individuals with the following credentials shall be recognized as capable of conducting a customer service inspection certification.

(A) Plumbing Inspectors and Water Supply Protection Specialists licensed by the Texas State Board of Plumbing Examiners.

(B) Customer service inspectors who have completed a commission approved course, passed an examination administered by the TNRCC or its designated agent and hold current professional certification or endorsement as a customer service inspector.

(2) As potential contaminant hazards are discovered, they shall be promptly eliminated to prevent possible contamination of the water supplied by the public water system. The existence of a health hazard, as identified in §290.47(i) of this title, shall be considered sufficient grounds for immediate termination of water service. Service can be restored only when the health hazard no longer exists, or until the health hazard has been isolated from the public water system in accordance with §290.44(h) of this title (relating to Water Distribution).

(3) These customer service inspection requirements are not considered acceptable substitutes for and shall not apply to the sanitary control requirements stated in §290.102(a)(5) of this title (relating to Definitions).

(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) Interconnection. No physical connection between the distribution system of a public drinking water supply and that of any other water supply shall be permitted unless the other water supply is of a safe, sanitary quality and the interconnection is approved by the executive director.

(l) Flushing of mains. All dead-end mains must be flushed at monthly intervals or more frequently if water quality complaints are received from water customers or if disinfectant residuals fall below acceptable levels as specified in §290.110 of this title (relating to Disinfectant Residuals).

(m) Maintenance and housekeeping. The maintenance and housekeeping practices used by a public water system shall ensure the reliability and general appearance of the system's facilities and equipment.

(1) Each of the system's ground, elevated and pressure tanks shall be inspected annually by water system personnel or a contracted inspection service.

(A) Ground and elevated storage tank inspections must determine that the vents are in place and properly screened, the roof hatches closed and locked, flap valves and gasketing provide adequate protection against insects, rodents and other vermin, the interior and exterior coating systems are continuing to provide adequate protection to all metal surfaces, and the tank remains in a watertight condition.

(B) Pressure tank inspections must determine that the pressure release device and pressure gauge are working properly, the air-water ratio is being maintained at the proper level, the exterior coating systems are continuing to provide adequate protection to all metal surfaces, and the tank remains in watertight condition. Pressure tanks provided with an inspection port must have the interior surface inspected every five years.

(C) All tanks shall be inspected annually to determine that instrumentation and controls are working properly.

(2) When pressure filters are used, a visual inspection of the filter media and internal filter surfaces shall be conducted annually to ensure that the filter media is in good condition and the coating materials continue to provide adequate protection to internal surfaces.

(3) When cartridge filters are used, filter cartridges shall be changed at the frequency required by the manufacturer, or more frequently if needed.

(4) All water storage facilities, distribution system lines and related appurtenances shall be maintained in a watertight condition and be free of excessive solids.

(5) Basins used for water clarification shall be maintained free of excessive solids to prevent possible carryover of sludge and the formation of tastes and odors.

(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.

(1) Accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank shall be maintained at the public water system until the facility is decommissioned. As-built plans of individual projects may be used to fulfill this requirement if the plans are maintained in an organized manner.

(2) An accurate and up-to-date map of the distribution system shall be available so that valves and mains can be easily located during emergencies.

(3) Copies of well material setting data, geological log, sealing information (pressure cementing and surface protection), disinfection information, microbiological sample results and a chemical analysis report of a representative sample of water from the well shall be kept on file for as long as the well remains in service.

(o) Filter backwashing at surface water treatment plants. Filters must be backwashed when a loss of head differential of six to ten feet is experienced between the influent and effluent loss of head gauges or when the turbidity level at the effluent of the filter reaches 1.0 NTU.

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

(1) When a water system changes ownership, a written notice of the transaction must be provided to the executive director. When applicable, notification shall be in accordance with Chapter 291 of this title (relating to Water Rates). Those systems not subject to Chapter 291 of this title shall notify the executive director of changes in ownership by providing the name of the current and prospective owner or responsible official, the proposed date of the transaction, and the address and phone number of the new owner or responsible official. The information listed in this paragraph and the system's public drinking water supply identification number, and any other information necessary to identify the transaction shall be provided to the executive director 120 days before the date of the transaction.

(2) On an annual basis, 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 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) The flowchart found in §290.47(h) of this title shall be used to determine if a boil water notification must be issued in the event of a loss of distribution system pressure. If a boil water notice is issued pursuant to this section, it shall remain in effect until water distribution pressures in excess of 20 psi can consistently be maintained, a minimum of 0.2 mg/l free chlorine residual or 0.5 mg/l chloramine residual (measured as total chlorine) is present throughout the system, and water samples collected for microbiological analysis are found negative for coliform organisms.

(3) A boil water notification shall be issued if the turbidity of the finished water produced by a surface water treatment plant exceeds 5.0 NTU. The boil water notice shall remain in effect until the water entering the distribution system has a turbidity level below 1.0 NTU, the distribution system has been thoroughly flushed, a minimum of 0.2 mg/l free chlorine residual or 0.5 mg/l chloramine residual (measured as total chlorine) is present throughout the system, and water samples collected for microbiological analysis are found negative for coliform organisms.

(4) Other protective measures may be required at the discretion of the executive director.

(r) Minimum pressures. All public water systems shall be operated to provide a minimum pressure of 35 psi throughout the distribution system under normal operating conditions. The system shall also be operated to maintain a minimum pressure of 20 psi during emergencies such as fire fighting.

(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 shall be calibrated at least once every 12-months.

(2) Laboratory equipment used for compliance testing shall be properly calibrated.

(A) pH meters shall be properly calibrated.

(i) Benchtop pH meters shall be calibrated according to manufacturers specifications at least once each day.

(ii) The calibration of benchtop pH meters shall be checked with at least one buffer each time a series of samples is run, and if necessary, recalibrated according to manufacturers specifications.

(iii) On-line pH meters shall be calibrated according to manufacturers specifications at least once each day.

(B) Turbidimeters shall be properly calibrated.

(i) Benchtop turbidimeters shall be calibrated with primary standards at least once every 90 days. Each time the turbidimeter is calibrated with primary standards, the secondary standards shall be restandardized.

(ii) The calibration of benchtop turbidimeters shall be checked with secondary standards each time a series of samples is tested, and if necessary, recalibrated with primary standards.

(iii) On-line turbidimeters shall be calibrated with primary standards at least once every 90 days.

(iv) The calibration of online turbidimeters shall be checked at least once each week with a primary standard, a secondary standard, or the manufacturer's proprietary calibration confirmation device or by comparing the results from the on-line unit with the results from a properly calibrated benchtop unit. If necessary, the on-line unit shall be recalibrated with primary standards.

(C) Disinfectant residual analyzers shall be properly calibrated.

(i) The accuracy of manual disinfectant residual analyzers shall be verified at least once every 30 days using chlorine solutions of known concentrations.

(ii) Continuous disinfectant residual analyzers shall be calibrated at least once every 90 days using chlorine solutions of known concentrations.

(iii) The calibration of continuous disinfectant residual analyzers shall be checked at least once each month with a chlorine solution of known concentration or by comparing the results from the on-line analyzer with the result of approved benchtop amperometric, spectrophotometric, or titration method.

(t) System ownership. All community water systems shall post a legible sign at each of its production, treatment, and storage facilities. The sign shall be located in plain view of the public and shall provide the name of the water supply and an emergency telephone number where a responsible official can be contacted.

(u) Abandoned wells. Abandoned public water supply wells owned by the system must be plugged with cement according to 16 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 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) Electrical wiring. All water system electrical wiring must be installed in a securely mounted conduit in compliance with a local or national electrical code.

§290.47. Appendices.

(a) Appendix A. Recognition as a Superior or Approved Public Water System.
Figure: 30 TAC §290.47(a) (No change.)

(b) Appendix B. Sample Service Agreement.
Figure: 30 TAC §290.47(b) (No change.)

(c) Appendix C. Sample Sanitary Control Easement Document for a Public Water Well.
Figure: 30 TAC §290.47(c) (No change.)

(d) Appendix D. Customer Service Inspection Certification.
Figure: 30 TAC §290.47(d)

(e) Appendix E. Boil Water Notification.
Figure: 30 TAC §290.47(e) (No change.)

(f) Appendix F. Sample Backflow Prevention Assembly Test and Maintenance Report.
Figure: 30 TAC §290.47(f)

(g) Appendix G. Operator and/or Employment Notice.
Figure: 30 TAC §290.47(g) (No change.)

(h) Appendix H. Special Precautions Flowchart.
Figure: 30 TAC §290.47(h) (No change.)

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

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 August 24, 2000.

TRD-200005957
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 13, 2000
Proposal publication date: April 21, 2000
For further information, please call: (512) 239-4712

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30 TAC §290.42, §290.46

STATUTORY AUTHORITY

The repealed sections are adopted under the 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; under THSC, §341.031, which allows the commission to adopt rules to implement the federal Safe Drinking Water Act, 42 USC §300f et. seq.; under THSC, §341.0315, which requires public water supply systems to meet the requirements of commission rules; and under THSC, §341.035, which requires the executive director of the commission to approve plans and specifications for public water supplies.

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SUBCHAPTER F. DRINKING WATER STANDARDS GOVERNING DRINKING WATER QUALITY AND REPORTING REQUIREMENTS FOR PUBLIC WATER SUPPLY SYSTEMS

30 TAC §§290.101 - 290.106, 290.108 - 290.121

STATUTORY AUTHORITY

The repealed sections are adopted under the 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; under THSC, §341.031, which allows the commission to adopt rules to implement the federal Safe Drinking Water Act, 42 USC §300f et. seq.; under THSC, §341.0315, which requires public water supply systems to meet the requirements of commission rules; and under THSC, §341.035, which requires the executive director of the commission to approve plans and specifications for public water supplies.

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♦ ♦ ♦

30 TAC §§290.101 - 290.115, 290.117 - 290.119, 290.121, 290.122

STATUTORY AUTHORITY

The new and amended sections are adopted under the 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; under THSC, §341.031, which allows the commission to adopt rules to implement the federal Safe Drinking Water Act, 42 USC §300f et. seq.; under THSC, §341.0315, which requires public water supply systems to meet the requirements of commission rules; and under THSC, §341.035, which requires the executive director of the commission to approve plans and specifications for public water supplies.

§290.102. General Applicability.

(a) General Applicability. This subchapter shall apply to all public water systems as described in each section, unless the system:

(1) consists only of distribution and storage facilities (and does not have any production and treatment facilities);

(2) obtains all of its water from, but is not owned or operated by, a public water system to which such standards apply;

(3) does not sell water to any person;

(4) is not a carrier which conveys passengers in interstate commerce; and

(5) is subject to plumbing restrictions and inspections by the public water system which provides the water.

(b) Variances and exemptions. Variances and exemptions may be granted at the discretion of the executive director.

(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) 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) Compliance cycle - The nine-year (calendar year) cycle during which public water systems must monitor. Each compliance cycle consists of three, three-year compliance periods. The first compliance cycle begins January 1, 1993, and ends December 31, 2001. The second begins January 1, 2002, and ends December 31, 2010. The third begins January 1, 2011, and ends December 31, 2019. The cycle continues thereafter in a similar pattern.

(2) Compliance period - A three-year (calendar year) period within a compliance cycle. Each compliance cycle has three, three-year compliance periods. Within the first compliance cycle, the first compliance period is called the initial compliance period and runs from January 1, 1993 to December 31, 1995. The second period from January 1, 1996, to December 31, 1998. The third period from January 1, 1999 to December 31, 2001. Compliance periods in subsequent compliance cycles follow the same pattern.

(3) Comprehensive performance evaluation (CPE) - A thorough review and analysis of a treatment plant's performance-based capabilities and the associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and to emphasize approaches that can be implemented without significant capital improvements. The comprehensive performance evaluation consists of the following components: assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report.

(4) Disinfection profile - A summary of daily *Giardia lamblia* and viral inactivation obtained through disinfection at the treatment plant.

(5) Disinfection by-products (DBP) - Chemical compounds formed by the reaction of a disinfectant with the natural organic matter present in water.

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

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

(8) Entry point to the distribution system - Any point where freshly treated water 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.

(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.

(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.

(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 summing.

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

(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.

(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.

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

(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).

(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.

(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.

(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, 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 maximum contaminant levels for inorganic contaminants listed below apply to public water systems as provided in §290.106 of this title (relating to Inorganic Contaminants).
Figure: 30 TAC §290.104(b)

(c) Maximum contaminant levels (MCLs) for organic compounds. The following maximum contaminant levels for synthetic organic contaminants and volatile organic contaminants apply to public water systems as provided in §290.107 of this title (relating to Organic Contaminants).

(1) The following are the maximum contaminant levels for synthetic organic contaminants.
Figure: 30 TAC §290.104(c)(1)

(2) The following are the maximum contaminant levels for volatile organic contaminants.
Figure: 30 TAC §290.104(c)(2)

(d) Maximum contaminant levels for radiological contaminants. Maximum contaminant levels for radiological contaminants apply to public water systems as provided in §290.108 of this title (relating to Radiological Sampling and Analytical Requirements). The maximum contaminant levels for beta particle and photon radioactivity from man-made radionuclides in drinking water are as follows.

(1) The maximum contaminant level for combined radium-226 and radium-228 is 5 pCi/l.

(2) The maximum contaminant level for gross alpha particle activity (including radium-226 but excluding radon and uranium) is 15 pCi/l.

(3) The average annual concentration of beta particle and photon radioactivity from man-made radionuclides in drinking water shall not produce an annual dose equivalent to the total body or any internal organ greater than four millirem (mrem)/year.

(4) If two or more radionuclides other than tritium or strontium-90 are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed four mrem/year. Average annual concentrations of tritium or strontium-90 assumed to produce a total body or organ dose of four mrem/year are as follows:
Figure: 30 TAC §290.104(d)(4)

(e) Microbial contaminants. The MCL for microbial or bacteriological contaminants applies to public water systems as provided in §290.109 of this title (relating to Microbial Contaminants). The MCL for microbiological contaminants is based on the presence or absence of total coliform bacteria in a sample.

(f) Minimum and MRDLs. Minimum and MRDLs apply to public water systems as provided in §290.110 of this title (relating to Disinfectant Residuals).

(1) The minimum residual disinfectant concentration in the water entering the distribution system is 0.2 mg/L free chlorine or 0.5 mg/L chloramine.

(2) The minimum residual disinfectant concentration in the water within the distribution system is 0.2 mg/L free chlorine or 0.5 mg/L chloramine.

(3) The maximum residual disinfectant level of chlorine dioxide in the water entering the distribution system is 0.8 mg/L.

(4) The maximum residual disinfectant level of free chlorine or chloramine in the water within the distribution system is 4.0 mg/L based on a running annual average.

(g) Turbidity. Systems must meet the turbidity treatment technique requirements as provided in §290.111 of this title (relating to Turbidity).

(1) Until January 1, 2002, the turbidity level of the combined filter effluent must never exceed 5.0 NTU and the turbidity level of the combined filter effluent must be 0.5 NTU or less in at least 95% of the samples tested each month.

(2) Effective January 1, 2002 the turbidity level of the combined filter effluent must never exceed 1.0 NTU and the turbidity level of the combined filter effluent must be 0.3 NTU or less in at least 95% of the samples tested each month.

(3) Systems are subject to individual filter turbidity provisions of §290.111 of this title.

(h) Disinfection by-product precursors. The treatment technique requirements for disinfection by- product precursors apply to water systems as provided in §290.112 of this title (relating to Total Organic Carbon (TOC)).

(i) Disinfection by-products (TTHM and HAA5). The MCLs for TTHM and HAA5 apply to water systems as provided in §290.113 of this title (relating to Disinfection By-products (TTHM and HAA5)). The MCLs for TTHM and HAA5 are:

(1) the MCL for TTHM is 0.080 milligrams/liter; and

(2) the MCL for HAA5 is 0.060 milligrams/liter.

(j) Disinfection by-products other than TTHM and HAA5. The maximum contaminant levels for chlorite and bromate apply to water systems as provided in §290.114 of this title (relating to Disinfection By-products Other than TTHM and HAA5). The MCLs for chlorite and bromate are as follows:

(1) the MCL for chlorite is 1.0 mg/L; and

(2) the MCL for bromate is 0.010 mg/L.

(k) Lead and copper action levels. The action levels for lead and copper apply to water systems as provided in §290.117 of this title (relating to Regulation of Lead and Copper). Action levels for lead and copper are as follows:

(1) the action level for lead is 0.015 mg/l; and

(2) the action level for copper is 1.3 mg/l.

§290.105. Summary of Secondary Standards.

(a) Summary table purpose. The secondary constituent levels are presented in this section as a reference source. Only the regulatory concentration is shown in these tables. Compliance requirements are given in §290.118 of this title (relating to Secondary Standards).

(b) Secondary standards. The secondary standards apply to all public water systems as provided in §290.118 of this title (relating to Secondary Constituent Levels). The maximum levels for secondary constituents are listed in the following table:
Figure: 30 TAC §290.105(b)

§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 MCLs for all inorganic contaminants listed in this section.

(2) Transient non-community systems shall comply with the requirements of this section regarding monitoring, reporting, and MCL for nitrate and nitrite.

(3) For purposes of this section, systems using groundwater under the direct influence of surface water shall meet the inorganic sampling requirements given for surface water systems.

(b) Maximum contaminant levels for inorganic contaminants (IOCs). The maximum contaminant levels for inorganic contaminants listed in the following table apply to community and nontransient, non-community water systems. The 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)

(c) Monitoring requirements for inorganic contaminants. Public water systems shall monitor for 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, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nitrate, nitrite, selenium, and thallium shall be monitored at each 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 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 point of entry to the distribution system unless the executive director determines that conditions make another 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) Compositing must be done in the laboratory or in the field by persons designated by the executive director.

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

(iii) Compositing shall be allowed only within a single system. Samples from different systems shall not be included in a composite sample.

(iv) No more than five individual samples shall be included in a composite sample.

(v) The maximum number of individual samples allowed in a composite sample shall not exceed the number obtained by dividing the MCL for the contaminant by the detection limit of the analytical method and rounding the quotient to the next lowest integer. Detection limits for each analytical method are as listed in 40 CFR §141.23(a)(4)(i).

(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) Follow-up samples must be collected within 14 days of receipt of the composite sample results.

(II) If duplicates of the original sample taken from each 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) The follow-up or duplicate samples must be analyzed for the contaminant(s) which were excessive in the composite sample.

(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 point of entry to the distribution system.

(B) A system vulnerable to asbestos contamination due solely to corrosion of asbestos-cement pipe shall sample at a tap served by asbestos-cement pipe, under conditions where asbestos contamination is most likely to occur.

(C) A system vulnerable to asbestos contamination due both to its source water supply and corrosion of asbestos-cement pipe shall sample at a tap served by asbestos-cement pipe, under conditions where asbestos contamination is most likely to occur.

(D) The executive director may require additional sampling locations based on the size, length, age, and location of asbestos-cement pipe in the distribution system. The system must provide information regarding the size, length, age, and location of asbestos-cement pipe in the distribution system to the executive director upon request.

(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 point of entry to the distribution system.

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

(iii) Each of the sampling frequencies listed in paragraph (3) of this subsection constitute one round of sampling for groundwater and surface water systems, respectively.

(B) The executive director may reduce the monitoring frequency for a system that has completed a minimum of three rounds of sampling by granting a waiver to the routine monitoring frequency for antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, selenium, and thallium.

(i) Systems that use a new water source are not eligible for a waiver until three rounds of sampling from the new source have been completed.

(ii) To be considered for a waiver, systems shall demonstrate that all previous analytical results were less than the MCL. At least one sample shall have been taken since January 1, 1990.

(iii) In determining the appropriate reduced monitoring frequency, the executive director shall consider:

(I) the reported contaminant concentrations from all previous samples;

(II) the degree of variation in reported concentrations; and

(III) other factors which may affect contaminant concentrations such as changes in groundwater pumping rates, changes in the system's configuration, changes in the system's operating procedures, or changes in the flow or characteristics of a reservoir or stream used as the water source.

(iv) If the executive director grants a waiver, it shall be made in writing and shall set forth the basis for the determination. The determination may be initiated by the executive director. The executive director shall review and, where appropriate, revise the waiver of monitoring frequency when other data relevant to the system becomes available.

(v) The term during which the waiver is effective shall not exceed one compliance cycle (i.e., nine years).

(vi) A system must take a minimum of one sample during each compliance cycle while the waiver is effective.

(C) The executive director may increase the monitoring frequency for public water systems with sources that exceed the MCL for antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, selenium, or thallium.

(i) Systems shall sample quarterly beginning in the next quarter after the violation occurs.

(ii) After the initiation of quarterly monitoring, the executive director may return a system to the routine monitoring frequency if monitoring shows that the system is reliably and consistently below the MCL.

(I) The executive director shall not decrease the quarterly sampling requirement until a groundwater system has taken a minimum of two quarterly samples.

(II) The executive director shall not decrease the quarterly sampling requirement until a surface water system has taken a minimum of four quarterly samples.

(4) Asbestos monitoring frequency. Community and non-transient non-community water systems shall monitor for asbestos at the following frequency.

(A) A public water system shall routinely monitor for asbestos once during the first three years of each compliance cycle.

(B) The executive director may waive the routine monitoring frequency requirements for asbestos.

(i) When determining if a waiver should be granted, the executive director shall consider:

(I) the potential for asbestos contamination of the water source;

(II) the use of asbestos-cement pipe for finished water distribution; and

(III) the corrosivity of the water.

(ii) If the executive director grants a waiver, it shall be made in writing and shall set forth the basis for the determination. The determination may be initiated by the executive director. The executive director shall review and, where appropriate, revise the waiver of monitoring frequency when other data relevant to the system becomes available.

(iii) The term during which the waiver is effective shall not exceed one compliance cycle (i.e., nine years).

(C) The executive director may increase the monitoring frequency for asbestos.

(i) A system which exceeds the MCL for asbestos shall sample quarterly beginning in the next quarter after the violation occurs.

(ii) After the initiation of quarterly sampling, the executive director may return a system to the routine monitoring frequency if monitoring shows that the system is reliably and consistently below the MCL.

(I) The executive director shall not decrease the quarterly sampling requirement until a groundwater system has taken a minimum of two quarterly samples.

(II) The executive director shall not decrease the quarterly sampling requirement until a surface (or combined surface water and groundwater) water system has taken a minimum of four quarterly samples.

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

(A) A public water system shall routinely monitor for nitrate.

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

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

(B) The executive director may reduce the monitoring frequency for community or non-transient, non-community water systems using surface water sources by granting a waiver to the routine monitoring frequency.

(i) To be considered for a waiver, a system shall demonstrate that the nitrate concentration in each sample collected during the previous four consecutive quarters was less than 50% of the nitrate MCL.

(ii) If the executive director grants a waiver, it shall be made in writing and shall set forth the basis for the determination. The determination may be initiated by the executive director. The executive director shall review and, where appropriate, revise the waiver of monitoring frequency when other data relevant to the system becomes available.

(iii) A system that receives a waiver to the routine nitrate monitoring frequency must sample annually for nitrate. The annual sample must be collected in the quarter that previously resulted in the highest nitrate concentration.

(iv) A system that is sampling annually shall return to routine quarterly monitoring if the nitrate concentration in any sample is equal to or greater than 50% of the nitrate MCL.

(C) The executive director may increase the nitrate monitoring frequency for community or non-transient, non-community water systems using groundwater sources.

(i) A system that is sampling annually shall begin quarterly nitrate sampling if the nitrate concentration in any sample is equal to or greater than 50% of the nitrate MCL. Quarterly sampling must begin the first quarter after the elevated nitrate level was detected.

(ii) After the initiation of quarterly sampling, the executive director may return a system to the routine annual nitrate monitoring frequency if quarterly sampling shows that the system is reliably and consistently below the nitrate MCL for a minimum of four consecutive quarters.

(6) Nitrite monitoring frequency. All public water systems shall monitor for nitrite at the following frequency.

(A) All public water systems shall routinely take one nitrite sample during the first three years of each compliance cycle.

(B) The executive director may reduce the monitoring frequency for nitrite by granting a waiver to the routine monitoring frequency.

(i) To be considered for a waiver, a system shall demonstrate that the nitrite concentration in the initial sample was less than 50% of the nitrite MCL.

(ii) If the executive director grants a waiver, it shall be made in writing and shall set forth the basis for the determination. The determination may be initiated by the executive director. The executive director shall review and, where appropriate, revise the waiver of monitoring frequency when other data relevant to the system becomes available.

(iii) A system that receives a waiver to the routine nitrite monitoring frequency must sample at a frequency specified by the executive director.

(C) The executive director may increase the monitoring frequency for nitrite.

(i) A system shall sample quarterly for at least one year following any sample in which the nitrite concentration is greater than or equal to 50% of the MCL.

(ii) The executive director may allow a system to return to the routine monitoring frequency after determining the system is reliably and consistently less than the MCL.

(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 point of entry to the distribution system as the sample that exceeded the MCL.

(ii) Confirmation samples for IOCs except nitrate and nitrite shall be collected as soon as possible after the system receives the analytical results of the first sample.

(iii) Confirmation samples for nitrate and nitrite shall be collected within 24 hours of the system's receipt of notification of the analytical results of the first sample. Systems unable to comply with the 24-hour sampling requirement must immediately notify the consumers served by the public water system in accordance with subsection (f) of this section. Systems exercising this option must take and analyze a confirmation sample within two weeks of notification of the analytical results of the first sample.

(B) The executive director may require a confirmation sample for any sample with questionable results.

(8) The executive director may require more frequent monitoring than specified in paragraphs (3) - (6) of this subsection.

(d) Analytical requirements for 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 Texas Department of Health (TDH) Bureau of Laboratories.

(e) Reporting requirements for inorganic contaminants. 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 inorganic contaminants. Compliance with this section shall be determined using the following criteria.

(1) Compliance with the MCL for each 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.

(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 inorganic contaminant except nitrate and nitrite) specified in subsection (b) of this section commits an MCL violation.

(A) If a confirmation sample is not collected, compliance shall be based on the results of each original sample.

(B) If a confirmation sample is collected, the compliance will be based on the average result of the original and confirmation samples.

(4) Any result below the method detection limit shall be considered to be zero for the purpose of calculating compliance.

(5) The executive director may exclude the results of obvious sampling errors from the compliance calculations.

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

(1) A public water system that violates the MCL for nitrate, nitrite, or the sum of nitrate and nitrite shall notify the executive director by the next business day and the water system customers of this acute violation in accordance with the requirements of §290.122(a) of this title (relating to Public Notification).

(2) A public water system that violates the MCL for nitrate, nitrite, or the sum of nitrate and nitrite that is unable to comply with the 24-hour confirmation sampling requirement must immediately notify the consumers served by the public water system in accordance with §290.122(a) of this title.

(3) A public water system that fails to meet the MCL for any of the regulated 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) 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.

(5) If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the executive director may allow the system to give public notice to only the area served by that portion of the system which is out of compliance.

(h) Best Available Technology (BAT) for inorganic contaminants. 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) Applicability. All community and nontransient, non-community water systems shall comply with the requirements of this section regarding organic contaminants. For purposes of this section, systems using groundwater under the direct influence of surface water shall meet the organic sampling requirements given for surface water systems.

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

(1) The following are MCLs for synthetic organic contaminants (SOCs).
Figure: 30 TAC §290.107(b)(1)

(2) The following are MCLs for volatile organic contaminants (VOCs).
Figure: 30 TAC §290.107(b)(2)

(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 ppm (or equivalent) for acrylamide and 0.01% dosed at 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 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 point of entry to the distribution system which is representative of each well after treatment. Subsequent samples must be taken at the same point of entry to the distribution system unless a change in conditions makes another 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 points of entry to the distribution system unless a change in conditions makes another 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) SOC monitoring frequency. Monitoring of the SOC contaminants shall be conducted at the following frequency.

(i) Community and nontransient noncommunity water systems shall take four consecutive quarterly samples for each SOC contaminant listed in subsection (b)(1) of this section during each compliance period beginning with the initial compliance period.

(ii) Community and nontransient noncommunity water systems serving more than 3,300 persons that do not detect a contaminant in the initial compliance period may reduce the sampling frequency to a minimum of two consecutive quarterly samples in one year during each repeat compliance period.

(iii) Community and nontransient noncommunity water systems serving 3,300 persons or fewer that do not detect a contaminant in the initial compliance period may reduce the sampling frequency to a minimum of one sample during each repeat compliance period.

(iv) Each public water system shall monitor at the time designated by the executive director within each compliance period.

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

(i) Systems which violate the SOC MCL's of subsection (b)(1) of this section as determined by subsection (f) of this section must monitor quarterly. After a minimum of four quarterly samples shows the system is in compliance and the executive director determines the system is reliably and consistently below the MCL, as determined by the methods specified in subsection (f) of this section, the executive director may allow the system to monitor annually. Systems which monitor annually must monitor during the quarter that previously yielded the highest analytical result.

(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 point of entry to the distribution system at which a detection occurs.

(II) After a groundwater system collects a minimum of two consecutive quarterly samples, the executive director may decrease the quarterly monitoring requirement specified in subclause (I) of this clause, if the system is reliably and consistently below the MCL.

(III) After a surface water system or system treating groundwater under the direct influence of surface water collects a minimum of four consecutive quarterly samples, the executive director may decrease the quarterly monitoring requirement specified in subclause (I) of this clause, if the system is reliably and consistently below the MCL.

(IV) After the executive director determines that a system is reliably and consistently below the MCL, the executive director may allow the system to monitor annually. Systems which monitor annually must monitor during the quarter that previously yielded the highest analytical result.

(V) Systems which have three consecutive annual samples with no detection of a contaminant may be granted a waiver at the discretion of the executive director. The executive director will consider the waiver for each compliance period.

(VI) If monitoring results in detection of one or more of certain related contaminants (i.e., heptachlor, and heptachlor epoxide), then subsequent monitoring shall analyze for all related contaminants.

(iii) The executive director may increase the required SOC monitoring frequency, where necessary, to detect variations within the system (e.g., fluctuations in concentration due to seasonal use, changes in water source, etc.).

(iv) The executive director may require a confirmation sample for positive or negative results. If a confirmation sample is required by the executive director, the result must be averaged with the first sampling result and the average used for the compliance determination as specified by subsection (f) of this section. The executive director has discretion to delete results of obvious sampling errors from this calculation.

(D) Waivers for SOC monitoring. The executive director may grant a waiver to reduce the SOC monitoring frequency from the monitoring frequency requirements of subsection (c)(1)(B) of this section, based on previous use of the contaminant within the watershed or zone of influence of the water source. Examples of use of a contaminant include transport, storage, or disposal. 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 the executive director cannot determine whether the contaminant has been used in the watershed or if the contaminant has been used previously, then the following factors shall be used to determine whether a waiver is granted:

(i) previous analytical results;

(ii) the proximity of the system to a potential point or non-point source of contamination. Point sources include spills and leaks of chemicals at or near a water treatment facility or at drinking water sources, manufacturing, distribution, or storage facilities, or from hazardous and municipal waste landfills and other waste handling or treatment facilities. Non-point sources include the use of pesticides to control insects, weeds, or pests on agricultural areas, forest lands, home and garden property, or other land application uses;

(iii) the environmental persistence and transport of the pesticide herbicide or contaminant;

(iv) how well the water source is protected against contamination due to such factors as depth of the well, type of soil and the integrity of well construction. Surface water systems must consider watershed vulnerability and protection;

(v) elevated nitrate levels at the water supply source; and

(vi) use of PCBs in equipment used in the production, storage, or distribution of water (i.e., PCBs used in pumps, transformers, etc.).

(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 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 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 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) Compositing may only be permitted at points of entry to the distribution system within a single system.

(F) Initial SOC monitoring. If monitoring data are generally consistent with the requirements of this subsection (c)(1) of this section, then the executive director may allow systems to use that data to satisfy the monitoring requirement for the initial compliance period.

(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 point of entry to the distribution system unless a change in conditions makes another 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 point of entry to the distribution system. Subsequent samples must be taken at the same points of entry to the distribution system unless a change in conditions makes another 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) Community and nontransient noncommunity water systems shall take four consecutive quarterly samples for each VOC contaminant listed in subsection (b)(2) of this section during each compliance period, beginning with the initial compliance period.

(ii) If the initial monitoring for VOC contaminants has been completed by December 31, 1992, and the system did not detect any VOC contaminant listed in subsection (b)(2) of this section, the system shall take one sample annually beginning with the initial compliance period.

(iii) After a minimum of three years of annual sampling, the executive director may allow groundwater systems with no previous detection of any VOC contaminant listed in subsection (b)(2) of this section to take one sample during each compliance period.

(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 (c)(2)(B)(iii) of this section after completing the initial monitoring. For the purposes of this section, detection is defined as ≥0.0005 mg/l. A waiver shall be effective for no more than six years (two compliance periods).

(v) Each public water system shall monitor at the time designated by the executive director within each compliance period.

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

(i) Systems which violate the VOC MCLs of subsection (b)(2) of this section, as determined by subsection (f) of this section, must monitor quarterly. After a minimum of four consecutive quarterly samples that show the system is in compliance as specified in subsection (f) of this section and after the executive director determines that the system is reliably and consistently below the MCL, the executive director may allow the system to monitor annually during the quarter that previously yielded the highest analytical result.

(ii) The executive director may require a confirmation sample for positive or negative results. If a confirmation sample is required by the executive director, the result must be averaged with the first sampling result and the average is used for the compliance determination as specified by subsection (f) of this section. The executive director has discretion to delete results of obvious sampling errors from this calculation.

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

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

(II) the executive director may decrease the quarterly monitoring requirement specified in subsection (c)(2)(C)(iii)(I) of this section provided it has determined that the system is reliably and consistently below the maximum contaminant level. In no case shall the executive director make this determination unless a groundwater system takes a minimum of two quarterly samples and a surface water system takes a minimum of four quarterly samples;

(III) If the executive director determines that the system is reliably and consistently below the MCL, the executive director may allow the system to monitor annually. Systems which monitor annually must monitor during the quarter which previously yielded the highest analytical result;

(IV) Systems which have three consecutive annual samples with no detection of a contaminant may be granted a waiver as specified in subsection (c)(2)(D) of this section; and

(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 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) The executive director may increase the required VOC monitoring frequency, where necessary, to detect variations within the system (e.g., fluctuations in concentration due to seasonal use, changes in water source, etc.).

(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) previous analytical results;

(ii) the proximity of the system to a potential point or non-point source of contamination. Point sources include spills and leaks of chemicals at or near a water treatment facility or at drinking water sources manufacturing, distribution, or storage facilities, or from hazardous and municipal waste landfills and other waste handling or treatment facilities;

(iii) the environmental persistence and transport of the contaminants;

(iv) the number of persons served by the public water system and the proximity of a smaller system to a larger system;

(v) how well the water source is protected against contamination (e.g., is it a surface or groundwater system). Groundwater systems must consider factors such as depth of the well, the type of soil, and well construction. Surface water systems must consider watershed protection;

(vi) As a condition of the waiver a groundwater system must take one sample at each 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) Community and nontransient surface water systems which do not detect a VOC contaminant listed in subsection (b)(2) of this section may be considered by the executive director for a waiver from the annual sampling requirements of subsection (c)(2)(B)(ii) of this section after completing the initial monitoring. Systems meeting

this criteria must be determined by the executive director to be non-vulnerable based on a vulnerability assessment during each compliance period. Each system receiving a waiver shall sample at the frequency specified by the executive director (if any).

(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 five 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 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 point of entry to the distribution system included in the composite.

(ii) If duplicates of the original sample taken from each 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 points of entry to the distribution system within a single system.

(iv) Procedures for compositing VOC samples are as stated in 40 CFR §141.24 (f)(14)(iv).

(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 TDH Bureau of Laboratories.

(e) Reporting requirements for organic contaminants. 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 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 point of entry to the distribution system. If the annual average at any 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 point of entry to the distribution system is greater than the MCL, the system commits an MCL violation. If a confirmation sample is required by the executive director, the determination of compliance will be based on the average of the two samples.

(3) The executive director has the authority to determine compliance or initiate enforcement action based upon analytical results and other information compiled by their sanctioned representatives and agencies.

(g) Public notification requirements for organic contaminants. A public water system that violates the requirements of this section must notify the 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 public drinking water program and notify the public as provided under §290.122(b) of this title (relating to Public Notification).

(2) A public water system which fails to conduct the monitoring required by this section must notify its customers of the violation in accordance with the requirements of §290.122(c) of this title (relating to Public Notification).

(h) Best available technology (BAT) for organic contaminants. Best available technology 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 Permitting and Resource Management Division, Texas Natural Resource Conservation Commission, P. O. Box 13087, Austin, Texas 78711-3087.

§290.108. 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) Maximum contaminant levels (MCLs). The concentration of radiological contaminants in the water entering the distribution system shall not exceed the following maximum contaminant levels.

(1) MCLs for radium-226, radium-228 and gross alpha particle radioactivity for community systems are as follows:

(A) the MCL for combined radium-226 and radium-228 is 5 pCi/l; and

(B) the MCL for gross alpha particle activity (including radium-226 but excluding radon and uranium) is 15 pCi/l.

(2) Maximum contaminant levels for beta particle and photon radioactivity from man-made radionuclides in drinking water in community water systems are as follows:

(A) The average annual concentration of beta particle and photon radioactivity from man-made radionuclides in drinking water shall not produce an annual dose equivalent to the total body or any internal organ greater than four millirem (mrem)/year.

(B) Except for the radionuclides listed in Table A, the concentration of man-made radionuclides causing four mrem total body or organ dose equivalents shall be calculated on the basis of a two-liter-per-day drinking water intake using the 168 hour data listed in "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure," NBS Handbook 69 as amended August 1963, U.S. Department of Commerce. If two or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed four mrem/year.
Figure: 30 TAC §290.108(b)(2)(B)

(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) The monitoring frequency requirements for gross alpha particle activity, radium-226 and radium-228 are as follows. Public water systems shall monitor at least once every four years following the procedure required by subsection (f)(1) of this section. At the discretion of the executive director, when an annual record taken in conformance with subsection (f)(1) of this section has established that the average annual concentration is less than one-half the maximum contaminant levels established by subsection (b) of this section, analysis of a single sample may be substituted for the quarterly sampling procedure required by subsection (f)(1) of this section.

(A) More frequent monitoring shall be conducted when required by the executive director in the vicinity of mining or other operations which may contribute alpha particle radioactivity to either surface or groundwater sources of drinking water, or when changes in the distribution system or treatment processing occur which may increase the concentration of radioactivity in the finished water.

(B) A public water system shall monitor in conformance with subsection (c)(1)(A) of this section within one year of the introduction of a new water source for a community water system.

(C) A community water system using two or more sources having different concentrations of radioactivity shall monitor the source of water, in addition to water from a free-flowing tap, when required by the executive director.

(D) Monitoring for compliance with subsection (b) of this section after the initial period need not include radium-228 provided that the average concentration of radium-228 has been assayed at least once using the quarterly sampling procedure required by this subsection.

(E) Public water systems shall conduct annual monitoring of any community water system in which the radium 226 concentration exceeds three pCi/l when required by the executive director.

(2) The monitoring frequency requirements for man-made radioactivity in community water systems are as follows:

(A) Systems using surface water sources and serving more than 100,000 persons and such other community water systems as are designated by the executive director shall be monitored for compliance with the subsection (b) of this section by analysis of four quarterly samples. Compliance with subsection (b) of this section may be assumed without further analysis if the average annual concentration of gross beta particle activity is less than 50 pCi/l and if the average annual concentrations of tritium and strontium-90 are less than those listed in Table A of subsection (b)(2)(B) of this section, provided that if both radionuclides are present, the sum of their annual dose equivalents to bone marrow shall not exceed four mrem/year.

(i) If the gross beta particle activity exceeds 50 pCi/l, an analysis of the sample must be performed to identify the major radioactive constituents present and the appropriate organ and total body doses shall be calculated to determine compliance with subsection (b) of this section.

(ii) Public water systems shall conduct additional monitoring as required by the executive director to determine the concentration of man-made radioactivity in principal watersheds designated by the executive director.

(iii) At the discretion of the executive director, public water systems utilizing only groundwater may be required to monitor for man-made radioactivity.

(B) After the initial analysis required by subsection (c)(2)(A) of this section, public water systems shall monitor at least every four years following the procedure given in subsection (c)(2)(A) of this section.

(C) A community water system designated by the executive director as utilizing waters contaminated by effluents from nuclear facilities shall initiate quarterly monitoring for gross beta particle and iodine-131 radioactivity and annual monitoring for strontium-90 and tritium.

(i) Quarterly monitoring for gross beta particle activity shall be based on the analysis of monthly samples. If the gross beta particle activity in a sample exceeds 15 pCi/l, the same or an equivalent sample shall be analyzed for strontium-89 and cesium-134. If the gross beta particle activity exceeds 50 pCi/l, an analysis of the sample must be performed to identify the major radioactive constituents present and the appropriate organ and total body doses shall be calculated to determine compliance with subsection (b) of this section.

(ii) For iodine-131, a composite of five consecutive daily samples shall be analyzed once each quarter. When iodine-131 is identified in the finished water more frequent monitoring shall be conducted as required by the executive director.

(iii) Annual monitoring for strontium-90 and tritium shall be conducted by the analysis of four quarterly samples.

(iv) The executive director may allow the substitution of environmental surveillance data taken in conjunction with a nuclear facility for direct monitoring of man-made radioactivity by the public water system where the executive director determines such data is applicable to a particular community water 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 TDH Bureau of Laboratories.

(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 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. Compliance with the requirements of this section shall be determined as follows.

(1) If the average annual MCL for gross alpha particle activity or total radium as set forth in subsection (b) of this section is exceeded, the system has committed a MCL violation. Monitoring at quarterly intervals shall be continued until the annual average concentration no longer exceeds the maximum contaminant level or until a monitoring schedule as a condition to a variance, exemption or enforcement action shall become effective. Compliance with subsection (b) of this section shall be based on the analysis or analyses of four quarterly samples.

(A) A gross alpha particle activity measurement may be substituted for the required radium-226 and radium-228 analysis provided that the measured gross alpha particle activity does not exceed five pCi/l at a confidence level of 95% (1.65 theta where theta is the standard deviation of the net counting rate of the sample).

(B) When the gross alpha particle activity exceeds five pCi/l, the same or an equivalent sample shall be analyzed for radium-226. If the concentration of radium-226 exceeds three pCi/l the same or an equivalent sample shall be analyzed for radium-228.

(2) If the average annual maximum contaminant level for man-made radioactivity set forth in subsection (b) of this section is

exceeded, the system has committed a MCL violation. Monitoring at monthly intervals shall be continued until the concentration no longer exceeds the maximum contaminant level or until a monitoring schedule as a condition to a variance, exemption or enforcement action shall become effective.

(3) A public water system that fails to conduct the monitoring tests required by this subsection commits a monitoring violation.

(4) A public water system that fails to report the results of the monitoring tests required by this subsection commits a reporting violation.

(g) Public notification. A public water system that violates the requirements of this subsection must notify the 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 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 public drinking water program and to the public as required by §290.122(b) of this title.

(3) 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.

§290.109. Microbial Contaminants.

(a) Applicability. All public water systems must produce and distribute water that meets the provisions of this section regarding microbial contaminants.

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

(1) For a system which collects at least 40 bacteriological samples per month, the MCL is 5.0% total coliform-positive samples, of the samples collected during the month.

(2) For a system which collects fewer than 40 samples/month, the MCL is one total coliform-positive sample, of the samples collected during the month.

(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) Routine microbial sampling locations. Public water systems shall routinely monitor for microbial contaminants at the following locations.

(A) Public water systems must collect routine bacteriological samples at active service connections which are representative of water throughout the distribution system. Other sampling sites may be used if located adjacent to service connections.

(B) Public water systems shall monitor for microbial contaminants at locations specified in the system's monitoring plan.

(2) Routine microbial sampling frequency. Public water systems must sample for microbiological contaminants at the following frequency.

(A) Community and noncommunity public water systems must collect routine bacteriological samples at a frequency based on the population served by the system:

(i) the population for noncommunity systems will be based on the maximum number of persons served on any given day during the month;

(ii) the population of community systems will be based on the data reported during the most recent sanitary survey of the public water system; and

(iii) the minimum sampling frequency for public water systems is shown in the following table.
Figure: 30 TAC §290.109(c)(2)(A)

(B) A public water system which uses surface water or groundwater under the direct influence of surface water must collect samples at regular time intervals throughout the month.

(C) A public water system which uses only uses only purchased water or groundwater not under the direct influence of surface water and serves more than 4,900 persons must collect samples at regular time intervals throughout the month.

(D) A public water system which uses only purchased water or groundwater not under the direct influence of surface water and serves 4,900 persons or fewer may collect all required samples on a single day if they are taken from different sites.

(E) A total coliform-positive sample invalidated under this subsection does not count towards meeting the minimum routine monitoring requirements of this subsection.

(F) If a system collecting fewer than five routine samples per month has one or more total coliform-positive samples and the executive director does not invalidate the sample(s) in accordance with subsection (c)(4) of this section, it must collect at least five routine samples during the next month the system provides water to the public.

(3) Repeat microbial monitoring requirements. Systems shall conduct repeat monitoring if one or more of the routine samples is found to contain coliform organisms.

(A) If a routine sample is total coliform-positive, the public water system must collect a set of repeat samples within 24 hours of being notified of the positive result, or as soon as possible if the local laboratory is closed.

(i) A system which collects more than one routine sample per month must collect no fewer than three repeat samples for each total coliform-positive sample found.

(ii) A system which collects one routine sample per month must collect no fewer than four repeat samples for each total coliform-positive sample found.

(B) The system must collect all repeat samples on the same day, except that a system with a single service connection may collect daily repeat samples until the required number of repeat samples has been collected.

(C) The system must collect at least one repeat sample from the sampling tap where the original total coliform-positive sample was taken, and at least one repeat sample at a tap within five service connections upstream and at least one repeat sample at a tap within five service connections downstream of the original sampling site. If a fourth repeat sample is required, it must be collected within five service connections upstream or downstream. If the positive routine sample was collected at the end of the distribution line, one repeat sample must be collected at that point and all other samples must be collected within five connections upstream of that point.

(D) If one or more repeat samples in the set is total coliform-positive, the public water system must collect an additional set

of repeat samples in the manner specified in subparagraphs (A) - (C) of this paragraph. The additional samples must be collected within 24-hours of being notified of the positive result or as soon as possible if the local laboratory is closed. The system must repeat this process until either total coliforms are not detected in one complete set of repeat samples or the system determines that the MCL for total coliforms has been exceeded.

(E) After a system collects a routine sample and before it learns the results of the analysis of that sample, if it collects another routine sample(s) from within five adjacent service connections of the initial sample, and the initial sample is found to contain total coliform bacteria, then the system may count the subsequent sample(s) as a repeat sample instead of as a routine sample.

(4) Sample invalidation. The executive director may invalidate a total coliform-positive sample if one of the following conditions is met.

(A) The executive director may invalidate a sample if the laboratory establishes that improper sample analysis caused the total coliform-positive result.

(B) The executive director may invalidate a sample if the results of repeat samples collected as required by this section determines that the total coliform-positive sample resulted from a domestic or other non-distribution system plumbing problem. The executive director cannot invalidate a sample on the basis of repeat sample results unless all repeat sample(s) collected at the same tap as the original total coliform-positive sample are also total coliform-positive, and all repeat samples collected within five service connections of the original tap are total coliform-negative. Under those circumstances, the system may cease resampling and request that the executive director invalidate the sample. The system must provide copies of the routine positive and all repeat samples.

(C) The executive director may invalidate a sample if there are substantial grounds to believe that the total coliform-positive result is due to a circumstance or condition which does not reflect water quality in the distribution system. In this case, the system must still collect all repeat samples required by this section, and use them to determine compliance with the MCL for total coliforms in subsection (f) of this section. The system must provide written documentation which must state the specific cause of the total coliform-positive sample, and the action the system has taken, or will take, to correct this problem. The executive director may not invalidate a total coliform-positive sample solely on the grounds that all repeat samples are total coliform-negative.

(D) The executive director may invalidate a sample if the laboratory establishes that the sample was unsuitable for analysis.

(E) If a sample is invalidated, the system must collect another sample from the same location as the original sample within 24-hours of being notified, or as soon as possible if the laboratory is closed, and have it analyzed for the presence of total coliforms. The system must continue to resample within 24 hours and have the samples analyzed until it obtains a valid result.

(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 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 TDH Bureau of Laboratories.

(e) Reporting requirements for microbial contaminants. 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 microbial contaminants. Compliance with the requirements of this section shall be determined using the following criteria each month that the system is in operation.

(1) A system commits an acute MCL violation if:

(A) A repeat sample is fecal coliform-positive or *Escherichia coli*-positive; or

(B) A total coliform-positive repeat sample follows a fecal coliform-positive or *Escherichia coli*-positive routine sample.

(2) A system that collects at least 40 bacteriological samples per month commits a nonacute MCL violation if more than 5.0 % of the samples collected during a month are total coliform-positive, but none of the initial or repeat samples are fecal coliform-positive or *Escherichia coli*- positive.

(3) A system that collects fewer than 40 samples per month commits a nonacute MCL violation if more than one sample collected during a month is total coliform-positive, but none of the initial or repeat samples are fecal coliform-positive or *Escherichia coli*-positive.

(4) A public water system that fails to provide the required number of suitable samples commits a monitoring violation.

(5) A public water system that fails to report the results of the monitoring tests required by this section commits a reporting violation.

(6) Results of all routine and repeat samples not invalidated by the executive director must be included in determining compliance with the MCL for total coliforms.

(7) Samples invalidated by the executive director shall not be included in determining compliance with the MCL for total coliforms.

(8) Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair, shall not be used to determine compliance with the MCL for microbiological contaminants.

(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) A public water system that commits an acute MCL violation for microbial contaminants must notify the water system customers in accordance with the requirements of §290.46(s)(3) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems) and §290.122(a) of this title.

(2) A public water system that has fecal coliforms or *E. coli* present must notify the 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 public drinking water program's office is closed, in which case the system must notify the 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 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 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) Applicability. All public water systems shall properly disinfect water before it is distributed to any customer and shall maintain acceptable disinfectant residuals within the distribution system.

(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 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) The disinfection protocols used by public water systems with surface water sources or groundwater sources that are under the direct influence of surface water must ensure that the total treatment process achieves at least 99.9% (3-log) inactivation or removal of *Giardia lamblia* cysts and at least 99.99% (4-log) inactivation or removal 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) The disinfection process at a surface water treatment plant that uses coagulation, flocculation, sedimentation, and filtration facilities shall provide at least a 0.5-log inactivation of *Giardia lamblia* cysts and a 2-log inactivation of viruses.

(B) The disinfection process at a surface water treatment plant or a plant treating groundwater under the direct influence of surface water that uses microfiltration or ultrafiltration processes shall provide at least a 4-log inactivation of viruses.

(C) The disinfection process at other types of treatment plants shall provide the level of disinfection required by the executive director.

(2) The residual disinfectant concentration in the water entering the distribution system shall be at least 0.2 mg/L free chlorine or 0.5 mg/L chloramine.

(3) The chlorine dioxide residual of the water entering the distribution system shall not exceed an MRDL of 0.8 mg/L.

(4) The residual disinfectant concentration in the water within the distribution system shall be at least 0.2 mg/L free chlorine or 0.5 mg/L chloramine.

(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) Effective January 1, 2002, public water systems that serve at least 10,000 people and use surface water sources or groundwater sources that are under the influence of surface water must comply with the MRDL for chlorine and chloramine.

(B) Effective January 1, 2004, 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) Public water systems that treat surface water sources or groundwater sources under the direct influence of surface water must verify that they meet the disinfection requirements of subsection (b)(1) of this section.

(A) The disinfectant residual, pH, temperature, and flow rate of the water in each disinfection zone must be measured at least once each day during a time when peak hourly raw water flow rates are occurring.

(B) Disinfection contact time will be based on tracer study data or a theoretical analysis submitted by the system owner or their designated agent and approved by the executive director and the actual flow rate that is occurring at the time that monitoring occurs.

(C) Treatment plants that fail to demonstrate an appropriate level of treatment must repeat these tests at four-hour or shorter intervals until compliance has been reestablished.

(2) Public water systems that treat surface water or groundwater under the direct influence of surface water must verify that they meet the disinfection requirements of subsection (b)(2) of this section.

(A) Public water systems that treat surface water or groundwater under the direct influence of surface water and sell treated water on a wholesale basis or serve more than 3,300 people must continuously monitor and record the disinfectant residual of the water entering the distribution system. If there is a failure in the continuous monitoring equipment, grab sampling every four hours may be conducted in lieu of continuous monitoring, but for no more than five working days following the failure of the equipment.

(B) Public water systems that treat surface water or groundwater under the direct influence of surface water, serve 3,300 or fewer people and do not sell treated water on a wholesale basis must monitor and record the disinfectant residual of the water entering the distribution system with either continuous monitors or grab samples.

(i) If a system uses grab samples, the samples must be collected on an ongoing basis at the frequency prescribed in the following table.

Figure: 30 TAC §290.110(c)(2)(B)(i)

(ii) The grab samples cannot be taken at the same time and the sampling interval is subject to the executive director's review and approval.

(iii) Treatment plants that use grab samples and fail to detect an appropriate disinfectant residual must repeat the test at four-hour or shorter intervals until compliance has been reestablished.

(3) Public water systems that treat groundwater or that purchase and resell treated water must, upon the request of the executive director, verify that they meet the disinfection requirements of subsection (b)(2) of this section.

(4) Each treatment plant using chlorine dioxide must monitor and record the chlorine dioxide residual of the water entering the distribution system at least once each day. If the chlorine dioxide residual in the water entering the distribution system exceeds the MRDL contained in subsection (b)(3) of this section, the treatment plant must conduct additional tests.

(A) If the public water system does not have additional chlorination facilities in the distribution system, it must conduct three additional tests at the service connection nearest the treatment plant where an elevated chlorine dioxide residual was detected. The first additional test must be conducted within two hours after detecting an elevated chlorine dioxide residual at the entry point to the distribution system. The two subsequent tests must be conducted at six-hour to eight-hour intervals thereafter.

(B) If the public water system has additional chlorination facilities in the distribution system, it must conduct an additional test at the service connection nearest the treatment plant where an elevated chlorine dioxide residual was detected, an additional test at the first service connection after the point where the water is rechlorinated, and an additional test at a location in the far reaches of the distribution system. The additional test at the location nearest the treatment plant must be conducted within two hours after detecting an elevated chlorine dioxide residual at the entry point to the distribution system. The two other tests must be conducted at six-hour to eight-hour intervals thereafter.

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

(A) Public water systems 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.

(B) Public water systems which use groundwater or purchased water sources only and serve fewer than 250 connections or 750 people daily must test the disinfectant residual at representative locations in the distribution system at least once every seven days.

(C) The residual disinfectant concentration must be measured at least at the same points in the distribution system and at the same time as bacteriological samples are collected, as specified in §290.109 of this title (relating to Microbial Contaminants).

(d) Analytical requirements. All monitoring required by this section must be conducted at a facility approved by the executive director and using methods that conform to the requirements of §290.119 of this title (relating to Analytical Procedures).

(1) The pH analysis must be conducted using a pH meter with a minimum accuracy of plus or minus 0.1 pH units.

(2) The temperature of the water must be measured using a thermometer or thermocouple with a minimum accuracy of plus or minus 0.5 degrees Celsius.

(3) The free chlorine residual must be measured to a minimum accuracy of plus or minus 0.1 mg/L using one of the following methods:

(A) Amperometric titration;

(B) DPD Ferrous titration; or

(C) DPD colorimetric.

(i) The free chlorine residual within the treatment plant and at the point where the treated water enters the distribution system must be measured with a colorimeter or spectrophotometer.

(ii) The free chlorine residual within the distribution system must be measured with a colorimeter, spectrophotometer, or color comparator test kit.

(D) Springaldizine (FACTS)

(4) The chloramine residual must be measured to a minimum accuracy of plus or minus 0.1 mg/L using one of the following methods:

(A) Amperometric titration;

(B) DPD Ferrous titration; or

(C) DPD colorimetric.

(i) The chloramine residual within the treatment plant and at the point where the treated water enters the distribution system must be measured with a colorimeter or spectrophotometer.

(ii) The chloramine residual within the distribution system must be measured with a colorimeter, spectrophotometer, or color comparator test kit.

(5) The chlorine dioxide residual must be measured to a minimum accuracy of plus or minus 0.05 mg/L using an amperometric titrator with platinum-platinum electrodes.

(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 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 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 TNRCC Form 0102A. After January 1, 2001, systems must submit TNRCC Form 00102.

(3) Public water systems that use chlorine dioxide must submit a Monthly Report for Chlorine Dioxide Installations each month.

(4) Effective January 1, 2004, public water systems that use purchased water or groundwater sources only must submit a Quarterly Distribution Report for Public Water Systems each quarter.

(5) Monthly and quarterly reports required by this section 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 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) All samples used for compliance must be obtained at sampling sites designated in the monitoring plan.

(A) All samples collected at sites designated in the monitoring plan as microbiological and disinfectant residual monitoring sites shall be included in the compliance determination calculations.

(B) Samples collected at sites in the distribution system not designated in the monitoring plan shall not be included in the compliance determination calculations.

(2) A public water system that fails to conduct the monitoring tests required by this section commits a monitoring violation.

(3) A public water system that fails to report the results of the monitoring tests required by this section commits a reporting violation.

(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)(3)(C) of this section also commits a nonacute treatment technique violation.

(5) A public water system that uses chlorine dioxide and exceeds the level specified in subsection (b)(3) of this section violates the MRDL for chlorine dioxide.

(A) If a public water system violates the MRDL for chlorine dioxide and any of the three additional distribution samples exceeds the MRDL, the system commits an acute MRDL violation for chlorine dioxide.

(B) If a public water system violates the MRDL for chlorine dioxide and fails to collect each of the three additional distribution samples required by subsection (c)(4) of this section, the system commits an acute MRDL violation for chlorine dioxide.

(C) If a public water system violates the MRDL for chlorine dioxide but none of the three additional distribution samples violates the MRDL, the system commits an nonacute MRDL violation for chlorine dioxide.

(6) A public water system that fails to meet the requirements of subsection (b)(4) of this section, in more than 5.0% of the samples collected each month, for any two consecutive months, commits a nonacute treatment technique violation. Specifically, the system commits a nonacute violation if the value "V" in the following formula exceeds 5.0% per month for any two consecutive months:
Figure: 30 TAC §290.110(f)(6)

(7) A public water system violates the MRDL for chlorine or chloramine if, at the end of any quarter, the running annual average of monthly averages exceeds the level specified in subsection (b)(5) of this section.

(8) Notwithstanding the MRDLs listed in subsection (b) of this section, operators shall increase residual disinfectant levels of chlorine or chloramines (but not chlorine dioxide) in the distribution system to a level and for a time necessary to protect public health to address specific microbiological contamination problems caused by circumstances such as distribution line breaks, storm runoff events, source water contamination, or cross-connections.

(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.

(g) Public notification requirements. The owner or operator of a public water system that violates the requirements of this section must notify the 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 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) A public water system that has an acute violation of the MRDL for chlorine dioxide must notify the customers in accordance with the requirements of §290.122(a) of this title.

(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 (b)(2) of this section shall notify the 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) A public water system that fails to meet the requirements of subsection (b)(4) of this section in more than 5.0% of the samples collected each month for two consecutive months must notify its customers.

(A) A public water system that uses surface water or groundwater under the direct influence of surface water must notify its customers in accordance with the requirements of §290.122(b) of this title.

(B) A public water system that uses only groundwater or purchased water must notify its customers when it issues its annual consumer confidence report.

(4) A public water system that fails to meet the requirements of subsection (b)(5) of this section shall notify the 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) Applicability. A public water system that treats surface water or groundwater under the direct influence of surface water must comply with the requirements of this section. A public water system that uses groundwater under the direct influence of surface water must comply with the requirements of this section by a date specified by the executive director. This compliance date shall not exceed 18 months from the date that the executive director first notifies the system that the groundwater source is under the direct influence of surface water.

(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) The turbidity level of the combined filter effluent must never exceed 5.0 NTU.

(ii) The turbidity level of the combined filter effluent must be 0.5 NTU or less in at least 95% 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) Membrane facilities must meet site-specific performance standards approved by the executive director.

(2) Beginning January 1, 2002, the treatment process must achieve at least a 2-log removal of *Cryptosporidium* oocysts, 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) The turbidity level of the combined filter effluent must never exceed 1.0 NTU.

(ii) The turbidity level of the combined filter effluent must be 0.3 NTU or less in at least 95% of the samples tested each month.

(B) Membrane facilities must meet site-specific performance standards approved by the executive director.

(C) The executive director may extend the compliance date for systems serving fewer than 10,000 people.

(i) The compliance date may not be extended beyond January 1, 2004.

(ii) During any extension that is granted, the turbidity level of the combined filter effluent must meet the requirements of subsection (b)(1) of this section.

(3) The filtration techniques used by public water systems that serve 10,000 people or more and treat surface water or groundwater under the direct influence of surface water must ensure the system meets the following criteria.

(A) Beginning January 1, 2002, the turbidity from each individual filter should not exceed 0.5 NTU at four hours after the individual filter is returned to service after backwash or shut down.

(B) Beginning January 1, 2002, the turbidity from each individual filter should never exceed 1.0 NTU.

(c) Monitoring requirements for turbidity. Public water systems with surface water sources or groundwater sources that are under the direct influence of surface water shall monitor the performance of their filtration facilities.

(1) Public water systems that serve fewer than 500 people must monitor the turbidity of the combined filter effluent at least once each day that the system serves water to the public.

(2) Public water systems that serve 500 people or more must monitor the turbidity of the combined filter effluent at least every four hours that the system serves water to the public.

(3) Beginning January 1, 2002, public water systems that serve 10,000 people or more must continuously monitor the filtered water turbidity at the effluent of each individual filter and record the turbidity value every 15 minutes.

(4) Beginning January 1, 2002, public water systems that serve fewer than 10,000 people and use surface water or groundwater under the direct influence of surface water must measure and record the filtered water turbidity level at the effluent of each individual filter at least once each day that the plant is in operation.

(5) Special monitoring requirements. Beginning January 1, 2002, public water systems which serve 10,000 people or more and fail to meet the turbidity criteria specified in subsection (b)(3) of this section must conduct additional monitoring. The executive director can waive these special monitoring requirements for systems that have a corrective action schedule approved by the executive director.

(A) Each time a filter exceeds either of the filtered water turbidity levels specified in subsection (b)(3) of this section for two consecutive 15-minute readings, the public water system must either identify the cause of the exceedance or complete a Filter Profile Report on the filter within seven days of the exceedance.

(B) Each time a filter exceeds the filtered turbidity level specified in subsection (b)(3)(B) of this section for two consecutive 15-minute readings on three separate occasions during any consecutive three month period, the public water system must conduct a filter assessment on the filter within 14 days of the exceedance.

(C) Each time the filtered water turbidity level for a specific filter or any combination of individual filters exceeds 2.0 NTU on two consecutive 15-minute readings during two consecutive months, the public water system must participate in a third-party comprehensive performance evaluation within 90 days of the exceedance.

(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 nephelometric methods or Great Lakes Instruments Method 2.

(2) Monitoring of combined filter effluent may be conducted by either continuously monitoring turbidity levels with an on-line turbidimeter or measuring the turbidity level in grab samples with a benchtop turbidimeter.

(3) Beginning January 1, 2002, systems serving 10,000 or more people must monitor the turbidity of the water produced by individual filters with a continuous, on-line turbidimeter and a continuous recorder.

(A) Continuous individual filter turbidity may be recorded electronically by a SCADA system or on a strip chart. Circular strip charts, if used, must be set to record no more than one day's readings per chart.

(B) If there is a failure in the continuous turbidity monitoring equipment, the system must conduct grab sampling every four hours in lieu of continuous monitoring but for no more than five working days following the failure of the equipment.

(4) Beginning January 1, 2002, systems serving fewer than 10,000 people must monitor the turbidity of the water produced by individual filters by continuously monitoring turbidity levels with an on-line turbidimeter or measuring the turbidity level in grab samples with a benchtop turbidimeter.

(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 5.0 NTU in the combined filter effluent shall notify the 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

TNRCC Form 0102A. After January 1, 2001, systems must submit TNRCC Form 00102.

(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 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 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 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 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) Compliance determination. Compliance with the requirements of this section shall be determined using the following criteria.

(1) A public water system that fails to conduct the combined filter effluent or individual filter monitoring tests required by this section commits a monitoring violation.

(2) A public water system that fails to report the results of the combined filter effluent or individual filter monitoring tests required by this section commits a reporting violation.

(3) Beginning on January 1, 2002, a public water system that serves 10,000 or more people and fails to submit the reports required by subsection (e)(3) - (5) of this section commits a reporting violation.

(4) A public water system that has a turbidity level exceeding 5.0 NTU in the combined filter effluent commits an acute treatment technique violation.

(5) Until December 31, 2001, a public water system that violates the requirements of subsection (b)(1)(A)(ii) of this section commits a treatment technique violation.

(6) Beginning January 1, 2002, a public water system that violates the requirements of subsection (b)(2)(A) of this section commits a treatment technique violation.

(7) Beginning January 1, 2002, a system that fails to correct the performance-limiting factors identified in a CPE conducted pursuant to the requirements of subsection (c)(5)(C) of this section commits a violation.

(g) Public notification for turbidity. The owner or operator of a public water system that violates the requirements of this section must notify the 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 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(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 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) 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.

§290.112. Total Organic Carbon (TOC).

(a) Applicability. All community and nontransient, noncommunity public water systems that treat surface water or groundwater under the direct influence of surface water and use sedimentation or clarification facilities as part of the treatment process must meet the provisions of this section.

(1) Systems serving 10,000 or more people must comply with the monitoring and reporting requirements beginning January 1, 2001. Systems serving fewer than 10,000 people must comply with the monitoring and reporting requirements beginning January 1, 2003.

(2) Systems serving 10,000 or more people must comply with the treatment technique requirements for TOC beginning January 1, 2002. Systems serving fewer than 10,000 people must comply with the treatment technique requirements for TOC beginning January 1, 2004.

(b) Treatment technique. Systems must achieve the Step 1 removal requirements in paragraph (1) of this subsection, meet one of the alternative compliance criteria described in paragraph (2) of this subsection, or apply for the alternative Step 2 removal requirements described in paragraph (3) of this subsection.

(1) Systems must determine their ability to meet the Step 1 removal requirements given in the following table. A water treatment plant's Step 1 TOC required percent removal is based upon plant's source water TOC and alkalinity. Step 1 TOC percent removal requirements are indicated in the following table. Systems practicing softening are evaluated based on the Step 1 TOC removal in the far-right column (Source water alkalinity >120 mg/L) for the specified source water TOC.

Figure: 30 TAC §290.112(b)(1)

(2) Systems may determine their ability to meet one of the eight alternative compliance criteria listed in this paragraph.

(A) A system meets alternative compliance criteria Number 1 if the system's source water TOC level is less than 2.0 mg/L, calculated quarterly as a running annual average.

(B) A system meets alternative compliance criteria Number 2 if the system's treated water TOC level is less than 2.0 mg/L, calculated quarterly as a running annual average.

(C) A system meets alternative compliance criteria Number 3 if: the system's source water TOC level is less than 4.0 mg/L, calculated quarterly as a running annual average; the source water alkalinity is greater than 60 mg/L (as $CaCO_3$), calculated quarterly as a running annual average; and the TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively.

(D) The system meets alternative compliance criteria Number 4 if the TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively, and the system uses only chlorine for primary disinfection and maintenance of a residual in the distribution system.

(E) The system meets alternative compliance criteria Number 5 if the system's source water SUVA, prior to any treatment,

measured monthly, is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

(F) The system meets alternative compliance criteria Number 6 if the system's finished water SUVA, measured monthly at a point prior to any disinfection, is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

(G) The system meets alternative compliance criteria Number 7 if the system practices softening, cannot achieve the Step 1 TOC removals required by paragraph (b)(1) of this subsection, and has treated water alkalinity less than 60 mg/L (as $CaCO_3$) and calculated quarterly as a running annual average.

(H) The system meets alternative compliance criteria Number 8 if the system practices softening, cannot achieve the Step 1 TOC removals required by paragraph (1) of this subsection, and has magnesium hardness removal greater than or equal to 10 mg/L (as $CaCO_3$), measured monthly calculated quarterly as a running annual average.

(3) If a system fails to meet the Step 1 TOC removal requirement required by paragraph (1) of this subsection and does not meet one of eight alternative compliance criteria described in paragraph (2) of this subsection, the system must apply to the public drinking water program for approval of Step 2 removal requirements.

(A) The plant must perform Step 2 jar testing to determine the coagulant dose at which the removal of TOC is less than 0.3 mg/L for an increase in coagulant of 10 mg/L alum or its equivalent. This dose is referred to as the point of diminishing returns (PODR).

(B) The system must submit the results of the Step 2 jar testing to the public drinking water program for approval of the alternative removal requirements at least 15 days before the end of the applicable quarter.

(C) The executive director may approve Step 2 alternative removal requirements.

(i) If approved, the removal achieved at the PODR becomes the alternative full-scale TOC removal requirement for the plant.

(ii) The alternate removal requirements may be applied to the quarter in which the jar test results are received and for the following quarter.

(c) TOC monitoring requirements. Systems must conduct required TOC monitoring during normal operating conditions at sites and at the frequency designated in the system's monitoring plan.

(1) Systems must monitor for TOC and alkalinity in the source water prior to any treatment. 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) Systems must take one TOC sample set monthly at a time representative of normal operating conditions and influent water quality.

(A) Systems with a running annual average treated water TOC of less than 2.0 mg/L for two consecutive years may reduce monitoring to one TOC sample set per plant per quarter. The system must revert to routine monitoring in the month following the quarter when the running annual average treated water TOC is greater than or equal to 2.0 mg/L.

(B) Systems with a running annual average treated water TOC of less than 1.0 mg/L for one year may reduce monitoring to one TOC sample set per plant per quarter. The system must revert to routine monitoring in the month following the quarter when the running annual average treated water TOC is greater than or equal to 2.0 mg/L.

(3) A public water system attempting to meet the treatment technique requirements for TOC using alternative compliance criteria Number 5 (as defined in subsection (b)(2)(E) of this section) must monitor for SUVA in the source water prior to any treatment at least once each month.

(4) A public water system attempting to meet the treatment technique requirements for TOC using alternative compliance criteria Number 7 (as defined in subsection (b)(2)(G) of this section) must monitor for alkalinity in the treated water at any point prior to distribution system at least once each month.

(5) A public water system attempting to meet the treatment technique requirements for TOC using alternative compliance criteria Number 8 (as defined in subsection (b)(2)(H) of this section) must monitor for magnesium in both the source water prior to any treatment at and the treated water at any point prior to the distribution system least once each month.

(d) Analytical requirements for TOC treatment. Analytical procedures required by this section must be conducted at a facility approved by the executive director and using methods that conform to the requirements of §290.119 of this title (relating to Analytical Procedures).

(e) Reporting requirements for TOC. Systems treating surface water or groundwater under the direct influence of surface water shall properly complete and submit periodic reports to demonstrate compliance with this section.

(1) The reports must be submitted to the Texas Natural Resource Conservation Commission, 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) Public water systems must submit a Monthly Operational Report for Total Organic Carbon Control each month.

(A) Systems treating surface water or groundwater under the direct influence of surface water and serving 10,000 or more people must comply with these reporting requirements starting January 1, 2001.

(B) Systems treating surface water or groundwater under the direct influence of surface water must and serving less than 10,000 people must comply with these reporting requirements starting January 1, 2003.

(3) A system that does not meet the Step 1 removal requirements must submit a Request for Alternate TOC Requirements at least 15 days before the end of the quarter.

(A) If the system meets alternative compliance criterion Number 3, subsection (b)(2)(C) of this section, the system must report the running annual average TTHM and HAA5 concentrations as determined under the requirements of §290.113 of this title (relating to Disinfection By-products (TTHM and HAA5)).

(B) If the system meets alternative compliance criterion Number 4, subsection (b)(2)(D) of this section, the system must report the running annual average TTHM and HAA5 concentrations as determined under the requirements of §290.113 (relating to Disinfection

By-products (TTHM and HAA5)), and report all disinfectants used by the system during last 12 months.

(C) If the system meets alternative compliance criterion Number 5, subsection (b)(2)(E) of this section, the system must report the average source water SUVA for each of the preceding 12 months.

(D) If the system meets alternative compliance criterion Number 6, subsection (b)(2)(F) of this section, the system must report the average treated water SUVA for each of the preceding 12 months.

(E) If the system practices softening and meets alternative compliance criterion Number 8, subsection (b)(2)(H) of this section, the system must report the source water and treated water magnesium concentrations and the average percent removal of magnesium obtained during each of the preceding 12 months.

(F) 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)).

(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) Compliance determination. Compliance with the requirements of this section shall be based on the following criteria:

(1) A system that fails to conduct the monitoring tests required by this section commits a monitoring violation. Failure to monitor will be treated as a violation for the entire period covered by the annual average.

(2) A system that fails to report the results of monitoring tests required by this section commits a reporting violation. Systems may use only data collected under the provisions of this section to qualify for reduced monitoring.

(3) A system that does not meet any of the alternative compliance criteria and does not achieve the required TOC removal commits a treatment technique violation. Compliance shall be determined quarterly by determining an annual average removal ratio using the following method:

(A) The actual monthly TOC percent removal must be determined for each month. The actual removal for a TOC sample set is equal to (1 - treated water TOC/source water TOC). The actual monthly percent removal is calculated by taking average removal for all TOC sample sets collected in the month, and expressing that value as a percent.

(B) The required monthly Step 1 or Step 2 TOC percent removal must be determined as provided in subsection (b) of this section. The executive director will approve or disapprove Step 2 requirements based on jar or pilot data. Until the executive director approves the Step 2 TOC removal requirements, the system must meet the Step 1 TOC removals contained in subsection (b)(1) of this section.

(C) The monthly removal ratio must be determined. The monthly removal ratio is determined by dividing the actual monthly TOC percent removal for each month by the required monthly Step 1 or approved Step 2 TOC percent removal for the month. The alternative compliance criteria may be used on a monthly basis as described in clauses (i) - (iv) of this subparagraph.

(i) If the monthly average source or treated water TOC is less than 2.0 mg/L, a monthly removal ratio value of 1.0 may be assigned (in lieu of the value calculated in subsection (f)(3)(C) of this section) when calculating compliance under the provisions of this section.

(ii) If the monthly average water source or treated SUVA level is less than 2.0 L/mg-m, a monthly removal ratio value of 1.0 may be assigned (in lieu of the value calculated in subsection (f)(3)(C) of this section) when calculating compliance under the provisions of this section.

(iii) In any month that a softening system lowers alkalinity below 60 mg/L (as $CaCO_3$), a monthly removal ratio value of 1.0 may be assigned (in lieu of the value calculated in subsection (f)(3)(C) of this section) when calculating compliance under the provisions of this section.

(iv) In any month that a softening system removes at least 10 mg/L of magnesium hardness (as $CaCO_3$) a monthly value of 1.0 may be assigned (in lieu of the value calculated in subsection (f)(3)(C) of this section) when calculating compliance under the provisions of this section.

(D) The yearly removal ratio must be determined. The yearly removal ratio is the running annual average of the quarterly averages of the monthly averages. To determine this value, for each quarter in the compliance year, determine the monthly removal ratio, add the removal ratios and divide by three. Then, add the quarterly removal ratio and divide by four.

(E) If the yearly removal ratio is less than 1.00, the system commits a treatment technique violation.

(g) Public Notification. A public water system that violates the treatment technique requirements of this section must notify the public drinking water program and the system's customers.

(1) A public water system that commits a TOC treatment technique violation shall notify the 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) A public water system which fails to conduct the monitoring required by this section must notify its customers of the violation in accordance with the requirements of §290.122(c) of this title.

§290.113. 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) Effective January 1, 2002, community and nontransient, noncommunity public water systems that serve at least 10,000 people and use surface water sources or groundwater sources that are under the direct influence of surface water must comply with the maximum contaminant levels (MCLs) for total trihalomethanes (TTHM) and haloacetic acids (five) (HAA5).

(2) Effective January 1, 2004, 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) Until January 1, 2004, public water systems using groundwater as a supply source and serving at least 10,000 people will be regulated in accordance with §290.115 of this title (relating to Transition Rule for Disinfection By-products).

(4) Until January 1, 2002, public water systems using surface water sources or groundwater sources that are under the direct influence of surface water must comply with the requirements of

§290.115 of this title (relating to Transition Rule for Disinfection By-products).

(b) Maximum contaminant level for TTHM and HAA5. The running annual average concentration of total trihalomethanes (TTHM) and haloacetic acids (five) (HAA5) shall not exceed the maximum contaminant levels.

(1) The MCL for TTHM is 0.080 milligrams/liter.

(2) The MCL for HAA5 is 0.060 milligrams/liter.

(c) Monitoring requirements for TTHM and HAA5. Systems must take all TTHM and HAA5 samples during normal operating conditions. Monitoring shall be performed at locations and frequency specified in the system's monitoring plan.

(1) The minimum number of samples required to be taken shall be based on the number of treatment plants used by the system, except that multiple wells drawing raw water from a single aquifer shall be considered as one treatment plant for determining the minimum number of samples.

(2) All samples taken within one sampling period shall be collected within a 24-hour period.

(3) Systems must routinely sample at the frequency and locations given in the following table entitled "Routine Monitoring Frequency and Locations for TTHM and HAA5."
Figure: 30 TAC §290.113(c)(3)

(4) The executive director may reduce the monitoring frequency for TTHM and HAA5 as indicated in the following table entitled "Reduced Monitoring Frequency and Locations for TTHM and HAA5."
Figure: 30 TAC §290.113(c)(4)

(A) The executive director may not reduce the routine monitoring requirements for TTHM and HAA5 until a system has completed one year of routine monitoring in accordance with the provisions of paragraph (3) of this subsection.

(B) A system that is on reduced monitoring and collects quarterly samples for TTHM and HAA5 may remain on reduced monitoring as long as the running annual average of quarterly averages for TTHM and HAA5 is no greater than 0.060 mg/L and 0.045 mg/L, respectively.

(C) A system that is on a reduced monitoring and monitors no more frequently than once each year may remain on reduced monitoring as long as TTHM and HAA5 concentrations are no greater than 0.060 mg/L and 0.045 mg/L, respectively.

(5) The executive director may require a system to return to the routine monitoring frequency described in paragraph (3) of this subsection.

(A) A system that does not meet the requirements of paragraph (4)(B) or (C) of this subsection must return to routine monitoring in the quarter immediately following the quarter in which the results exceed 0.060 mg/L or 0.045 mg/L for TTHMs and HAA5, respectively.

(B) A system that is on reduced monitoring and makes any significant change to its source of water or treatment program shall return to routine monitoring in the quarter immediately following the quarter when the change was made.

(C) If a system is returned to routine monitoring, routine monitoring shall continue for at least one year before a reduction in monitoring frequency may be considered.

(d) 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 TDH Bureau of Laboratories.

(e) Reporting requirements for TTHM and HAA5. 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) A system that fails to monitor in accordance with this section commits a monitoring violation. Failure to monitor will be treated as a violation for the entire period covered by the annual average.

(2) A public water system that fails to report the results of the monitoring tests required by subsection (e) of this section commits a reporting violation.

(3) Compliance with the MCLs for TTHM and HAA5 shall be based on the running annual average of all samples collected during the preceding 12 months.

(A) A public water system that samples for TTHM and HAA5 each quarter must calculate the running annual average of the quarterly averages.

(B) A public water system that samples for TTHM and HAA5 no more frequently than once each year must calculate the annual average of all samples collected during the year.

(C) All samples collected at the sampling sites designated in the public water system's shall be used to compute the quarterly and annual averages unless the analytical results are invalidated by the executive director for technical reasons.

(4) A public water system violates the MCL for TTHM if the running annual average for TTHM exceeds the MCL specified in subsection (b)(1) of this section.

(5) A public water system violates the MCL for HAA5 if the running annual average for HAA5 exceeds the MCL specified in subsection (b)(2) of this section.

(6) If a public water system is routinely sampling in accordance with the requirements of subsection (c)(3) of this section and an individual sample or quarterly average will cause the system to exceed the MCL for TTHM or HAA5, the system is in violation of the respective MCL at the end of that quarter.

(7) If a public water system's failure to monitor makes it impossible to determine compliance with the MCL for TTHM or HAA5, the system commits an MCL violation.

(g) Public Notification Requirements for TTHM and HAA5. A public water system that violates the requirements of this section of must notify the public drinking water program and the system's customers.

(1) A system that violates an MCL given in subsection (b)(1) or (2) of this section shall report to the 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) A public water system which fails to conduct the monitoring required by subsection (c) of this section must notify its customers of the violation in accordance with the requirements of §290.122(c) of this title.

§290.114. Disinfection By-products 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) Maximum contaminant level (MCL) for chlorite. The chlorite concentration in the water in the distribution system shall not exceed an MCL of 1.0 mg/L.

(2) Monitoring requirements for chlorite. Public water systems shall measure the chlorite concentration at locations and intervals specified in the system's monitoring plan. All samples must be collected during normal operating conditions.

(A) Each plant using chlorine dioxide must monitor the chlorite concentration in the water entering the distribution system at least once each day. The monitoring frequency at the entry point to the distribution system may not be reduced.

(B) Each plant using chlorine dioxide must monitor the chlorite concentration in the water within the distribution system at each of the following three locations: at a location near the first customer of a plant using chlorine dioxide; at a location representative of the average residence time in the distribution system; and at a location reflecting maximum residence time in the distribution system. The group of three samples must be collected on the same day and is called a "three-sample set."

(i) Each system must collect at least one three-sample set each month.

(ii) If the chlorite concentration entering the distribution system exceeds 1.0 mg/L, the system must collect a three-sample set within 24 hours.

(iii) The frequency of chlorite monitoring in the distribution system may be reduced to one three- sample set per quarter if none of the entry point or distribution system samples tested during the preceding 12 months contained a chlorite concentration above 1.0 mg/L. A system must revert to the monthly monitoring frequency if the chlorite concentration exceeds 1.0 mg/L in any sample.

(iv) Public water systems that serve fewer than 10,000 people are exempt from the requirements of subsection (a) of this section until January 1, 2004 if the public water system signs and complies with the requirements set forth by the executive director in a bilateral agreement.

(v) Public water systems that serve at least 10,000 people are exempt from the requirements of subsection (a) of this section until January 1, 2002 if the public water system signs and complies with the requirements set forth by the executive director in a bilateral agreement.

(3) Analytical requirements for chlorite. Analytical procedures required by this section shall be performed in accordance with the requirements of §290.119 of this title (relating to Analytical Procedures).

(A) The chlorite concentration of the water entering the distribution system must be analyzed at a facility approved by the executive director. The analysis must have a minimum accuracy of 0.05 mg/L and use one of the following methods:

(i) amperometric titration using a unit with platinum-platinum electrodes; or

(ii) ion chromatography.

(B) Before January 1, 2002, systems using chlorine dioxide in accordance with a bilateral compliance agreement with the executive director must have the chlorite concentration of the water within the distribution system analyzed using ion chromatography at a facility approved by the executive director.

(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 TDH Bureau of Laboratories.

(4) Reporting requirements for chlorite. Public water systems 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 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) The results of all samples collected at points designated in the monitoring plan must be reported.

(5) Compliance determination for chlorite. Compliance with the requirements of this subsection shall be based on the following criteria.

(A) A public water system that fails to conduct the monitoring tests required by this subsection commits a monitoring violation.

(B) A public water system that fails to report the results of the monitoring tests required by this subsection commits a reporting violation.

(C) A public water system commits an MCL violation if the arithmetic average of any three-sample set collected in the distribution system exceeds the MCL for chlorite.

(6) Public notification requirements for chlorite. A public water system that violates the requirements of this subsection must notify the public drinking water program and the system's customers.

(A) A public water system that violates the MCL for chlorite shall notify the 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) A public water system which fails to conduct the monitoring required by this subsection must notify its customers of the violation in accordance with the requirements of §290.122(c) of this title.

(b) Bromate. Community and nontransient, noncommunity public water systems that use ozone must comply with the requirements of this subsection beginning on January 1, 2002.

(1) Maximum contaminant level for bromate. The concentration of bromate at the entry point to the distribution system shall not exceed an MCL of 0.010 mg/L.

(2) Monitoring requirements for bromate. Each plant using ozone must measure the bromate concentration in the water entering the distribution system at least once each month. The monitoring frequency at the entry point to the distribution system may not be reduced. Samples shall be collected when the ozonation system is operating under normal conditions and at locations and intervals specified in the system's monitoring plan.

(3) Analytical requirements for bromate. Analytical procedures required by this section shall be performed in accordance with §290.119 of this title (relating to Analytical Procedures). Testing for bromate shall be performed at a laboratory certified by the TDH Bureau of Laboratories.

(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.

(i) All samples collected and analyzed in accordance with the monitoring plan must be included when calculating each monthly average and the running annual average, even if the total number of samples collected during the month is greater than the minimum required.

(ii) If a public water system fails to complete 12 consecutive months of monitoring, compliance with the MCL for the last four-quarter compliance period must be based on an average of the available data.

(iii) If, during the first year of bromate monitoring, any individual quarter's average will cause the running annual average of that plant to exceed the MCL, the system is out of compliance at the end of that quarter.

(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 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.

(a) Applicability. All community and non-transient noncommunity public water systems that serve at least 10,000 people must comply with the requirements of this section.

(1) A public water system that uses groundwater sources and serves at least 10,000 people shall comply with this section until January 1, 2004.

(2) A public water system that uses surface water sources or groundwater sources that are under the direct influence of surface water and serves at least 10,000 people shall comply with this section until January 1, 2002.

(b) The maximum contaminant level (MCL) for total trihalomethanes shall be 0.10 milligrams/liter. The MCL shall apply only to those systems which serve a population of 10,000 or more individuals.

(c) Sampling and analytical requirements for total trihalomethanes:

(1) For the purpose of this section, the minimum number of samples required to be taken shall be based on the number of treatment plants used by the system, except that multiple wells drawing raw water from a single aquifer shall be considered as one treatment plant for determining the minimum number of samples. All samples taken within one sampling period shall be collected within a 24-hour period.

(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 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 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 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) If at any time during which the reduced monitoring frequency prescribed under this paragraph applies, the results from any analysis exceed 0.10 milligrams/liter of TTHMs and such results are confirmed by at least one check sample taken promptly after such results are obtained, or if the system makes any significant change to its source of water or treatment program, the system shall immediately begin monitoring in accordance with the requirements of paragraph (2) of this subsection.

(B) If a system is required to begin monitoring in accordance with paragraph (2) of this subsection, such monitoring shall continue for at least one year before a reduction in monitoring frequency may be considered.

(4) Upon the written request to the 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 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 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) If at any time during which the reduced monitoring frequency prescribed under this paragraph is in effect, the result from any analysis taken by the system for the maximum TTHM potential is equal to or greater than 0.10 milligrams/liter, and such results are confirmed by at least one check sample taken promptly after such results are received, the system shall begin immediately to monitor in accordance with the requirements of paragraph (2) of this subsection.

(B) If it becomes necessary to begin monitoring in accordance with paragraph (2) of this subsection, such monitoring shall continue for at least one year before the monitoring frequency may be reduced.

(C) In the event of any significant change to the system's raw water or treatment program, the system shall immediately analyze an additional sample for maximum TTHM potential taken at a point in the distribution system reflecting the maximum residence time of the water in the system for the purpose of determining whether the system must comply with the monitoring requirement of paragraph (2) of this subsection.

(5) Compliance with the MCL of 0.10 milligrams/liter for 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 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 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 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 TDH Bureau of Laboratories.

§290.118. Secondary Constituent Levels.

(a) Applicability for secondary constituents. The requirements for secondary constituents apply to all public water systems. Water that does not meet the secondary constituent levels may not be used for public drinking water without written approval from the executive director. When drinking water that does not meet the secondary constituent levels is accepted for use by the executive director, such acceptance is valid only until such time as water of acceptable chemical quality can be made available at reasonable cost to the area(s) in question.

(b) Secondary constituent levels. The maximum secondary constituent levels are as follows.

Figure: 30 TAC §290.118(b)

(c) Monitoring frequency for secondary constituents. 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 point of entry to the distribution system.

(2) Each surface water source shall be sampled annually at the point of entry to the distribution system.

(3) Each of the sampling frequencies listed in paragraph (3) of this subsection constitute one round of sampling for groundwater and surface water systems, respectively.

(d) Analytical requirements for secondary constituents. All analyses for determining compliance with the provisions of this subsection shall be conducted in accordance with §290.119 of this title (relating to Analytical Procedures) at a facility certified by the Texas Department of Health Bureau of Laboratories.

(e) Reporting requirements for secondary constituents. 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 results of such test, measurement, or analysis.

(f) Compliance determination for secondary constituents. Compliance with the requirements of this subsection shall be based on the following criteria:

(1) A public water system that fails to conduct the monitoring tests required by this subsection commits a monitoring violation;

(2) A public water system that fails to report the results of the monitoring tests required by this subsection commits a reporting violation; and

(3) A public water system that exceeds the secondary constituent levels in subsection (b) of this section commits a secondary constituents level violation.

(g) Public notification for secondary constituents. Public notification must be consistent with the requirements of §290.122 of this title (relating to Public Notification).

(1) Community and nontransient, noncommunity water systems that exceed the secondary maximum constituent level for fluoride but are below the maximum contaminant level listed in §290.106 of this title (relating to Inorganic Contaminants) must notify the public. The notice must be made annually by including it with the water bill or by separate mailing to all customers. The form and content of the notice shall be as prescribed by the executive director.

(2) If a system exceeds the secondary constituent levels, notice must be given to new customers and in the annual consumer confidence report.

§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 MCLs, and action levels requirements of this subchapter must be analyzed by a laboratory certified by the Texas Department of Health Bureau of Laboratories. These samples include:

(A) compliance samples for SOCs;

(B) compliance samples for VOCs;

(C) compliance samples for inorganic contaminants;

(D) compliance samples for radiological contaminants;

(E) compliance samples for microbial contaminants;

(F) compliance samples for TTHM;

(G) compliance samples for HAA5;

(H) compliance samples for chlorite;

(I) compliance samples for bromate; and

(J) compliance samples for lead and copper.

(2) Samples used to determine compliance with the treatment technique requirements and MRDLs of this subchapter must be analyzed by a laboratory approved by the executive director. These samples include:

(A) compliance samples for turbidity treatment technique requirements;

(B) compliance samples for the chlorine MRDL;

(C) compliance samples for the chlorine dioxide MRDL;

(D) compliance samples for the combined chlorine (chloramine) MRDL;

(E) compliance samples for the disinfection by-product precursor treatment technique requirements, including alkalinity, total organic carbon, and specific ultraviolet absorbance;

(F) samples used to monitor chlorite levels at the point of entry to the distribution system; and

(G) samples used to determine pH.

(3) Non-compliance tests, such as control tests taken to operate the system, may be run in the plant or at a laboratory of the system's choice.

(b) Acceptable analytical methods. Methods of analysis shall be as specified in 40 Code of Federal Regulations 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 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) section 141.21(f) for microbiological analyses;

(2) section 141.22(a) for turbidity analyses;

(3) section 141.23(f) for inorganic analyses;

(4) section 141.24(e), (f), and (g) for organic analyses;

(5) section 141.25 for radionuclide analyses;

(6) section 141.131(b) for disinfection by-product analyses;

(7) section 141.131(c) for disinfectant analyses;

(8) section 141.131(d) for alkalinity analyses, specific ultraviolet absorbance analyses, and pH analyses; and

(9) section 141.89 for lead and copper analyses and for water quality parameter analyses that are performed as part of the requirements for lead and copper.

§290.121. Monitoring Plans.

(a) Applicability. All public water systems shall maintain an up-to-date chemical and microbiological monitoring plan. Monitoring plans are subject to the review and approval of the executive director. A copy of the monitoring plan must be maintained at each water treatment plant and at a central location.

(b) Monitoring plan requirements. The monitoring plan shall identify all sampling locations, describe the sampling frequency, and specify the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements of this subchapter.

(1) 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) The location of each sampling site at a treatment plant or pump station must be designated on a plant schematic. The plant schematic must show all water pumps, flow meters, unit processes, chemical feed points, and chemical monitoring points.

(B) Each 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 point of entry to the distribution system shall be provided; or

(ii) the location of each point of entry shall be indicated clearly on a distribution system or treatment plant schematic.

(C) The address of each sampling site in the distribution system shall be included in the monitoring plan or the location of each distribution system sampling site shall be designated on a distribution system schematic. The distribution system schematic shall clearly indicate the following:

(i) the location of all pump stations in the distribution system;

(ii) the location of all ground and elevated storage tanks in the distribution system; and

(iii) the location of all chemical feed points in the distribution system.

(D) The system must revise its monitoring plan if changes to a plant or distribution system require changes to the sampling locations.

(2) Monitoring frequency. The monitoring plan must include a written description of sampling frequency and schedule.

(A) The monitoring plan must include a list of all routine samples required on a daily, weekly, monthly, quarterly, and annual basis and identify the sampling location where the samples will be collected.

(B) The system must maintain a current record of the sampling schedule.

(3) The monitoring plan must identify the analytical procedures that will be used to perform each of the required analyses.

(4) The monitoring plan must identify all laboratory facilities that may be used to analyze samples required by this chapter.

(5) The monitoring plan shall include a written description of the methods used to calculate compliance with all MCLs, MRDLs, and treatment techniques that apply to the system.

(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 system must update the monitoring plan when the 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 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 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 submit a copy of the monitoring plan to the public drinking water program upon the request of the executive director.

(4) All water systems must provide the public drinking water program with any revisions to the plan upon the request of the executive director.

(d) Compliance determination. Compliance with the requirements of this section shall be determined using the following criteria.

(1) A public water system that fails to submit an administratively complete monitoring plan by the required date or fails to submit updates to a plan upon request commits a reporting violation.

(2) A public water system that fails to maintain an up-to-date monitoring plan commits a monitoring violation.

(e) Public notification. A system that commits a violation described in §290.122(d) of this title (relating to Public Notification) shall notify its customers of the violation in the next consumer confidence report that is issued by the system.

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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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-4712

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CHAPTER 293. WATER DISTRICTS

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §293.11, Information Required to Accompany Applications for Creation of Districts; §293.12, Creation Notice Actions and Requirements; §293.32, Qualifications of Directors; §293.33, Commission Appointment of Directors; §293.42, Submitting of Documents; §293.44, Special Considerations; §293.46, Construction Prior to Commission Approval; §293.47, Thirty Percent of District Construction Costs to be Paid by Developer; §293.48, Street and Water, Wastewater and Drainage Utility (Street and Utility) Construction by Developer; §293.51, Land and Easement Acquisition; §293.54, concerning Bond Anticipation Notes (BAN); §293.59, Economic Feasibility of Project; §293.88, Petition for Authorization to Proceed in Federal Bankruptcy; §293.97, Adoption of Fiscal Year and Operating Budget; §293.131, Authorization for Dissolution of Water District by the Commission; and §293.143, Application Requirements for Standby Fees to be Used to Supplement the Operation and Maintenance Fund. The commission also adopts the repeal of §293.96, Miscellaneous Reports to be Submitted to the Executive Director.

The commission adopts *with changes*, as published in the April 21, 2000 issue of the *Texas Register* (25 TexReg 3483) §§293.42, 293.44, 293.46, 293.47, and 293.51. Sections 293.11, 293.12, 293.32, 293.33, 293.48, 293.54, 293.59, 293.88, 293.97, 293.131, and 293.143 and the repeal of §293.96 are adopted *without changes* and will not be republished in this adoption.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adoption of the amendments and the repeal in Chapter 293 establishes new requirements relating to the administration of water districts and the commission's supervision over their actions under Chapters 49, 51, 53, and 65 of the Texas Water Code (TWC), as amended by House Bill (HB) 846 and HB 1069, 76th Legislature, 1999. Specifically, the adopted amendments allow sewer service corporations to petition for conversion to a special utility district; clarify other rules related to district creation; update the qualifications for directors of fresh water supply districts; adopt procedures for commission appointment of district directors to fill positions that have been vacant for more than 90 days; adopt procedures for expedited review of certain bond applications; revise provisions concerning reimbursement for district project costs; add provisions to allow districts to pay certain costs related to federal stormwater permits, endangered species permits, and flood plain and wetlands regulation; allow developers to satisfy the financial guarantee requirement with an escrow of funds in the name of the district; revise rules related to bond feasibility analysis; increase the water and wastewater rates a district must be charging before it qualifies for commission approval of standby fees to supplement its operation and maintenance fund; repeal or delete unnecessary rules; and correct and clarify the rules.

The commission has the statutory duty and responsibility to create, supervise, and dissolve certain water and water related districts and to approve the issuance and sale of bonds for district improvements in accordance with the TWC. Chapter 293, entitled "Water Districts," governs the creation, supervision, and dissolution of all general and special law districts and governs the conversion of districts into municipal utility districts. There are approximately 1,300 water districts in Texas which are overseen by the commission. Chapter 293 provides the rules which govern the review of bonds for engineering standards and economic feasibility of applications in order to assure that construction projects are designed and completed with the proper approvals, thereby ensuring quality service. The chapter is also

important because it ensures that bond funds are used for the benefit of the residents of the districts and that proceeds from bond issues are used to promote a district's intended purpose.

In 1989, after many water districts were found to be in financial distress or bankruptcy and could not meet debt obligations, the commission adopted its feasibility rules to protect the integrity of the water district bonds and to prevent further defaults. The adoption of the repeal and the amendments clarifies provisions in order to further protect the integrity of the water district bonds.

Amendments are also adopted in Chapter 293 as a result of HB 846 and HB 1069. First, HB 846 amends provisions in TWC, Chapters 36, 49, and 53 relating to the administration, management, operation, and authority of water districts and authorities. The adopted amendments to Chapter 293 implement provisions of HB 846 that authorize the commission to appoint directors to fill positions on district boards that have been vacated for more than 90 days, revise statutory provisions concerning types of expenses that districts may finance, and revise the qualifications for directors of fresh water supply districts. The other portions of HB 846 did not require changes to the commission's rules.

HB 1069 eliminates the requirement in TWC, Chapter 65 that a water supply corporation (WSC) must have been providing service prior to January 1, 1985 in order to be eligible to convert to a special utility district (SUD). No changes to the commission's rules were necessary to implement this statutory change. HB 1069 also amends TWC, Chapter 65, to allow sewer service corporations, as well as water supply corporations, to convert to SUDs. There are currently approximately 900 WSCs operating in the state.

SECTION BY SECTION DISCUSSION

The following paragraphs describe the adopted amendments. Sections 293.42, 293.44, 293.46, and 293.51 are adopted with changes to the proposed text as published in the April 21, 2000 issue of the *Texas Register* (25 TexReg 3483).

The adopted amendments in §293.11(h) implement HB 1069, which amended TWC, Chapter 65, to allow sewer service corporations, along with water supply corporations, to petition the commission for conversion to a special utility district. The adopted amendments also clarify the section.

Amendments in §293.12(a) specify that the commission may also approve the creation of single county water control and improvement districts if additional powers are requested that are not otherwise available from the county, as provided by TWC, §51.333. Section 293.12(b) is adopted, with amendments, to provide that notice of an application to create a district must be posted on a bulletin board used for posting legal notice in each county where the proposed district is to be located, not later than 30 days before the commission may act on the application. Additional changes are adopted in §293.12 for compatibility with *Texas Register* formatting requirements.

The amendment to §293.32(a) is adopted to provide the qualifications for a director of a fresh water supply district under TWC, §53.063, as amended by HB 846, and to clarify the section.

The title of §293.33 is adopted to amend the title from "Commission Appointment of Directors" to "Commission Appointment of Directors to Fill Vacancies" in order to specify that the section applies to the appointment of directors to fill vacancies on district boards. The procedures for the appointment of directors at the time of a district's creation are provided in §293.11 and §293.13.

The amendment to §293.33 is adopted to provide the circumstances under which the commission may appoint directors to fill vacancies; to identify which procedures apply to a request for appointment of a director or directors as a result of the number of board members being to reduced to less than a quorum; and to implement TWC, §49.105(c), as amended by HB 846, by adding procedures to request appointment of a director to fill a position that has been vacant for more than 90 days.

The amendment in §293.42 is adopted to change the title from "Submitting of Documents" to "Submitting of Documents and Order of Review" in order to more accurately reflect the subject matter of the section. The amendment in §293.42(b) is adopted to allow for the expedited review of bond applications that are submitted after the district meets certain criteria indicating its financial soundness and that fully comply with the commission's feasibility rules. The commission adopts this rule with changes from the proposal to clarify that an application submitted for expedited review under §293.42(b) must still comply with the bond application requirements in §293.43.

Section 293.42(c) is adopted to allow for the expedited review of nondeveloper bond applications for districts that are near full development and have a low tax rate. The commission also adopts this rule with changes from the proposal to provide that an application submitted under this subsection must also comply with §293.43, which requires, among other things, that an application for approval of bonds must include a bond application report prepared in accordance with the applicable "Bond Application Report Format" manual adopted by the Executive Director. The commission has concluded that this change to the rule as proposed is necessary to implement TWC, §49.181(b), which requires that a bond application include an engineering report. The "Bond Application Report Format" manual specifies the engineering information that must be submitted with a bond application. The Executive Director has adopted a "Nondeveloper's Bond Application Report Format" that may be used for applications submitted for expedited review under the adopted §293.42(c). The commission has also revised the adopted rule to eliminate the requirements that an application submitted under this subsection include a summary of costs and copies of required permits; that information is addressed by the "Bond Application Report Format" manual.

The adoption of §293.42(d) provides that an application that does not meet the requirements for expedited review as initially submitted must be withdrawn and resubmitted with an additional filing fee in order to qualify for expedited review. The amendment adopted in §293.42(e) sets out the applicability of the expedited review processes to applications pending on the effective date of the rule changes.

The amendments adopted in §293.44(a)(3), relating to developer reimbursements from bond proceeds, clarify language in the rule for ease of interpretation without changing the intent. The amendments adopted in §293.44(a)(9) and (10) add language to clarify that §293.47, relating to developers' 30% contribution, applies. The amendments adopted in §293.44(a)(12) clarify the criteria for determining what portion of the costs for combined lake and detention facilities a district may pay. The adoption of the amendments in §293.44(a)(13) corrects a grammatical error and clarifies the rule so that all districts are allowed to fund a pro rata share of bridges and culverts which further the district's purposes. The existing rule allows only two types of districts created prior to September 1, 1989 to fund these costs.

A new §293.44(a)(21) is adopted to allow districts to finance certain costs associated with flood plain and wetlands regulation.

The adoption of §293.44(a)(22) and (23) implement amendments to TWC, §49.155 made by HB 846. The revised statute allows districts to pay for costs associated with requirements for federal stormwater permits and endangered species permits. In response to comments, §293.44(a)(22), is adopted, with changes from the proposal, to provide that a district may finance up to 70% of the costs associated with endangered species permits; however, the district's share is not further subject to the developer's 30% contribution under §293.47. The adoption of §293.44(a)(22) also includes a change for clarification.

Section 293.44(b), relating to the reimbursement of project costs from bond proceeds, is adopted to clarify the calculation of the value of facilities not constructed by a developer for resale to the district or facilities constructed by a developer in contemplation of resale to the district, but for which original cost documentation is not available. To eliminate a duplication in §293.59, the commission also adopts the deletion of §293.44(b)(2), which required that all wastewater permits necessary to serve the projected development be in place in order for a project to be considered feasible.

In response to comments, §293.46(3) is adopted, with amendments, to clarify the rule. The rule change is intended to encourage compliance with local and state requirements for plan approval by disallowing reimbursement of any additional costs associated with changes required after contract award, unless all required state and local approvals were obtained prior to contract award. An amendment to §293.46(5) is also adopted to delete an unnecessary grandfather provision concerning construction contracts awarded prior to September 5, 1986.

Amendments are adopted throughout §293.47 to correct grammatical errors and for compatibility with *Texas Register* formatting requirements. The amendments adopted in §293.47(a) provide that 30% of district construction costs are to be paid by the developer, and clarify that these rules apply to all districts except those specifically excluded by the rule and also clarify the exception for districts that have a ratio of debt to assessed valuation of 10% or less. The adopted amendments also add an exception to the rule for those districts that enter into an agreement with another political subdivision to receive significant revenues and that meet other criteria concerning buildout and tax rate. This adoption increases the financial integrity of district bonds by encouraging developers of in-city districts created after September 1, 1986, and of other commercial districts, to negotiate sales tax and other tax or revenue rebate agreements with the city or other local governments.

The amendments adopted in §293.47(b)(2) clarify that the total debt used in calculating the 10% debt to assessed valuation ratio includes all bonds of the district, including bonds not approved by the commission, and adds a provision concerning the calculation of the ratio where more than one bond application is pending. The amendments adopted in §293.47(b)(4) and (5) add Fitch IBCA to the list of acceptable investment firms that may rate a district's credit.

The amendment adopted in §293.47(c) updates the rule, which relates to requesting a conditional waiver to the 30% contribution, by deleting the reference to a bond application hearing. TWC, §49.181, the applicable statute, does not require a hearing for commission action on a bond application.

Section 293.47(g) is adopted to add flexibility to the rule by allowing a developer to satisfy the financial guarantee requirement for the developer's share of costs with an escrow of funds in the name of the district.

Section 293.48 is adopted to add flexibility to the rule by allowing a developer to satisfy the financial guarantee requirement for street and utility construction with an escrow of funds in the name of the district or a deferral of reimbursement of bond funds owed. Additional changes are adopted in §293.48 to correct grammatical errors.

Modifications are adopted throughout §293.51 for consistency with *Texas Register* formatting, to correct grammatical errors, and to add appropriate catch lines at the beginning of the subsections for consistency throughout the section. The amendments adopted in §293.51(a) require that the rights-of-way necessary for roadside ditches be dedicated as easements by the developer. The amendments adopted in §293.51(b) specify the purposes for which a district may acquire land in fee simple, including allowing districts to purchase land for flood plain or wetlands mitigation, for certain drainage channels, and for buffer zones around water and wastewater plants. The adopted amendments also implement TWC, §49.155(a)(16), which was added by HB 846, by allowing districts to fund a portion of the cost for mitigation sites required for compliance with an endangered species permit. In response to comments, the commission adopts §293.51(b)(7) with changes from the proposal. Section 293.51(b)(7), as adopted, provides that the cost of mitigation sites or payments in lieu of mitigation must be shared between the developer and the district as set out in adopted §293.44(a)(22), which allows a district to finance up to 70% of such costs.

Amendments adopted in §293.54 correct grammatical errors. Additionally, §293.54(2) is adopted to clarify the basis of the opinion given by the district's financial advisor to support issuance of bond anticipation notes. Section 293.54(13) is adopted to add language providing that the requirement to obtain a street and road construction agreement prior to issuing bond anticipation notes does not apply if the district would otherwise be exempt when issuing bonds.

Changes in §293.59 are adopted to correct grammatical errors and for compatibility with *Texas Register* formatting requirements. The amendments to §293.59(k)(8) require that for first bond issues supported by taxes, the developer or other landowner or lender's written agreement, waiving the right to reduce the land values used in the feasibility analysis supporting the proposed bonds, must be submitted at the time of filing the bond application rather than prior to the actual approval. The adopted amendments require that if such agreements are not voluntarily provided by the owners of developable property who are not receiving bond proceeds, and the value of the property is such that a reduction will significantly (defined as 10% of the current assessed value of the district for an individual and 20% cumulatively) impact the district's projected tax rates, the feasibility analysis used to support the bonds will be based on a reduced value for such properties. The adopted amendments to §293.59(k)(11) clarify the commission's interpretation of the applicability of specific sections of the rule relating to financial guarantees required for a district's first bond issue. The adopted amendment to §293.59(l)(5)(B) is to correct a grammatical error.

The commission adopts the deletion of §293.59(m), concerning the feasibility analysis used by the commission when reviewing a benefit assessment bond application. The commission has

not received a benefit assessment bond application since initially adopting this rule. Section §293.59 was adopted as a result of one particular bond application that was submitted by a partially developed district; however, the commission believes that the rule may prohibit some viable districts from using benefit assessment bonds that may be feasible even though they do not comply with the existing rule.

Sections 293.88(b), (c), and (d) are adopted to clarify that the commission does not hold contested case hearings on applications by districts to proceed in federal bankruptcy. The applicable statute, TWC, §49.456, does not provide an opportunity for a contested case hearing. The commission's evaluation is limited to conducting a feasibility review of the district's financial condition to determine whether the district can meet its debts and other obligations through the full exercise of its powers. The commission considers these applications at a regular open meeting.

The commission adopts the repeal of §293.96, which requires districts to file with the commission a certified copy of orders canvassing the results of maintenance tax elections and water and wastewater rate orders. These requirements are unnecessary, as the commission does not use the data filed.

Section 293.97(a) is adopted to specify that the district's fiscal year shall be used for accounting all the district's financial per annum statutory limitations, including the limitations on director fees and per diems under TWC, §49.060.

Adopted changes in §293.131 are for compatibility with *Texas Register* formatting requirements and to correct a statutory reference. Section 293.131(b) is adopted to clarify the procedures for the executive director to initiate dissolution of a district on the executive director's own motion and specify the application requirements for a petition for dissolution submitted by a party other than the executive director.

The amendment to §293.143(b) is adopted to increase the water and wastewater rates a district must be charging before it qualifies for commission approval of standby fees to supplement its operation and maintenance fund. Since the adoption of the 1989 water district regulations, the average water and wastewater bills have increased significantly, thereby justifying the change.

REGULATORY IMPACT ASSESSMENT

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has 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 Administrative Procedures Act.

The specific purpose of the amendments adopted in Chapter 293 is to establish new requirements relating to the administration of water districts and the commission's supervision over their actions under TWC, Chapters 49, 51, 53, and 65, particularly as amended by HB 846 and HB 1069, 76th Legislature, 1999. Specifically, the adopted rule amendments allow sewer service corporations to petition for conversion to a special utility district; clarify other rules related to district creation; update the qualifications for directors of fresh water supply districts; adopt procedures for commission appointment of district directors to fill positions that have been vacant for more than 90 days; adopt procedures for expedited review of certain bond applications; revise provisions concerning reimbursement for district project costs; add provisions to allow districts to pay certain costs related to federal stormwater permits, endangered species permits, and flood plain and wetlands regulation; allow developers to satisfy the financial guarantee requirement with an escrow of funds in the name of the district; revise rules related to bond feasibility analysis; and increase the water and wastewater rates a district must be charging before it qualifies for commission approval of standby fees to supplement its operation and maintenance fund. The adopted amendments are not anticipated to have an adverse effect in a material way 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 and will specifically benefit a sector of the economy and the public by updating and clarifying the rules, making them easier to use; by reducing the costs related to the review of certain bond applications; and by further protecting and enhancing the financial integrity and operations of water districts.

In addition, Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

This rulemaking does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the adopted rule amendments do not exceed a standard set by federal law nor exceed a requirement of a federal delegation agreement or contract, because no federal law or federal delegation agreement or contract applies to the rulemaking. The adopted rule amendments were not developed solely under the general powers of the agency, but rather are also adopted under TWC, §5.235 and §49.011 and were specifically developed to implement TWC, §§49.060, 49.105, 49.154, 49.155, 49.158, 49.181, 49.195, 49.231, 49.321 - 49.324, 51.063, 51.333, 65.001, 65.014, 65.015, and 65.022, particularly as amended by HB 846 and HB 1069, 76th Legislature, 1999, and do not exceed the express requirements of those state statutes.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The specific purpose of the rules is to adopt new requirements relating to the administration of water districts and the commission's supervision over their actions under TWC, Chapters 49, 51, 53, and 65 of the TWC, particularly as amended by HB 846 and HB 1069, 76th Legislature, 1999. The adopted rules advance this specific purpose by allowing sewer service corporations to petition for conversion to a special utility district; clarifying other rules related to district creation; updating the qualifications for directors of fresh water supply districts; adopting procedures for commission appointment of district directors to fill positions that have been vacant for more than 90 days; adopting procedures for expedited review of certain bond applications; revising provisions concerning reimbursement for district project costs; adding provisions to allow districts to pay certain costs related to federal stormwater permits, endangered species permits, and flood plain and wetlands regulation; allowing developers to satisfy the financial guarantee requirement with an escrow of funds in the name of the district; revising rules related to bond feasibility analysis; increasing the water and wastewater rates a district must be charging before it qualifies for commission

approval of standby fees to supplement its operation and maintenance fund; repealing and deleting unnecessary rules; and correcting and clarifying the rules. Promulgation and enforcement of these rules does not burden private real property because private real property is not subject to these rules.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.) and found that the rules are consistent with the applicable CMP goals and policies.

CMP goals applicable to the rules include the goal to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. While the rules do not specifically regulate location or type of development allowed, Chapter 293 provides requirements for developers and for water districts. Section 505.11 of 31 TAC provides the actions and rules that are subject to the CMP. Among the list is the creation of a special purpose district or approval of bonds to construct infrastructure on coastal barriers. As the rules are effective throughout the state, the CMP policy is applicable. CMP policies applicable to the rules include the administrative policy requiring applicants to provide information necessary for an agency to make an informed decision on an action listed in 31 TAC §505.11 and the standards related to the development of infrastructure on coastal barriers set out in 31 TAC §505.14(m).

The rules do not alter the allowable location, standards, or stringency of requirements for infrastructure on coastal barriers. The specific purpose of the rules is to adopt new requirements relating to the administration of water districts and the commission's supervision over their actions under TWC, Chapters 49, 51, 53, and 65, particularly as amended by HB 846 and HB 1069, 76th Legislature, 1999. The rules advance this specific purpose by allowing sewer service corporations to petition for conversion to a special utility district; clarifying other rules related to district creation; updating the qualifications for directors of fresh water supply districts; adopting procedures for commission appointment of district directors to fill positions that have been vacant for more than 90 days; adopting procedures for expedited review of certain bond applications; revising provisions concerning reimbursement for district project costs; adding provisions to allow districts to pay certain costs related to federal stormwater permits, endangered species permits, and flood plain and wetlands regulation; allowing developers to satisfy the financial guarantee requirement with an escrow of funds in the name of the district; revising rules related to bond feasibility analysis; increasing the water and wastewater rates a district must be charging before it qualifies for commission approval of standby fees to supplement its operation and maintenance fund; repealing and deleting unnecessary rules; and correcting and clarifying the rules.

Promulgation and enforcement of these rules does not violate or exceed any standards identified in the applicable CMP goals and policies because the rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any Coastal Natural Resource Areas, and because the rules do not alter the allowable location, standards, or stringency of the requirements for infrastructure on coastal barriers.

HEARING AND COMMENTERS

The proposed rules were published in the April 21, 2000 issue of the *Texas Register* (25 TexReg 3483). A public hearing for this rulemaking was held in Austin on May 18, 2000. The comment period closed on May 22, 2000.

A total of 17 commenters provided comments to the proposal. The following provided written comments on the proposed rules: BVD Partners, L.P. (BVD); CCNG Development Company, L.P. (CCNG); an individual; JadCo Development, Inc. (JadCo); Milburn; Murfee Engineering Company (MEC); Newland Communities, L.L.C. (Newland); Ranch at Cypress Creek Municipal Utility District No. 1 (Cypress Creek); Representative Ron Lewis (Representative Lewis) of the State of Texas House of Representatives; Smith, Robertson, Elliott, and Glenn, L.L.P. (Smith); SWD Holdings, Inc. (SWD); SWTC, Ltd. (SWTC); Stratus Properties Operating Co. (Stratus); Turner Collie & Braden, Inc. (TC&B); Texas Department of Transportation (TxDot); Williamson-Travis Counties Water Control and Improvement District No. 1E (District 1E); and Vinson & Elkins (V&E). In addition to the written comments, V&E also provided oral comments during the public hearing.

ANALYSIS OF TESTIMONY

Of the commenters, V&E generally supported the proposal and complimented the expedited bond review process. TC&B supported §293.44(a)(21). TxDot expressed no support or opposition, and provided no suggested changes.

Representative Lewis recommended that the commission revise the proposed rules to allow districts to finance 100% of the costs associated with endangered species permits. Representative Lewis commented that the intent of the changes to TWC, §49.155(a)(16), made by HB 846 was to allow a district to finance all endangered species permitting costs and that a district's board should determine what portion of such costs a district should finance. Further, the statutory amendments were intended in part to clarify the expenses a district may pay, whether directly or indirectly through reimbursement to a developer. He further commented that the commission's existing feasibility rules for bonds adequately protect a district's financial feasibility, thus making unnecessary a limit on the endangered species permitting costs a district may finance. Representative Lewis also noted that in addressing this issue, the commission should consider both the Texas Constitution, Article III, §52, which prohibits a district from making grants of public funds for a private purpose, and the Texas Constitution, Article XVI, §59, which provides that one of the public rights and duties of water districts is the preservation and conservation of all the natural resources of the state. Because endangered species permitting costs directly relate to the preservation, conservation, and development of natural resources, these costs benefit the public regardless of whether a district pays for these expenses directly or reimburses a developer who has paid those expenses.

CCNG also commented that proposed §293.44(a)(22) should be revised to allow a district to finance 100% of the costs associated with endangered species permits. CCNG further commented that compliance with endangered species laws is a significant issue for large development projects, especially in central Texas, and that compliance with those laws generally provides significant ancillary environmental benefits, such as improved water quality. CCNG also suggested that allowing a district to finance 100% of endangered species permitting costs would not result in abuses by developers or districts, but instead would encourage

developers to pursue the most effective form of environmental protection.

Stratus, Milburn, Newland, BVD, and JadCo commented that under HB 846, costs associated with federal stormwater permits, addressed in proposed §293.44(a)(23), and costs associated with endangered species permits should not be treated differently. These commenters also believe that the protection of endangered species is consistent with the purposes of water districts under the Texas Constitution, Article XVI, §59. These commenters, SWD, District 1E, Cypress Creek, and an individual also asserted that allowing public financing of endangered species permitting costs will serve to protect and preserve endangered species. Therefore, Stratus, Milburn, Newland, BVD, JadCo, SWD, District 1E, Cypress Creek, and the individual commenter requested that the rules allow district financing of all endangered species permitting expenses, including mitigation land.

SWD and SWTC also commented that HB 846 did not limit the percentage of costs associated with endangered species permits that districts may finance. SWD further suggested that a district's board should determine the specific percentage of such costs to be paid by that district; District 1E, Cypress Creek, and the individual commenter also made this comment.

SWTC also commented that where an endangered species or its habitat is present on or adjacent to land where district facilities are to be built, an endangered species permit must be obtained before those facilities can be constructed. SWTC also noted that current commission rules allow a district to finance all of the costs associated with a water quality permit and asserted that an endangered species permit is even more fundamental to resource conservation than a water quality permit. SWTC also contended that in some cases, endangered species requirements have been applied to districts that were already in existence, resulting in permitting costs that had to be incurred before planned district facilities could be constructed. SWTC also commented that in some instances, the permit not only allowed the construction of district facilities, but also benefitted the public by preserving a large area of endangered species habitat. In addition, SWTC argued that because a district may finance all of the costs of the district facilities that an endangered species permit authorizes to be built, then a district should also be allowed to finance 100% of the costs associated with obtaining the endangered species permit.

MEC commented that protection of endangered species is a matter of public policy and results in other environmental benefits, such as better stormwater control and improved water quality. Therefore, MEC questioned why the commission would consider any rules that would allow a district to finance anything less than 100% of endangered species permitting costs.

Smith also encouraged the commission to allow districts to finance 100% of these costs. Smith commented that the significant costs associated with Endangered Species Act requirements often cause developers to try to avoid obtaining permits under the act, although compliance results in substantial public benefits such as preservation of species and natural open areas. Smith therefore supports any opportunity to ameliorate the costs of complete compliance with the Endangered Species Act.

The commission agrees with these comments in part and has revised §293.44(a)(22) and §293.51(b)(7) from the proposal. The commission acknowledges that the preservation and conservation of endangered species is an important activity that provides significant public benefits. The commission also acknowledges that an endangered species permit is often necessary before district facilities such as water and wastewater treatment plants may be constructed. Unlike a stormwater or other water quality permit, however, endangered species permits do not relate solely to functions performed by the district. Endangered species permits are also necessary to allow the construction of homes and other development within the district. The commission believes that obtaining these permits benefits public purposes, through the conservation of endangered species and by allowing a district to build the facilities necessary to provide district services, but also benefits the private interests of developers operating in the district. Therefore, because an endangered species permit benefits both the developer and the district, the commission also believes that it is appropriate for the developer to finance a portion of the costs of obtaining the permit. Because these permits promote the important public purpose of conserving endangered species, however, the commission has concluded that the costs associated with obtaining these permits are not entirely comparable to other costs that the commission requires to be divided equally between the developer and the district and that districts should be allowed to finance more than 50% of endangered species permitting costs, as was provided in the proposed rules. By requiring the developer to finance some portion of these costs, however, the developer has an incentive to keep costs low which will benefit future property owners in the district.

The commission has therefore adopted §293.44(a)(22), with changes from the proposal, to provide that a district may finance up to 70% of the costs associated with endangered species permits, and that the district's share is not further subject to the developer's 30% contribution as required under §293.47. In other words, the developer is responsible for financing no more than 30% of the total Endangered Species Act costs. The commission has also adopted §293.51(b)(7), with changes from the proposal, to provide that the cost of mitigation sites or payments in lieu of mitigation must be shared between the developer and the district as set out in adopted §293.44(a)(22), rather than shared equally. The adopted rules are consistent with §293.47, which the commission is also amending as part of this rulemaking and which generally requires developers to contribute 30% of district construction costs with certain exceptions. The purpose of §293.47 is to insure the feasibility of district projects.

Section 293.46(3) prohibits reimbursement for all costs resulting from changes required by a city or agency after a construction contract is awarded. TC&B, Stratus, Milburn, Newland, BVD, and JadCo expressed concern that even if all approvals were obtained, the rule amendments, as proposed, would prevent reimbursement if changes were necessitated by a governmental entity after construction commences. TC&B also noted that the proposed language appears to conflict with §293.81, which allows districts to issue change orders in response to changes in regulatory criteria. TC&B suggested that no change be made to the existing rule. Stratus, Milburn, Newland, BVD, and JadCo suggested that §293.46(3) be changed to clarify that denial of reimbursement applies only to a developer who awards a construction contract or commences construction before obtaining all necessary plan approvals. V&E also suggested that §293.46(3) be clarified to provide that change orders are valid if they are issued because a city or other government entity requires changes after approving plans.

The commission agrees with these comments, in part, and adopts the provision, with changes, to clarify that the developer

may not be reimbursed unless all required state and local approvals were obtained prior to contract award. The commission does not agree with the comments that the provision conflicts with §293.81 or that §293.46(3) should address change orders. Existing §293.81 adequately addresses the circumstances under which change orders may be issued and allows for change orders for contracts which comply with the requirements of §293.46.

SUBCHAPTER B. CREATION OF WATER DISTRICTS

30 TAC §293.11, §293.12

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state. The amendments to §293.12 are also adopted under TWC, §49.011, which requires the commission to establish by rule a procedure for public notice of applications for creation of general law water districts.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 25, 2000.

TRD-200005963
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 14, 2000
Proposal publication date: April 21, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER D. APPOINTMENT OF DIRECTORS

30 TAC §293.32, §293.33

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 25, 2000.

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♦ ♦ ♦

SUBCHAPTER E. ISSUANCE OF BONDS

30 TAC §§293.42, 293.44, 293.46-293.48, 293.51, 293.54, 293.59

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state. The amendments to §293.42 are also adopted under TWC, §5.235, which provides the commission authority to adopt rules to set fees for the processing of bond applications.

§293.42. Submitting of Documents and Order of Review.

(a) Applicants shall submit all of the required data at one time in one package. Applications may be returned for completion if they do not satisfy the requirements and conform to the bond application report format.

(b) Applicants may qualify for an expedited review which entitles them to a commitment from staff to have a completed memorandum to the commission within 60 calendar days following submission of the application. In order to qualify for this expedited review, the applicant must submit a bond application that complies with §293.43 of this title (relating to Application Requirements). The district's bond counsel, engineer, and financial advisor must also sign a certificate which is worded as shown on the form provided by the executive director. The certificate must state that the district's bond counsel, engineer, and financial advisor have reviewed the bond application, that the application is accurate and complete, that the application includes specific documents identified on the form, and that the district's financial status has reached the thresholds provided in §293.59 of this title (relating to Economic Feasibility of Project) as shown by its existing assessed valuation and completion of facilities. If the executive director finds the documentation to be insufficient, the application will not be expedited and an administrative review letter will be sent. A bond applicant that seeks conditional approval on the basis of receiving an acceptable credit rating or credit enhanced rating as provided in §293.47(b)(4) and (5) and (c) of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer) may qualify for expedited review. A bond applicant that seeks approval on the basis of a ratio of debt to certified assessed valuation of 10% or less must provide evidence of that ratio as provided in §293.47(b)(3) of this title to qualify for the expedited review.

(c) Applicants may qualify for an expedited review which entitles them to a commitment from staff to have a completed memorandum to the commission within 45 calendar days following submission of the application. If the executive director finds the documentation to be insufficient, the application will not be expedited and an administrative review letter will be sent. In order to qualify for this expedited review, the applicant must submit a bond application that includes all of the items listed in §293.43 of this title and the following:

(1) a certificate signed by the district's president, engineer, financial advisor, and bond counsel, which is worded as shown on the form provided by the executive director, which states that less than 20% of the total land area in the district is undeveloped with underground facilities, that the facilities contained in the bond application are for water plant facilities, wastewater treatment plant facilities, major lines to or between such facilities, remote water wells, or for any improvement necessary to serve development in the district as described in §293.83(c)(3) of this title (relating to District Use of Surplus Funds

for any Purpose and Use of Maintenance Tax Revenue for Certain Purposes), that no funds are being expended for developer facilities as described in §293.47(d) of this title and no funds are being used to reimburse a developer as described in Texas Water Code, §49.052(d), that the district expects to have a no-growth tax rate of $0.75 or less calculated in accordance with §293.59(d) of this title after issuance of the proposed bonds, and that the district is legally authorized to issue the bonds;

(2) a debt service schedule and related cash flow schedule showing a no-growth tax rate as defined in §293.59(d) of this title of $0.75 or less; and

(3) a certificate of assessed valuation or estimated assessed valuation as defined by §293.59(d) of this title reflecting a value sufficient to support the no-growth tax rate in paragraph (2) of this subsection.

(d) A bond application that does not qualify for an expedited review pursuant to subsection (b) or (c) of this section may not become eligible for expedited review unless the applicant requests withdrawal of the pending application in writing and resubmits the filing fee and completed certificate in accordance with subsection (b) or (c) of this section. For the purposes of this subsection, a new receipt date will be assigned and the time requirements of subsection (b) and (c) of this section shall commence upon the date of submission of the signed certificate.

(e) If a complete bond application is pending on the effective date of this section, an applicant may qualify for expedited review under subsection (b) or (c) of this section only upon the submission of a complete response to all outstanding requests for additional information and a certificate stating that a complete application is on file in accordance with subsection (b) or (c) of this section.

§293.44. Special Considerations.

(a) Developer projects. The following provisions shall apply unless the commission, in its discretion, determines that application to a particular situation renders an inequitable result.

(1) A developer project is a district project which provides water, wastewater or drainage service for property owned by a developer of property in the district, as defined by Water Code, §49.052(d).

(2) Except as permitted pursuant to paragraph (8) of this subsection, the costs of joint facilities that benefit the district and others should be shared on the basis of benefits received. Generally, the benefits are the design capacities in the joint facilities for each participant. Proposed cost sharing for conveyance facilities should account for both flow and inflow locations.

(3) The cost of clearing and grubbing of district facilities easements that will also be used for other facilities that are not eligible for district expenditures, such as roads, gas lines, telephone lines, etc., should be shared equally by the district and the developer, except where unusually wide road or street rights-of-way or other unusual circumstances are present, as determined by the commission. The district's share of such costs is further subject to any required developer contribution pursuant to §293.47 of this title (relating to Thirty Percent of District Construction Costs to be Paid by Developer). The applicability of the competitive bidding statutes and/or regulations for clearing and grubbing contracts let and awarded in the developer's name shall not apply when the amount of the estimated district share, including any required developer contribution does not exceed 50% of the total construction contract costs.

(4) A district may finance the cost of spreading and compacting of fill in areas that require the fill for development purposes, such as in abandoned ditches or floodplain areas, only to the extent necessary to dispose of the spoil material (fill) generated by other projects of the district.

(5) The cost of any clearing and grubbing in areas where fill is to be placed should not be paid by the district unless the district can demonstrate a net savings in the costs of disposal of excavated materials when compared to the estimated costs of disposal off site.

(6) When a developer changes the plan of development requiring the abandonment or relocation of existing facilities, the district may pay the cost of either the abandoned facilities or the cost of replacement facilities, but not both.

(7) When a developer changes the plan of development requiring the redesign of facilities that have been designed, but not constructed, the district may pay the cost of the original design or the cost of the redesign, but not both.

(8) A district shall not finance the pro rata share of oversized water, sewer or drainage facilities to serve areas outside the district unless:

(A) such oversizing:

(i) is required by or represents the minimum approvable design sizes prescribed by local governments or other regulatory agencies for such applications;

(ii) does not benefit out-of-district land owned by the developer;

(iii) does not benefit out-of-district land currently being developed by others; and

(iv) the district agrees to use its best efforts to recover such costs if a future user outside the district desires to use such capacity; or

(B) the district has entered into an agreement with the party being served by such oversized capacity which provides adequate payment to the district to pay the cost of financing, operating and maintaining such oversized capacity; or

(C) the district has entered into an agreement with the party to be served or benefitted in the future by such oversized capacity, which provides for contemporaneous payment by such future user of the incremental increase in construction and engineering costs attributable to such oversizing and which, until the costs of financing, construction, operation and maintenance of such oversized facilities are prorated according to paragraph (2) of this subsection, provides that

(i) the capacity or usage rights of such future user shall be restricted to the design flow or capacity of such oversized facilities multiplied by the fractional engineering and construction costs contemporaneously paid by such future user, and

(ii) such future user shall pay directly allocable operation and maintenance costs proportionate to such restricted capacity or usage rights.

(9) Railroad, pipeline, or underground utility relocations that are needed because of road crossings should not be financed by the district; however, if such relocations result from a simultaneous district project and road crossing project, then such relocation costs should be shared equally. The district's share of such costs is further subject to any required developer contribution pursuant to §293.47 of this title.

(10) Engineering studies, such as topographic surveys, soil studies, fault studies, boundary surveys, etc., that contain information that will be used both for district purposes and for other purposes, such as roadway design, foundation design, land purchases, etc., should be

shared equally by the district and the developer, unless unusual circumstances are present as determined by the commission. The district's share of such costs is further subject to any required developer contribution pursuant to §293.47 of this title.

(11) Land planning, zoning and development planning costs should not be paid by the district, except for conceptual land use plans required to be filed with a city as a condition for city consent to creation of the district.

(12) The cost of constructing lakes or other facilities that are part of the developer's amenities package should not be paid by the district. The cost of combined lake and detention facilities should be shared with the developer on the basis of the volume attributable to each use, and land costs should be shared on the same basis, unless the district can demonstrate a net savings in the cost of securing fill and construction materials from such lake or detention facilities, when compared to the costs of securing such fill or construction materials off-site for another eligible project.

(13) Bridge and culvert crossings shall be financed in accordance with the following provisions.

(A) The costs of bridge and culvert crossings needed to accommodate the development's road system shall not be financed by a district unless such crossing consists of one or more culverts with a combined cross-sectional area of not more than nine square feet. The district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(B) Districts may fund the costs of bridge and culvert crossings needed to accommodate the development's road system that are larger than those specified in subparagraph (A) of this paragraph which cross channels other than natural waterways with defined bed and banks and are necessary as a result of required channel improvements subject to the following limitations:

(i) the drainage channel construction or renovation must benefit property within the district's boundaries;

(ii) the costs shall not exceed a pro rata share based on the percent of total drainage area of the channel crossed, measured at the point of crossing, calculated by taking the total cost of such bridge or culvert crossing multiplied by a fraction, the numerator of which is the total drainage area located within the district upstream of the crossing, and the denominator of which is the total drainage area upstream of the crossing;

(iii) the district shall be responsible for not more than 50% of the pro rata share as calculated under this subsection, subject to the developer's 30% contribution as may be required by §293.47 of this title.

(C) The cost of replacement of existing bridges and culverts not constructed or installed by the developer, or the cost of new bridges and culverts across existing roads not financed or constructed by the developer, may be financed by the district, except that any costs of increasing the traffic carrying capacity of bridges or culverts shall not be financed by the district.

(14) In evaluating district construction projects, including those described in paragraphs (1) - (12) of this subsection, primary consideration shall be given to engineering feasibility and whether the project has been designed in accordance with good engineering practices, notwithstanding that other acceptable or less costly engineering alternatives may exist.

(15) Bond issue proceeds will not be used to pay or reimburse consultant fees for the following:

(A) special or investigative reports for projects which, for any reason, have not been constructed and, in all probability, will not be constructed;

(B) fees for bond issue reports for bond issues consisting primarily of developer reimbursable and approved by the commission but which are no longer proposed to be issued;

(C) fees for completed projects which are not and will not be of benefit to the district;

(D) provided, however, that the foregoing limitations shall not apply to regional projects or special or investigative reports necessary to properly evaluate the feasibility of alternative district projects.

(16) Bond funds may be used to finance costs and expenses necessarily incurred in the organization and operation of the district during the creation and construction periods as follows:

(A) Such costs were incurred or projected to incur during creation, and/or construction periods which includes periods during which the district is constructing its facilities or there is construction by third parties of above ground improvements within the district.

(B) Construction periods do not need to be continuous; however, once reimbursement for a specific time period has occurred, expenses for a prior time period are no longer eligible. Payment of expenses during construction periods is limited to five years in any single bond issue.

(C) Any reimbursement to a developer with bond funds is restricted to actual expenses paid by the district during the same five year period for which application is made pursuant to this subsection.

(D) The district may pay interest on the advances under this paragraph. Section 293.50 of this title (relating to Developer Interest Reimbursement) applies to interest payments for a developer and such payments are subject to a developer reimbursement audit.

(17) In instances where creation costs to be paid from bond proceeds are determined to be excessive, the executive director may request that the developer submit invoices and cancelled checks to determine whether such creation costs were reasonable and customary and necessary for district creation purposes. Such creation costs shall not include planning, platting, zoning, other costs prohibited by paragraphs (10) and (14) of this subsection, and other matters not directly related to the district's water, sewage, and drainage system, even if required for city consent.

(18) The district shall not purchase, pay for, or reimburse the cost of facilities, either completed or incomplete, from which it has not and will not receive benefit, even though such facilities may have been at one time required by a city or other entity having jurisdiction.

(19) The district shall not enter into any binding contracts with a developer which compel the district to become liable for costs above those approved by the commission.

(20) A district shall not purchase more water supply or wastewater treatment capacity than is needed to meet the foreseeable capacity demands of the district, except in circumstances where:

(A) lease payments or capital contributions are required to be made to entities owning or constructing regional water supply or wastewater treatment facilities to serve the district and others;

(B) such purchases or leases are necessary to meet minimum regulatory standards; or

(C) such purchases or leases are justified by considerations of economic or engineering feasibility.

(21) The district may finance those costs, including mitigation, associated with flood plain regulation and wetlands regulation, attributable to the development of water plants, wastewater treatment plants, pump and lift stations, detention/retention facilities, drainage channels, and levees. The district's share shall not be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(22) The district may finance those costs associated with endangered species permits. Such costs shall be shared between the district and the developer with the district's share not to exceed 70% of the total costs unless unusual circumstances are present as determined by the commission. The district's share shall not be subject to the developer's 30% contribution under §293.47 of this title. For purposes of this subsection, "endangered species permit" means a permit or other authorization issued under §7 or §10(a) of the federal Endangered Species Act of 1973, 16 United States Code, §1536 and §1539(a).

(23) The district may finance 100% of those costs associated with federal stormwater permits. The district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title. For purposes of this subsection, "federal stormwater permit" means a permit for stormwater discharges issued under the federal Clean Water Act, including National Pollutant Discharge Elimination System permits issued by EPA and Texas Pollutant Discharge Elimination System permits issued by the commission.

(b) All projects.

(1) The purchase price for existing facilities not covered by a preconstruction agreement or otherwise not constructed by a developer in contemplation of resale to the district or if constructed by a developer in contemplation of resale to the district and the cost of the facilities is not available after demonstrating a good faith effort to locate the cost records should be established by an independent appraisal by a registered professional engineer hired by the district. The appraised value should reflect the cost of replacement of the facility less repairs and depreciation taking into account the age and useful life of the facility and economic and functional obsolescence as evidenced by an on-site inspection.

(2) Contract revenue bonds proposed to be issued by districts for facilities providing water, sewer, or drainage, pursuant to contracts authorized under Local Government Code, §402.014, or other similar statutory authorization, will be approved by the commission only when the city's pro rata share of debt service on such bonds is sufficient to pay for the cost of the water, sewer, or drainage facilities proposed to serve areas located outside the boundaries of the service area of the issuing district.

(3) When a district proposes to obtain water or sewer service from a municipality, district, or other political subdivision and proposes to use bond proceeds to compensate the providing political subdivision for the water or sewer services on the basis of a capitalized unit cost, e.g., per connection, per lot, or per acre, the commission will approve the use of bond proceeds for such compensation under the following conditions:

(A) the unit cost is reasonable;

(B) the unit cost approximates the cost to the entity providing the necessary facilities, or providing entity has adopted a uniform service plan for such water and sewer services based on engineering studies of the facilities required; and

(C) the district and the providing entity have entered into a contract which will:

(i) specifically convey either an ownership interest in or a specified contractual capacity or volume of flow into or from the system of the providing entity;

(ii) provide a method to quantify the interest or contractual capacity rights;

(iii) provide that the term for such interest or contractual capacity right is not less than the duration of the maturity schedule of the bonds; and

(iv) contain no provisions which could have the effect of subordinating the conveyed interest or contractual capacity right to a preferential use or right of any other entity.

§293.46. Construction Prior to Commission Approval.

The developer may proceed with financing or construction of water, wastewater, and drainage facilities contemplated for purchase by the district prior to commission approval of the bond issue designed to finance the project under the following conditions.

(1) Prior to entering into construction contracts for such facilities, the developer and district shall execute an agreement setting out the terms of reimbursement, providing for the use of the facilities by the district until reimbursement and providing that the construction contract will be awarded and administered in accordance with commission regulations and applicable statutes relating to districts. If the district has not been created at the time of the execution of the construction contracts, the developer and district shall execute an agreement as described in the preceding sentence within 60 days after confirmation of the district. The contract shall not bind the district to payment of costs above that approved by the commission. If such an agreement is not entered into within the time period specified above, and such actions of the developer are not subsequently ratified and approved by the district in a subsequent agreement with the developer, the developer shall be denied interest costs.

(2) All construction plans, specifications, and contract documents as set forth in §293.62 of this title (relating to Construction Related Documents To Be Submitted to the Commission), change orders and supporting engineering data for construction or installation of the facilities shall be submitted to the appropriate commission field office in a timely manner, together with evidence that the materials have been filed with and approved by the district and have been noted in the district's minutes (if the district has not been created, the documents shall be filed with the district within 30 days after creation).

(3) All construction plans and specifications for proposed projects must be approved by all cities and agencies having jurisdictional responsibilities over the district prior to construction contract award by the developer. Unless all required state and local approvals were obtained prior to contract award, a developer cannot be reimbursed for any additional costs resulting from changes required by the city or agency having jurisdictional responsibility after the construction contract is awarded.

(4) The appropriate commission field office shall be notified of the bid opening at least five days prior to the opening.

(5) Contract advertising and award and construction and installation of facilities shall be accomplished in the manner required by the general law for districts and in conformity with commission rules. If substantial compliance with statutory requirements is not achieved, reimbursement to a developer may be limited to the final construction contract amount, or a lesser amount, if more reflective of the actual value of such facilities as may be determined by the commission, without developer interest.

(6) The filing of the materials provided herein or construction inspections by the commission shall not constitute approval of the project in any manner. A person proceeding with construction of a project prior to its formal approval by the commission shall do so with no assurance that public funds will be authorized for acquiring the facilities. Construction which is not in the best interests of the district, and improper or ineligible expenditures, will be disallowed for district purchase.

(7) The commission will not approve payment on completion-type construction contracts unless alternate bids are received on monthly pay-type construction contracts, and then only if it is clearly indicated that it is to the district's financial advantage to assume the payment on completion-type construction contracts.

(8) Commission representatives shall have the right to inspect the facilities construction at any time and without notice while construction activities are being carried on. The appropriate commission field office shall be notified of the date and time of the final inspection for each construction contract at least five days prior to the inspection.

§293.47. Thirty Percent of District Construction Costs to be Paid by Developer.

(a) It has been determined by experience that some portion of the cost of district water, wastewater, and drainage facilities in certain districts should be paid by a developer to insure the feasibility of the construction projects of such districts. Accordingly, this section applies to all districts except:

(1) a district which has a ratio of debt (including proposed debt) to certified assessed valuation of 10% or less; provided, however, that any bond issue proposed to be exempted on this basis must include funds to provide sufficient capacity in facilities exempted in subsection (d) of this section to serve all connections upon which the feasibility is based or to be financed by the bond issue;

(2) a district which obtains an acceptable credit rating on its proposed bond issue pursuant to the provisions hereof;

(3) a district which obtains a credit enhanced rating on its proposed bond issue and which the executive director, in his discretion, finds to be feasible and justified, based upon satisfactory evidence submitted by the district, without such developer contribution; or

(4) a district which has entered into a strategic partnership agreement, interlocal agreement, or other contract with a political subdivision or an entity created to act on behalf of a political subdivision under which the political subdivision or other entity has agreed to provide sales and use taxes or other revenues generated by a project to the district as consideration for the district's development or acquisition of water, wastewater, and drainage facilities and:

(A) water, sewer, drainage, and street and road construction are complete in accordance with §293.59(k)(6)(A) - (E) of this title (relating to Economic Feasibility of Project);

(B) the projected value of houses, buildings, and/or other improvements are complete in accordance with §293.59(k)(7) of this title;

(C) the district can demonstrate a history of revenue generated by the project;

(D) the district's projected ad valorem tax rate necessary to amortize the district's debt at the district's current assessed valuation after accounting for the contract payments pledged to the district's debt would be equal to or less than the projected ad valorem tax rate for a district with an assessed valuation sufficient to qualify under paragraph (1) of this subsection; and

(E) the district's combined no-growth tax rate does not exceed the amounts prescribed in §293.59(k)(11)(C) of this title.

(b) For purposes of this chapter, the following definitions shall apply:

(1) Developer is as defined in Water Code, §49.052(d);

(2) Debt includes all outstanding bonds of the district, all bonds approved by the commission and not yet sold (less such portions thereof for which the authority to issue such bonds has lapsed or been voluntarily canceled), all bonds of the district approved by other entities which are exempt from commission approval and not yet sold, all proposed bonds with respect to which applications for project and bond approvals are presently on file and pending with the commission, and all outstanding bond anticipation notes which are not to be redeemed or paid with proceeds derived from such pending bond application(s). If more than one application for approval of project and bonds is pending, the ratio of debt to value shall be calculated consecutively with respect to each application in the order of filing of each application. For the purpose of this subsection, the amount of such outstanding bond anticipation notes shall be deemed to be the sum of:

(A) the principal amount of the bond anticipation notes;

(B) the accrued interest thereon; and

(C) all bond issuance costs relating to the refunding of such bond anticipation notes, including capitalized interest.

(3) Certified assessed valuation is a certificate provided by the central appraisal district in which the district is located either certifying the actual assessed valuation as of January 1, or estimating the assessed valuation as of any other date.

(4) Acceptable credit rating is a rating of Baa3 or higher from Moody's Investors Service, Inc., or BBB- or higher from Standard and Poors Corporation or BBB- or higher from Fitch IBCA, which rating is obtained by the district independent of any municipal bond guaranty insurance, guarantee, endorsement, assurance, letter of credit, or other credit enhancement technique furnished by or obtained through any other party.

(5) Credit enhanced rating is a rating of Aa or higher from Moody's Investors Service, Inc. or AA or higher from Standard and Poors Corporation, or AA or higher from Fitch IBCA, which rating is obtained by the district by virtue of municipal bond guaranty insurance, furnished by or obtained through any other party; provided, however, that such municipal bond guaranty insurance shall be unconditional, irrevocable, and in full force and effect for the scheduled maturity of the entire bond issue; and provided, further, that payment of the premium on such municipal bond guaranty insurance shall not be made from district funds except through the establishment of the interest rate or premium or discount on such bonds.

(c) If a district anticipates receipt of a certified assessed valuation evidencing a debt ratio of 10% or less or an acceptable credit rating, or a credit enhanced rating, as provided in subsection (a) of this section, prior to the bond sale identified in the bond application being considered, the district may, at its discretion, request a conditional waiver to the developer cost participation requirements of this section as follows.

(1) At the time the district makes application for approval of its project and bonds, the district may include a written request for a conditional waiver of the 30% developer cost participation requirements of this section to be considered by the commission, which request shall specifically state on which basis the district requests such waiver. The waiver request shall be accompanied by a written statement from the district's financial advisor stating that, in his opinion, the

district can reasonably be expected to qualify for either an acceptable credit rating or a credit enhanced rating, and that the district financing is feasible without the developer contribution.

(2) Except for districts which have achieved a debt ratio of 10% or less at the time of application, the cost summary in support of any bond application proposed to be exempted by virtue of subsection (a) of this section must show the district bond issue requirement, cash flow, and tax rate with and without the developer contribution.

(3) If a conditional waiver is granted by the commission in anticipation of the district obtaining an acceptable credit rating, a credit enhanced rating, or a certified assessed valuation evidencing a ratio of debt to certified assessed valuation of 10% or less, no bonds shall be sold by the district unless such acceptable or enhanced credit rating is obtained or such debt ratio is achieved.

(4) If a bond issue is approved on the basis of obtaining an acceptable credit rating, and an acceptable credit rating is not obtained, and if the district wishes to proceed with such bond issue on the basis of an enhanced credit rating, the district shall not issue the bonds unless the district requests and obtains a commission order approving the bonds to be sold with an enhanced credit rating and finding the financing to be feasible without the developer contribution.

(5) Upon request by the district, the commission order approving a bond issue without developer contribution may authorize an alternative amount of bonds to be issued with developer contribution in the event compliance with subsection (a) of this section is not achieved. Such order may contain other conditions otherwise applicable to a bond issue requiring developer contribution.

(d) Except as provided in subsection (a) of this section or in the remaining provisions of this subsection, the developer shall contribute to the district's construction program an amount not less than 30% of the construction costs for all water, wastewater and drainage facilities, including attendant engineering fees and other related expenses, with the following exemptions:

(1) wastewater treatment plant facilities, including site costs;

(2) water supply, treatment and storage facilities, including site costs;

(3) stormwater pump stations associated with levee systems, including site costs;

(4) that portion of water and wastewater lines from the district's boundary to the interconnect, source of water supply, or wastewater treatment facility as necessary to connect the district's system to a regional, city, or another district's system;

(5) pump stations and force mains located within the boundaries of the district which directly connect the district's wastewater system to a regional trunkline or a regional plant, regardless of whether such line or plant is located within or without the boundaries of the district;

(6) segments of water transmission or wastewater trunk lines of districts or other authorities which are jointly shared or programmed to be jointly shared between the district and another political subdivision whether inside or outside of a participating district or authority;

(7) water and wastewater lines serving or programmed to serve 1,000 acres or more within the district;

(8) drainage channels, levees and other flood control facilities and stormwater detention facilities, or contributions thereto, meeting the requirements of §293.52 of this title (relating to Storm Water Detention Facilities) or §293.53 of this title (relating to District Participation in Regional Drainage Systems), and which are serving or are programmed to serve either areas of 2,000 acres or more or, at the discretion of the commission, areas of less than 2,000 acres, as the commission may deem appropriate to encourage regional drainage projects. Construction cost paid in lieu of such a contribution does not qualify as an exemption unless the facility constructed is itself exempt;

(9) land costs for levees or stormwater detention facilities; and

(10) alternate water supply interconnects between a district and one or more other entities.

(11) lease payments for central plant capacity not included in operating expenses.

(e) A developer will also be required to contribute toward construction costs in districts which are within the limits of a city, except for:

(1) facilities that were completed or under construction as of December 1, 1986;

(2) districts previously created or in the process of creation which, prior to December 1, 1986, have submitted petitions to the executive director requesting creation; or

(3) districts that are providing facilities and services on behalf of, in lieu of, or in place of the city and which have contracted with the city to receive rebates of 65% or more of the city taxes actually collected on property located within the district.

(f) The developer's contribution toward construction cost shall be reduced by the amount that the developer is required by a city, state, or federal regulatory agency to pay toward costs that are otherwise eligible for district financing.

(g) The developer must enter into an agreement with the district, secured by an escrow of funds in the name of the district, a letter of credit or a deferral of reimbursement of bond funds owed (as provided in subsection (k) of this section) prior to advertisement for sale of the district's bonds specifying that if the construction project is not completed because of the developer's failure to pay its share of utility construction costs and/or engineering costs within a reasonable and specified period of time, the district may draw upon the letter of credit to pay the developer's share of construction costs and/or engineering costs. The agreement shall also provide that a default by the developer under the agreement shall be deemed to have occurred if: the letter of credit is not renewed for an additional year at least 45 days prior to its expiration date; or the construction project has not been completed as certified by the district's engineer at least 45 days prior to its date of expiration. The letter of credit must be from a financial institution meeting the qualifications and specifications as specified in §293.56 of this title (relating to Requirements for Letters of Credit (LOC)), must be valid for a minimum of one year from the date of issuance, and should provide that upon default by the developer under the agreement, the financial institution shall pay to the district, upon written notice by the district or the executive director, the remaining balance of the letter of credit. Although such letters of credit provide for payment to the district upon notice by the executive director, the district remains solely responsible for the administration of such letters of credit and for assuring that letters of credit do not expire prior to completion of the construction project(s) specified therein.

(h) Actual payment of funds for the district's construction project shall be made by the developer to the district within 10 days following the developer's receipt of billing. The developer's applicable share will be adjusted by the overruns or underruns on

developer participation items and will be shared by the developer at the same percentage utilized in determining his initial contribution.

(i) The district (or district engineer) shall forward to the commission's executive director copies of the board approved monthly construction contract pay estimates, engineering fee statements and/or other adequate documentation reflecting payment of the developer's required contribution to construction and engineering costs.

(j) A district may submit other information and data to demonstrate that all or any part of this section should not apply and/or request that it be waived.

(k) If the bond issue includes funds owed the developer in an amount which exceeds that amount required as the developer's contribution and the estimated costs of required street and road construction, the district may request a waiver of the requirement of a letter of credit if the developer enters into an agreement with the district whereby the developer agrees to defer receipt of payment of a sufficient amount of such owed funds until the facilities for which guarantees are required have been completed and certified complete by the district's engineer. Any such agreement shall be made a part of the agreement required by subsection (g) of this section if the funds are being withheld for the developer 30% contribution of construction costs, and if appropriate, such agreement shall be made part of the street and road construction Agreement required by §293.48 of this title, if the funds are being withheld for guaranteeing street and road construction costs.

§293.51. Land and Easement Acquisition.

(a) Water, sanitary sewer, storm sewer, and drainage facilities easements. All easements required within a district's boundaries for water lines, sanitary sewer lines, storm sewer lines, sanitary control at water plants, noise and odor control at wastewater treatment plants, and the right of way necessary for a drainage swale or ditch constructed generally along a street or road right of way in lieu of a storm sewer, shall be dedicated to the district or the public by the developer without payment or reimbursement from the district. If any easements are required for such facilities on land not owned by a developer in the district, the district may acquire such land at its appraised market value, and may also pay legal, engineering, surveying, or court fees and expenses incurred in acquiring such land, and §293.47 of this title (relating to Thirty Percent of District Construction Costs to be Paid by Developer) shall not apply to such acquisition.

(b) Land acquisition. A district may acquire the following in fee simple from any person, including the developer, in accordance with this section, and §293.47 of this title shall not apply to such acquisition:

(1) plant sites, including required sanitary control at water plants and noise and odor control at wastewater treatment plants;

(2) lift or pump station sites;

(3) drainage channels other than those described in subsection (a) of this section and other than those which are natural waterways with defined bed and banks;

(4) detention/retention pond sites;

(5) levees;

(6) mitigation sites for compliance with flood plain regulation and wetlands regulation or payments in lieu of mitigation;

(7) mitigation sites for compliance with endangered species permits or payments in lieu of mitigation, the cost of which shall be shared between the district and the developer as provided in §293.44(a)(22) of this title (relating to Special Considerations).

(c) Price of land acquisition. If a district acquires such a site, as described in subsection (b) of this section, from a developer within the district or subsequent owner of developer reimbursables, the price shall be determined by adding to the price paid by the developer for such land or easement in a bona fide transaction between unrelated parties the developer's actual taxes and interest paid to the date of acquisition by the district. The interest rate shall not exceed the net effective interest rate on the bonds sold, or the interest rate actually paid by the developer for loans obtained for this purpose, whichever is less. If a developer uses its own funds rather than borrowed funds, the net effective interest rate on the bonds sold shall be applied. Provided, however, if the executive director determines that such price appears to exceed the fair market value of such land or easement, he may require an appraisal to be obtained by the district from a qualified independent appraiser and payment to the seller may be limited to the fair market value of such land as shown by the appraisal; if the seller acquired the land after the improvements to be financed by the district were constructed, the price shall be limited to the fair market value of such land or easement established without the improvements being constructed; or if the seller acquired the land more than five years before the creation of the district and the records relating to the actual price paid and the taxes and interest costs are impossible or difficult to obtain, the district, upon executive director approval, may purchase such site at fair market value based on an appraisal prepared by a qualified, independent appraiser. If the land or easement needed by the district is being acquired based on the appraised value, the application to the commission for approval to purchase such site must contain a request by the district to acquire the site in such manner and must explain the reason the seller is unable to provide price and carrying cost records. If the land or easement needed by the district is being acquired from an entity other than a developer or subsequent owner of developer reimbursables in the district, the district may pay the fair market value established by a qualified, independent appraiser, and may also pay legal, engineering, surveying, or court fees and expenses incurred in acquiring such land or easement.

(d) Joint stormwater detention/water amenity facilities. If a detention or retention pond is also being used as an amenity by the developer, payment to the developer shall be limited to that cost that is associated only with the drainage function of the facility. The land costs of combined water amenity and detention facilities should be shared with the developer on the basis of the volume of water storage attributable to each use.

(e) Land or easements outside the district's boundaries. Land or easements needed for any district facilities outside the district's boundaries may be purchased by the district as part of the district project at a price not to exceed the fair market value thereof. The district may also pay legal, engineering, surveying, or court fees and expenses spent in acquiring such land. If the land or easements are purchased from a developer who owns land within the district, the price paid by the district shall be determined in accordance with subsection (b) of this section and such purchase price shall be subject to the provisions of §293.47 of this title unless the facilities constructed in, on, or over such land, easements, or rights-of-way are exempt from such contribution or the district is exempt from such contribution under the terms of §293.47 of this title.

(f) Shared land or easements outside the district's boundaries. If the out-of-district land or easement is required for a drainage channel downstream of the district and a portion of such land or easement is or will be needed by another district(s), whether upstream or downstream, for development, the district shall only pay for its proportionate share of the land costs based upon the acreage of the drainage area contributing drainage to such drainage channel at full development. However, in the event there is no developer in another district(s) to dedicate the district's pro rata share of the required land, the district may pay the entire cost to

acquire such land, but the commission shall order the other district(s) to reimburse the district at such time as development occurs in the other district that requires such drainage right-of-way.

(g) Regional facilities. A district may use bond proceeds to acquire the entire site for any regional plant, lift or pump station, detention pond, drainage channel, or levee if the commission determines that regionalization will be promoted and the district will recover the appropriate pro rata share of the site costs, carrying costs, and bond issuance costs from future participants. The district may pay the fair market value based on an appraisal for such regional site and also may pay legal, engineering, surveying, or court fees and expenses incurred in acquiring such land. The commission shall, by separate order, order other districts participating in such regional facility to reimburse the acquiring district a proportionate share of such site costs, carrying costs, and bond issuance costs at such time as development occurs in such other districts requiring such regional site.

(h) Certification by registered professional engineer. Prior to the district purchasing or obligating district funds for the purchase of sites for water plants, wastewater plants, or lift or pump stations, the district must have a registered professional engineer certify that the site is suitable for the purposes for which it intended and identify what areas will need to be designated as buffer zones to satisfy all entities with jurisdictional 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 August 25, 2000.

TRD-200005965
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 14, 2000
Proposal publication date: April 21, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER G. OTHER ACTIONS REQUIRING COMMISSION CONSIDERATION FOR APPROVAL

30 TAC §293.88

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Director, Environmental Law Division
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SUBCHAPTER H. REPORTS

30 TAC §293.96

STATUTORY AUTHORITY

The repeal is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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30 TAC §293.97

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 25, 2000.

TRD-200005968
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 14, 2000
Proposal publication date: April 21, 2000
For further information, please call: (512) 239-1966

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SUBCHAPTER L. DISSOLUTION OF DISTRICTS

30 TAC §293.131

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and

enforce rules necessary to carry out its powers and duties under the laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER M. APPLICATION FOR APPROVAL OF STANDBY FEES

30 TAC §293.143

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 239-1966

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CHAPTER 297. WATER RIGHTS SUBSTANTIVE

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §297.21, Domestic and Livestock Use; and §297.41, General Approval Criteria. These sections are adopted *without changes* to the proposed text as published in the April 21, 2000 issue of the *Texas Register* (25 TexReg 3499).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The rule amendments implement provisions of Senate Bill (SB) 658 (An Act relating to dates by which regional and state water plans must be adopted) and House Bill (HB) 2572 (An Act relating to reservation of riparian rights associated with land sold by certain municipalities), enacted by the 76th Texas Legislature. In addition, this rulemaking clarifies language concerning formal commission enforcement of the requirement of reasonable use as between domestic and livestock users and moves appropriate portions of Chapter 297, pertaining to domestic and livestock use, to Chapter 304 to facilitate enforcement in areas covered by the commission watermaster programs. The rulemaking will also preclude a claim of domestic and livestock exemption for a purchaser of land from a municipality of a certain size, that lies within 5,000 feet of the shoreline of a lake.

SECTION BY SECTION DISCUSSION

The amendments add a sentence to §297.21(b), which implements HB 2572, 76th Legislature, 1999; remove language concerning formal enforcement of the requirement of reasonable use as between domestic and livestock users from §297.21(c); and change the date after which the commission will not issue a water right for municipal purposes in any region that does not have an approved regional water plan, as required by Texas Water Code (TWC), §11.134. These provisions implement SB 658, 76th Legislature, 1999.

Section 297.21(b) provides that persons may construct on their own property reservoirs to impound 200 acre-feet or less for domestic and livestock purposes without obtaining a permit. The commission adds to that section that this exemption is not available to owners of property sold by a municipality having a population of 250,000 or less; owners of land within 5,000 feet of where the shoreline of a lake would be if the lake were filled to its storage capacity; owners whose property was sold without notice; or in the solicitation of bids to the person leasing the land. This subsection notifies people of the exclusion from the domestic and livestock exemption in Local Government Code, §272.001(h), which was adopted by the legislature in HB 2572.

Section 297.21(c) provides that a person's domestic and livestock use may not unreasonably interfere with another person's domestic and livestock use, and that any domestic and livestock dam exempt from permitting under §297.21(b) must allow sufficient inflows through for the benefit of domestic and livestock users downstream. While this is an accurate statement of the rights of domestic and livestock users under the common law, staff working in some of the regional offices have found administrative enforcement problematic, due to the subjective nature of the finds required.

The commission has traditionally advised domestic and livestock users of the necessity to share with one another during times of shortage. Often this type of intervention has been successful in facilitating agreement between the landowners involved on an equitable sharing arrangement. Institutionalizing this procedure into a rule, however, was a change that added some features that are difficult to manage. For example, most domestic and livestock users do not meter their flows. Therefore, in order to enforce this provision, staff must decide by visual examination if passage of inflows is sufficient or if the domestic and livestock use is reasonable. This is usually easy to do on an informal basis, but not so easy to determine with the precision necessary for a formal enforcement proceeding. The commission has not received statutory guidance on these issues. Also, there often is not sufficient staff in the region to police these inflow passage requirements in addition to their other duties. For these reasons, the commission proposes to return to the former, informal procedure. When facilitation by the commission is unsuccessful, the appropriate venue for formal action is a private action in court between the disputing domestic and livestock users.

Additionally, while the requirement that a domestic and livestock user must not unreasonably interfere with the use by other domestic and livestock users is established in common law, the TWC does not explicitly require or authorize the commission to enforce this requirement, except where a watermaster has been appointed.

These amendments take the language in §297.21(c) that states a domestic and livestock reservoir shall pass sufficient inflows to downstream domestic and livestock users out of Chapter 297 which contains general substantive water rights requirements and amends Chapter 304, Watermaster Operations, §304.21(d)(3) to include this requirement. Chapter 304 is an appropriate place in which to insert the requirement that domestic and livestock reservoir owners pass inflows when necessary to protect others. Watermasters have statutory authority to enforce this requirement; they are familiar with the water rights in their areas; they have staff that work solely on water rights enforcement; and they have statutory authority to apportion flows in times of drought. The prohibition against locating a domestic and livestock reservoir on a navigable stream would remain in §297.21(c).

Adopted §297.41(b) provides that, beginning January 5, 2002, the commission will not issue a water right for municipal purposes in a region that does not have an approved regional water plan unless the commission determines that new, changed, or unaccounted for conditions warrant the waiver of this requirement. This amendment implements the change in the date required by SB 658.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has 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 section of the state. The rule amendments will not adversely affect the economy, productivity, competition, jobs, the environment, or public health and safety because the amendments do not relate to jobs, economy, competition, or productivity. 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.

These amendments do not meet any of these four applicability requirements of a major environmental rule. The changes in §297.21(b) and (c) implement state legislation and the deletion from §297.21(c) clarifies the rules used for enforcement in the agency.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rule amendments pursuant to Texas Government Code, §2007.43. The following is a summary of that assessment. The purposes of these amendments are to take a rule out of Chapter 297 that is difficult to enforce and for which adequate agency staff for enforcement does not exist; provide a situation in which a buyer of land from a municipality of a certain size cannot claim a domestic and livestock exemption; and change a date on which the commission shall deny water rights if the application is from an area that does not have an approved regional plan. Removing the inflow passage provision from Chapter 297 reflects current practice of the region and enforcement staff and does not place a burden on private real property. The other two amendments do not affect private real property. The exception from the domestic and livestock exemption is pursuant to state law, and does not adversely affect private real property because this situation will be very rare and the land buyer may still file an application for a water right for this water.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has determined that the rulemaking is subject to the Texas Coastal Management Program (CMP) and has reviewed the amendments for consistency in accordance with the Coastal Coordination Act Implementation Rules in 31 TAC §505, relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies, and in particular 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program. The rulemaking has the potential to affect an action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Applicable goals contained in 31 TAC §501.12, relating to Goals, are to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; and to balance the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhance CNRAs, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone. Of the 18 policies contained in 31 TAC §501.14, relating to Policies for Specific Activities and Coastal Natural Resource Areas, only one, Appropriations of Water, has the potential for being affected by the rulemaking.

The commission has reviewed the rules for consistency with the aforementioned goals and policies of the CMP and has determined the rules are consistent with the intent of the applicable goals and policies and will not result in any significant adverse effects to CNRAs.

HEARINGS AND COMMENTERS

A public hearing was not held on this rulemaking. The commission received three written comments before the public comment period closed on May 22, 2000. Comments were submitted by the Texas Department of Transportation (TxDOT), the Lower Colorado River Authority (LCRA), and an individual attorney.

ANALYSIS OF TESTIMONY

TxDOT stated that the rulemaking had been reviewed and that no comments would be submitted.

LCRA filed comments which urged the commission to reconsider amending §297.21(c) and §304.21(d)(3) for primarily four reasons. LCRA argued that (1) the commission has jurisdiction to

require domestic and livestock users to pass inflows to other domestic and livestock users; (2) the commission should consider alternatives to the deletion of the requirement 297.21(c); (3) the proposed changes will not benefit all of the public; and (4) the proposed changes may result in increased costs to the public, units of the state, and the judicial system.

LCRA's first comment was that the commission has authority to require domestic and livestock users to pass inflows under TWC, §11.121, which requires a person who appropriates water to obtain a permit. The commission must determine whether someone claiming the exemption in §11.142 should be required to obtain a permit. If a person is not in compliance with §11.142, the commission should exercise its discretion and proceed with enforcement.

The commission agrees with the comment, but does not agree that the commission's authority to ascertain whether a person should obtain a permit under TWC, §11.121 necessarily provides authority for the commission to enforce against a domestic and livestock user which is not passing inflows to another domestic and livestock user. Riparian rights were established by case law, not the TWC, which the commission enforces. Section 11.142 only allows the commission to determine how much water a domestic and livestock user has impounded in order to determine whether a permit is needed. Under the TWC, if a domestic and livestock user does not pass inflows, this would not result in the user having to obtain a permit unless the domestic and livestock user was impounding more than 200 acre-feet of water.

The TWC creates special responsibilities for the commission in some circumstances. Where a watermaster has been appointed, the watermaster is to "regulate or cause to be regulated the controlling works of reservoirs and diversion works in times of water shortage, as is necessary to prevent the waste of water or its diversion, taking, storage, or use in excess of the quantities to which the holders of water rights are lawfully entitled." Texas Water Code, §11.327 and §11.454 provides the authority and duty of a watermaster to require passage of inflows by domestic and livestock users during water shortages. This action will protect the rights of domestic and livestock users to the equal priority which they share. This function, however, does not interfere with a persons right to impound water under TWC, §11.142 without a permit.

LCRA's second comment was that the commission should consider alternatives to repealing the language of §297.21(c) requiring the passage of inflows to other domestic an livestock users. LCRA stated that if the commission is going to continue to informally advise domestic and livestock users of the necessity of passing inflows, the public would be better served if the process was clear in the rules. The commission should also consider amending its rules to include mechanisms or methods by which flows can be measured to assist regional personnel. This process would be a more efficient means of enforcing §297.21(c). During times of drought, the commission should maintain a lead role in resolving water disputes that arise under TWC, §11.142.

The commission disagrees that any of the alternatives suggested by LCRA would be more appropriate at this time. Case law provides that domestic and livestock users are limited to reasonable use of the water, which includes a domestic and livestock reservoir owner passing inflows to other domestic and livestock users. However, TWC, §11.142, which the commission enforces, does not require reasonable use of the passage of inflows, but only relates to how much water a person can impound for domestic and livestock use. Also, "reasonable use" and "sufficient inflows" are not easily definable in a rule because they depend on the circumstances of each case. The fact that the relative rights of domestic and livestock users is not governed by statute, are but based only on case-by-case, subjective analyses by courts of equity, makes them inappropriate for administration in the field by agency staff. By contrast, there is a statutory basis and standard for such administration by watermasters during times of shortage, making it both legally appropriate and administratively practical for this provision to be adopted for those districts where a watermaster has been appointed. Those offices have not only the statutory mandate to regulate domestic and livestock impoundments, they are also staffed to perform such tasks.

LCRA's third comment was that the proposed rule amendments do not benefit all of the public because only persons with water rights in two areas of the state have watermasters.

The commission generally agrees with this comment but responds that this is not a change from the current situation. Regions are currently unable to adequately enforce §297.21(c) due to the vagueness of the rule and the shortage of personnel. A watermaster is capable of enforcing provisions of the TWC that the regions cannot, and has broad powers to enforce water rights in times of drought. Watermasters currently have the authority to require this passage of inflows; the change to §304.21(d)(3) is simply to clarify that authority. No changes were made based on this comment.

The LCRA commented that the proposed deletion of language in §297.21(c) relating to the domestic and livestock use may result in increased costs to the public, local governments, state entities, and the state's judicial system.

The commission disagrees with this comment. At the outset, the commission notes that the commenter merely asserts that the proposed rule *may* increase costs. The commenter cites no studies or cost estimates of the effect of the proposed rule. The commission acknowledges that they also do not have exact cost estimates of the effect of the proposed rule. However, the commission does not believe that these amendments will result in any significant cost increases to other state and local government entities.

Under the adopted rules, commission staff could continue to seek informal resolution of disputes among domestic and livestock users and, therefore, lessen the costs associated with dispute resolution either by the administrative process or judicial process. As noted in the preamble to the proposed rule, commission staff have traditionally sought to informally facilitate agreements providing for equitable sharing among domestic and livestock users during times of water shortage. By adopting these rules, commission staff will still be able to attempt such informal agreements.

The vast majority of cases in both the judicial process and the administrative process are settled without the need for a contested case. For those remaining cases that must be resolved by hearing or trial, it is very speculative to assess which might cost more. Both are subject to the same broad discovery process. Both rely on the same rules of evidence. In disputes between domestic and livestock users, most witnesses reside near the points of use. There will be no increased costs to the public because the ultimate decisions of these disputes concerning private property rights will continue to be made where they have always been - in civil court. Because of the administrative and practical difficulties of implementing an administrative system in areas without

watermasters, this burden was never even partly transferred to the agency; therefore, it has always been, as it will remain, one of the private property rights that each owner has and enforces through the court system. The voluntary and informal mediation function traditionally offered by the commission will continue.

Under the historic rule and practice, an aggrieved downstream domestic and livestock user could seek a private remedy in court. The commission is aware of at least one recent case where an aggrieved domestic and livestock user elected to do just that, perhaps because of the difficulties in administrative enforcement the commission has pointed out in its preamble to the proposed rule. Under the circumstances, the adoption of these rules might not result in any real shift in cases of this type from the administrative hearing process to the judicial process.

Nothing in the adopted rule would require other state or local entities to monitor or provide these entities with the jurisdiction to enforce the principles that a persons's domestic and livestock use may not unreasonably interfere with another's domestic and livestock use, and that an exempt dam must allow sufficient inflows to pass through downstream for the benefit of other domestic and livestock users. The adopted rules does not require other state agencies or local entities to do anything. Therefore, the commission has not estimated any cost for such entities in adoption of this rule. No changes to the rules were made based on this comment.

The individual commenter stated that the amendment to §304.21(d)(3) appears to be contrary to TWC, §11.142, which allows a person to impound up to 200 acre-feet normal capacity of water on his own land for domestic and livestock purposes without obtaining a permit. The commenter asserted that the commission is in effect attempting to usurp the authority of the legislature.

The commission disagrees because the purpose of the amendment of §304.21(d)(3) is to clarify a watermaster's authority to regulate water rights during times of drought, not to change the exemption from permitting for impoundments for domestic and livestock purposes. Section 304.21(d)(3) clarifies that in times of shortage, the watermaster may require owners of exempt domestic and livestock reservoirs to pass inflows sufficient for the use of other holders of domestic and livestock rights.

The proposed amendment does not affect the exemption in TWC, §11.142. The TWC creates special responsibilities for the commission in some circumstances. Where a watermaster has been appointed, the watermaster is to "regulate or cause to be regulated the controlling works of reservoirs and diversion works in times of water shortage, as is necessary to prevent the waste of water or its diversion, taking, storage, or use in excess of the quantities to which the holders of water rights are law fully entitled." Texas Water Code, §11.327 and §11.454, provide the authority and duty of a watermaster to require passage of inflows by domestic and livestock users during water shortages. This action will protect the rights of domestic and livestock users to the equal priority which they share. This function, however, does not interfere with a person's right to impound water under TWC, §11.142, without a permit.

No changes to the rule were made based on this comment.

SUBCHAPTER C. USES EXEMPT FROM PERMITTING

30 TAC §297.21

STATUTORY AUTHORITY

The amended sections are adopted under TWC, §5.103 and §5.105, which provide the commission the authority to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas. The amendments are also adopted under HB 2572 and SB 658, 76th Legislature, 1999.

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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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-4712

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SUBCHAPTER E. ISSUANCE AND CONDITIONS OF WATER RIGHTS

30 TAC §297.41

STATUTORY AUTHORITY

The amended sections are adopted under TWC, §5.103 and §5.105, which provide the commission the authority to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas. The amendments are also adopted under HB 2572 and SB 658, 76th Legislature, 1999.

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 304. WATERMASTER OPERATIONS

SUBCHAPTER C. ALLOCATION OF AVAILABLE WATERS

30 TAC §304.21

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §304.21, Watermaster Operations. This section is adopted *without changes* to the proposed text as published in the April 21, 2000 issue of the *Texas Register* (25 TexReg 3502).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The rule amendment clarifies language concerning formal commission enforcement of the requirement of reasonable use as between domestic and livestock users and moves appropriate portions of Chapter 297, pertaining to domestic and livestock use, to Chapter 304 to facilitate enforcement in areas covered by the commission watermaster programs.

SECTION BY SECTION DISCUSSION

Amendments to §297.21(c) provide that a person's domestic and livestock use cannot unreasonably interfere with another person's domestic and livestock use, and that any domestic and livestock dam exempt from permitting under §297.21(b) must allow sufficient inflows to pass through for the benefit of domestic and livestock users downstream. While this is an accurate statement of the rights of domestic and livestock users under the common law, staff working in some of the regional offices have found administrative enforcement problematic, due to the subjective nature of the finds required.

Texas Water Commission and commission staff have traditionally advised domestic and livestock users of the necessity to share with one another during times of shortage. Often this type of intervention has been successful in facilitating agreement between the landowners involved on an equitable sharing arrangement. Institutionalizing this procedure into a rule, however, was a change that added some features that are difficult to manage. For example, most domestic and livestock users do not meter their flows; therefore, in order to enforce this provision, staff must decide by visual examination if passage of inflows is sufficient, or if the domestic and livestock use is reasonable. This is usually easy to do on an informal basis, but not so easy to determine with the precision necessary for a formal enforcement proceeding. The commission has not received statutory guidance on these issues. Also, there often is not sufficient staff in the region to police these inflow passage requirements in addition to their other duties. For these reasons, the commission proposes to return to the former, informal procedure. When facilitation by the commission is unsuccessful, the appropriate venue for formal action is a private action in court between the disputing domestic and livestock users.

There is an exception to this general statement. In watermaster districts, there are specialized personnel whose role it is to regulate diversions during shortage. For that reason, this amendment moves the requirement that domestic and livestock exempt reservoirs pass inflows to other domestic and livestock users from §297.21(c), which is being amended, to a new §304.21(d)(3). Watermasters have broad authority under Texas Water Code (TWC), Chapter 11 to regulate water usage during drought. Under §297.327, watermasters, in times of water shortage, may regulate the works of reservoirs and regulate the distribution of water among water right holders. Chapter 304 is an appropriate place for requiring domestic and livestock exempt reservoirs to pass inflows because watermasters are familiar with the water rights in their areas, have staff that work solely on water rights enforcement, and have statutory authority to apportion flows in times of drought.

Section 304.21(d) provides what a watermaster may do when sufficient flow is not available to meet water right holder's existing declarations of intent to take water or meet the needs of domestic and livestock users. Section 304.21(d)(2) provides that the watermaster can require water right holders with reservoirs to pass inflows to honor these downstream water rights. New §304.21(d)(3) provides that domestic and livestock reservoir owners exempt from permitting under TWC, §11.142 must allow inflows to pass through when necessary for the protection of downstream domestic and livestock users. The commission does not regard this amendment as a change in the law. Watermasters already have this authority under statute, and §304.21(d)(2) can already be read to include domestic and livestock users as persons who can be required to pass inflows. New §304.21(d)(3) simply makes that authority explicit in the rule.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has 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 section of the state. This rule will not adversely affect the economy, productivity, competition, jobs, the environment, or public health and safety. 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.

This rule amendment does not meet any of these four applicability requirements of a major environmental rule. This rule implements state law, not federal, and simply clarifies the watermaster's authority.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rule pursuant to Texas Government Code, §2007.43. The following is a summary of that assessment. The rule clarifies that the watermaster can require a domestic and livestock user with exempt reservoirs to pass inflows to another domestic and livestock user when flows are low. This is not a change in interpretation or policy of this agency. The watermaster has always had this authority. This is not a burden on private real property because the fact that domestic and livestock exempt reservoirs may be required to pass inflows is a current rule of law and does not affect the property value of the right.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the rulemaking and found that the rule amendment is neither identified in Texas Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to actions and rules subject to the Texas Coastal Management Program (CMP), nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC 505.11. Therefore, the rule amendment is not subject to the CMP.

HEARINGS AND COMMENTERS

A public hearing was not held for this rulemaking. The public comment period for the rulemaking closed May 22, 2000. Written comments were submitted by the Texas Department of Transportation (TxDOT), the Lower Colorado River Authority (LCRA), and an individual attorney.

ANALYSIS OF TESTIMONY

TxDOT stated the rulemaking had been reviewed and that no comments would be submitted.

LCRA expressed concerns that repealing language in §297.21(c) and placing the provision in §304.21, would restrict the benefits of that provision to a limited portion of the state.

The LCRA commented neither in support of or opposition to the rulemaking.

The individual commenter stated that the amendment to §304.21(d)(3) appears to be contrary to TWC, §11.142, which allows a person to impound up to 200 acre-feet normal capacity of water on his own land for domestic and livestock purposes without obtaining a permit. The commenter asserted that the commission is in effect attempting to usurp the authority of the legislature.

The commission disagrees because the purpose of the amendment of §304.21(d)(3) is to clarify a watermaster's authority to regulate water rights during times of drought, not to change the exemption from permitting for impoundments for domestic and livestock purposes. Section 304.21(d)(3) clarifies that in times of shortage, the watermaster may require owners of exempt domestic and livestock reservoirs to pass inflows sufficient for the use of other holders of domestic and livestock rights.

The proposed amendment does not affect the exemption in TWC, §11.142. The TWC creates special responsibilities for the commission in some circumstances. Where a watermaster has been appointed, the watermaster is to "regulate or cause to be regulated the controlling works of reservoirs and diversion works in times of water shortage, as is necessary to prevent the waste of water or its diversion, taking, storage, or use in excess of the quantities to which the holders of water rights are law fully entitled." Texas Water Code, §11.327 and §11.454, provide the authority and duty of a watermaster to require passage of inflows by domestic and livestock users during water shortages. This action will protect the rights of domestic and livestock users to the equal priority which they share. This function, however, does not interfere with a person's right to impound water under TWC, §11.142, without a permit. No changes to the rule were made based on this comment.

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103 and §5.105, which authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas.

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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Margaret Hoffman

Director, Environmental Law Division

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CHAPTER 305. CONSOLIDATED PERMITS

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §305.1, Scope and Applicability; §305.2, Definitions; §305.42, Application Required; §305.45, Contents of Application for Permit; §305.54, Additional Requirements for Radioactive Material Licenses; §305.62, Amendment; §305.65, Renewal; §305.67, Revocation and Suspension upon Request or Consent; §305.121, Applicability; §305.123, Reservation in Granting Permit; §305.125, Standard Permit Conditions; and §305.127, concerning Conditions to be Determined for Individual Permits. Sections 305.1, 305.62, and 305.125 are adopted *with changes* to the proposed text as published in the June 16, 2000 issue of the *Texas Register* (25 TexReg 5809). Sections 305.2, 305.42, 305.45, 305.54, 305.65, 305.67, 305.121, 305.123, and 305.127 are adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted changes to Chapter 305 are part of a larger package to revise the agency's radiation control rules. That rule package had three major goals: (1) implement House Bill (HB) 1172, 76th Legislature, 1999, and its amendments to the Texas Health and Safety Code (THSC); (2) implement the recommendations of the TNRCC's Business Process Review Permit Implementation Team (BPR-PIT) to provide for consistency between the administrative procedures of the radiation control program and the rest of the agency; and (3) improve readability and understanding by reorganizing 30 TAC Chapter 336 (relating to Radioactive Substance Rules), by putting its requirements into plain English and eliminating its redundancies and conflicts.

Changes to implement HB 1172 are: (1) amending the definition of low-level radioactive waste to be compatible with the United States Nuclear Regulatory Commission's (NRC's) definition; (2) incorporating the TNRCC's new authority to exempt from application of a rule; (3) adding an exemption to continue or expand on-site low-level radioactive waste disposal licensed before September 9, 1989; and (4) adding exemptions from radioactive material licensing requirements for facilities participating in the Voluntary Cleanup Program or Superfund cleanups.

The BPR-PIT changes are part of an agency-wide effort to make programs consistent where feasible. The agency's management had mandated the consistency effort to make agency processes more efficient and "user friendly." Most of the license application process requirements in Chapter 336 could be modified to be more consistent with the permit application requirements of the rest of the agency. The TNRCC expects a consistent application process to be especially helpful for persons who have multiple permits/licenses from the TNRCC or are seeking consolidated permits. Major adopted changes are: (1) that the radiation control program will begin using the agency's definitions for major and minor amendments; and (2) the radiation control program's license application process was moved for the most part from Chapter 336 to Chapter 281 (relating to Applications Processing)

and Chapter 305 (relating to Consolidated Permits) with technical requirements remaining in Chapter 336 and amended to be consistent with Chapter 305.

The amendments to Chapter 305 make conforming changes per HB 1172, implement recommendations of the agency's BPR-PIT, and improve the readability and understanding of the agency's radiation control program rules.

SECTION BY SECTION DISCUSSION

Subchapter A - General Provisions

Section 305.1(a) was amended to add "and the Texas Health and Safety Code, Chapters 361 and 401" and to delete "and the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7" to apply Chapter 305's requirements for applications, permits, and actions by the commission to activities regulated under THSC, Chapter 401, Radioactive Materials and Other Sources of Radiation and to update the citation for the Texas Solid Waste Disposal Act, Chapter 361. This amendment provides more consistency between the radiation control program and other waste programs regulated by the agency, as recommended by the agency's BPR-PIT without changing the substantive requirements currently in place. Minor editorial changes were made to §305.1 from proposal to adoption to conform with *Texas Register* formatting and style requirements.

Section 305.2 was amended to incorporate definitions contained in THSC, §401.003 and §401.004, as part of the actions to make the radiation control program's license application process consistent with the process used in the other permitting programs within the agency, in accordance with the agency's BPR-PIT recommendations. Amendments are also adopted to correct the citation for the Texas Solid Waste Disposal Act. The definition of "Permit" was amended to add "for radioactive material disposal" and "a radioactive material disposal license," to include radioactive material licenses, which will also be consistent with the definition of "Permit" in the agency's general definitions applicable to more than one regulatory program chapter in Chapter 3. The terms "permit" and "license" may be used interchangeably throughout the agency's rules. The definition of "Radioactive material" was amended to add "A naturally occurring or artificially produced solid, liquid, or gas that emits radiation spontaneously" and delete "A material which is identified as a radioactive material under Texas Civil Statutes, Article 4590f, as amended, and the rules adopted by the Texas Board of Health pursuant thereto." This amendment updates the definition and makes it consistent with the definition of this term in THSC, §401.003(18).

Subchapter C - Application for Permit

Section 305.42(c) was amended to add "low-level radioactive waste disposal" to clarify that licenses issued under Chapter 336, Subchapter H are low-level radioactive waste disposal licenses, and to implement the HB 1172 addition of "low-level" to "radioactive waste." It was also amended to correct the cross-reference to Chapter 336, Subchapter H to reflect its newly adopted title.

Section 305.45(a) was amended to delete "Except for applications under Chapter 336 of this title (relating to Radioactive Substance Rules), each" to extend the agency's standard application content requirements to radioactive material license applications. The changes adopted throughout this section are intended to consolidate most of the radioactive material license application program requirements with those of the other permitting programs. Chapter 336 is concurrently amended to move the application process information to Chapter 305, except most technical requirements remain in Chapter 336. Section 305.45(a)(8)(B)(ii) was amended to delete "and" and add "and radiological" to include radiological properties in the list of properties that must be characterized for applications related to waste or injected fluids. In addition, the term "radioactive" was changed to "radiological" to reflect proper usage. Section 305.45(a)(8)(C) was amended to add "§305.54 of this title (relating to Additional Requirements for Radioactive Material Licenses), §336.207 of this title (relating to General Requirements for the Issuance of a License), §336.513 of this title (relating to Technical Requirements for Active Disposal Sites), §336.617 of this title (relating to Technical Requirements for Inactive Disposal Sites), §336.705 of this title (relating to Content of Applications)," to reference all of the technical information required to be submitted in the supplemental technical report for radioactive material license applications. Former §305.45(c) was deleted as redundant with the preceding amendment.

Section 305.54 was amended to be consistent with the effort to improve the application process by moving radioactive material license application requirements to Chapter 305 (except most technical requirements will remain in Chapter 336). Former §305.54(b), was deleted as redundant with the requirements of §336.513, §336.617, and Chapter 336, Subchapter H. The remaining subsections were renumbered accordingly. Section 305.54(d) was moved unchanged from repealed §336.201(b) as part of the effort to improve applications processing by consolidating application requirements in Chapter 305. Adopted new §305.54(e) was moved from repealed §336.201(c). This new subsection (e) is unchanged with the exception of extending its requirements to include amendments, as part of the effort to improve applications processing by consolidating application requirements in Chapter 305. Adopted new §305.54(f) was moved from repealed §336.201(d) essentially unchanged, with the exception of deleting an obsolete date and a redundancy.

Subchapter D - Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits

Section 305.62(b) was amended to change "§§305.41 - 305.53 of this title" to "Subchapter C of this chapter" to include radioactive material license application requirements in amendment applications, as part of the effort to improve applications processing by consolidating application requirements in Chapter 305.

Prior to this adoption, the radiation control licensing program used different definitions from the rest of the agency's permitting programs for major and minor amendment. The TNRCC's BPR-PIT, as part of its recommendation to make the permitting process consistent within the agency wherever possible, recommended that the definitions for major and minor amendments in Chapter 336 be repealed and that the radiation control licensing program begin using the major and minor amendment definitions found in Subchapter D of Chapter 305.

According to former §305.62(c), which was made applicable to radiation control licensing, a major amendment is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit; a minor amendment is an amendment to improve or maintain the permitted quality or method of disposal of waste, or injection of fluid if there is neither a significant increase of the quantity of waste or fluid to be discharged

or injected nor a material change in the pattern or place of discharge or injection. A minor amendment includes any other change to a permit issued under this chapter that would not cause, or relax a standard or criterion which may result in, a potential deterioration of quality of water in the state.

Prior to this adoption, major amendments to Chapter 336, Subchapter F licenses included transfers of a license to another person, enlargement of the disposal area, the addition of another disposal area and substantial changes to the nature of the waste or the method of disposal. Excluding transfers, these types of major amendment specified in repealed §336.2(58)(A)(ii) and (iii) were covered by the already existing language in §305.62(c)(1). Transfers do not "cause, or relax a standard or criterion which may result in, a potential deterioration of quality of water in the state." Because the rest of the permitting programs treat transfers separately or as minor amendments, the commission will process transfers for Subchapters F and G licenses under §305.64 (Transfer of Permits) with this adoption.

Also, under repealed §336.2(58)(C), amendments to Chapter 336, Subchapter H licenses that require an environmental analysis were classified as major amendments. In addition, a major amendment for a Chapter 336, Subchapter H low-level radioactive waste disposal facility receiving waste from other persons, was defined in repealed §336.2(58)(B) as an amendment that authorizes: a change in the type or concentration limits of wastes to be received; receipt of wastes from other states not authorized in the existing license; a change in the operator of the facility; closure and the final closure plan for the disposal site; or transfers the license to the custodial agency. Because of the uniqueness of regulating a low-level radioactive waste disposal facility licensed to receive waste from other persons, the commission retained these Chapter 336 specific, major amendment requirements and incorporated them into the definition of major amendment in §305.62(c)(1). However, a change was made from proposal to adoption. In Chapter 305, Consolidated Permits, Subchapter D, the language in §305.62(c)(1) was reorganized to clearly state that when a written environmental analysis is required for a Chapter 336, Subchapter H licensed facility amendment, it is a major amendment.

Section 305.62(i) was deleted to remove a requirement to file amendment applications in accordance with Chapter 336 rather than this chapter.

Section 305.65(b) was deleted to remove a statement that this section does not apply to renewal of radioactive material licenses. With this adoption, radioactive material license renewals are to be processed like other renewal applications submitted to this agency.

Section 305.67 was amended to add a new subsection (c) to clarify that the executive director may, upon request of an applicant, terminate a license if the applicant has complied with all of the applicable decommissioning requirements in Chapter 336, Subchapter G. This provides consistent procedures for use throughout the agency's permitting/licensing programs concerning voluntary termination.

Subchapter F - Permit Characteristics and Conditions

Section 305.121 was amended to add "radioactive material disposal" to apply characteristics and conditions for permits issued under other programs to radioactive material licenses. This standardization provides more consistency among programs, by locating basic conditions in one part of the rules and by standardizing the basic requirements. Standardization should make the application process easier for persons having multiple permits/licenses from the agency and make consolidated permitting easier to implement.

Section 305.123 was amended to add "Texas Health and Safety Code, Chapters 361 and 401" and to delete "Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7" to allow the agency to incorporate requirements necessary to implement its responsibilities under THSC, Chapter 401, Radioactive Materials and Other Sources of Radiation, into existing permits and to update the citation for the Texas Solid Waste Disposal Act, Chapter 361.

Section 305.125(9) was amended to add a new subparagraph (C) to refer to the requirements in Chapter 336 for reporting noncompliances/incidents to the executive director. Section 305.125(10) was amended to add "and 401.063" to include the inspection and entry requirements under THSC, §401.063, as a standard permit condition. With the amendments to §305.125, the subject matter in §336.215 and §336.742 was addressed, and these sections in Chapter 336 were repealed. Section 305.125(11)(B) was amended to add "as otherwise required by Chapter 336 of this title or" to refer to Chapter 336 monitoring requirements and to exclude licenses issued under Chapter 336 from this subparagraph's Resource Conservation and Recovery Act (RCRA) reporting requirements under 40 Code of Federal Regulations §264.73(b)(9). Section 305.125(22) was taken from repealed §336.219, which required permittees to notify the executive director, in writing, following the filing of a voluntary or involuntary petition for bankruptcy. With this adoption, the bankruptcy notification requirement will be applicable to all permits subject to Chapter 305. This simple notification requirement allows the executive director to bring to the bankruptcy court's attention any environmental concerns which need to be addressed to protect health and the environment. Minor editorial changes were made to §305.125 from proposal to adoption to conform with *Texas Register* formatting and style requirements.

In the title of the §305.127, the words "To Be" were changed to lower case letters. Section 305.127(1) was amended to add a new subparagraph (G) that adds fixed term limits for radioactive material licenses. The agency adopts a limit, not to exceed ten years, for all radioactive material licenses other than those granted under Subchapter H of Chapter 336. The THSC, Chapter 401 is silent with regards to term limits for licenses not issued under Subchapter H, with the exception that the financial qualifications of the licensee are reviewed once every five years. This adoption does not change that financial review requirement. The adopted ten-year maximum term limit is consistent with the term limit for RCRA and Underground Injection Control (UIC) Class I injection well permits and reflects the current practice of the agency. This consistent approach to license term limits will allow permittees to consider the option of consolidating separate permits and licenses. Section 305.127(4)(A) was amended to add "to Chapter 336 of this title (relating to Radioactive Substance Rules) for radioactive material disposal standards," to include the technical requirements of Chapter 336 as conditions to which the commission will refer for determination of requirements to be included in the license. Section 305.127(4)(C) was amended to add "Chapter 336 of this title (relating to Radioactive Material Disposal Standards)" to incorporate by reference into the license, the technical requirements of Chapter 336 as license conditions.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has 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 adopted amendments to Chapter 305 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the requirement to notify the agency in case of bankruptcy and the ten-year term limit for radioactive material licenses other than those granted under Chapter 336, Subchapter H, and additional application requirements in Chapter 305 are not expected to significantly increase the cost to licensees. The simple notification requirement in case of bankruptcy allows the executive director to bring to the bankruptcy court's attention any environmental concerns which need to be addressed to protect health and the environment. Similarly, the ten-year term limit allows permittees to consider the option of consolidating separate permits into one.

Prior to this adoption, the radiation control licensing program used different definitions from the rest of the agency's permitting programs for major and minor amendment. The TNRCC's BPR-PIT, as part of its recommendation to make the permitting process consistent within the agency wherever feasible, recommended that the definitions for major and minor amendments in Chapter 336 be repealed and that the radiation control licensing program begin using the major and minor amendment definitions found in Chapter 305, Subchapter D.

According to former §305.62(c), which was made applicable to radiation control licensing, a major amendment is "an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit." A minor amendment is "an amendment to improve or maintain the permitted quality or method of disposal of waste, or injection of fluid if there is neither a significant increase of the quantity of waste or fluid to be discharged or injected nor a material change in the pattern or place of discharge or injection." A minor amendment included any other change to a permit issued under this chapter that would not "cause, or relax a standard or criterion which may result in, a potential deterioration of quality of water in the state."

Prior to this adoption, major amendments to Chapter 336, Subchapter F licenses included transfers of a license to another person, enlargement of the disposal area, the addition of another disposal area, and substantial changes to the nature of the waste or the method of disposal. Excluding transfers, these types of major amendment specified in repealed §336.2(58)(A)(ii) and (iii) were covered by the already existing language in §305.62(c)(1). Transfers do not "cause, or relax a standard or criterion which may result in, a potential deterioration of quality of water in the state." Because the rest of the permitting programs treat transfers separately or as minor amendments, the commission will process transfers for Subchapters F and G licenses under §305.64 (Transfer of Permits) with this adoption.

Also, under repealed §336.(58)(C), amendments to Chapter 336, Subchapter H licenses that require an environmental analysis were classified as major amendments. In addition, a major amendment for a Chapter 336, Subchapter H low-level radioactive waste disposal facility receiving waste from other persons, was defined in repealed §336.2(58)B as an amendment that authorizes: a change in the type or concentration limits of wastes to be received; receipt of wastes from other states not authorized in the existing license; a change in the operator of the facility; closure and the final closure plan for the disposal site; or transfers the license to the custodial agency. Because of the uniqueness of regulating a low-level radioactive waste disposal facility licensed to receive waste from other persons, the commission retained these Chapter 336 specific, major amendment requirements and incorporated them into the definition of major amendment in §305.62(c)(1). The proposal put the Chapter 336, Subchapter H licensed facility requirement for an amendment requiring an environmental analysis to be a major amendment into a new §305.62(c)(1)(A) and the remaining Subchapter H unique requirements for an amendment to be a major amendment into a new §305.62(c)(1)(B). In this adoption, instead of placing these former Chapter 336, Subchapter H unique requirements in two separate subparagraphs, they are grouped together in §305.62(c)(1). However, the adopted changes to the definitions of major and minor amendment are not substantially different from those formerly in Chapter 336.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to: (1) implement HB 1172, 76th Legislature, 1999, and its amendments to the THSC; (2) implement the recommendations of the TNRCC's BPR-PIT to provide for consistency between the procedures of the radiation control program and the other permitting programs within the agency; and (3) improve readability and understanding by reorganizing Chapter 336 (relating to Radioactive Substance Rules), putting its requirements into plain English and eliminating redundancies and conflicts. The rules substantially advance these specific purposes by incorporating these changes: amending the definition of low-level radioactive waste to be compatible with the NRC's definition; incorporating the TNRCC's new exemption from rule authority; adding an exemption to continue or expand on-site low-level radioactive waste disposal licensed before September 9, 1989; and adding exemptions from radioactive material licensing requirements for facilities participating in the Voluntary Cleanup Program or Superfund cleanups; and by beginning to use the agency's definitions for major and minor amendments rather than radiation control program specific definitions; by moving the application process from Chapter 336 to Chapter 281 (relating to Applications Processing) and Chapter 305 (relating to Consolidated Permits) and amending the application process to be consistent with other agency application procedures; by making Chapter 336 more understandable by partially reorganizing the chapter; and by clarifying wording, eliminating unnecessary or repetitive language, and improving readability. Promulgation and enforcement of these rules will not burden private real property.

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/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 on the proposed amendments was held on July 6, 2000; however, no one appeared at the hearing to testify. No written comments were received concerning this chapter during the comment period which closed on July 17, 2000.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §305.1, §305.2

STATUTORY AUTHORITY

The amendments are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

§305.1. Scope and Applicability.

(a) The provisions of this chapter set the standards and requirements for applications, permits, and actions by the commission to carry out the responsibilities for management of waste disposal activities under the Texas Water Code, Chapters 26, 27, and 28, and the Texas Health and Safety Code, Chapters 361 and 401.

(b) The national pollutant discharge elimination system (NPDES) program, as delegated to the State of Texas, requires permits for the discharge of pollutants from any point source to waters in the state. Such permits are designated as Texas pollutant discharge elimination system (TPDES). The terms "NPDES," "pollutant," "point source," and "waters in the state" are defined in Texas Water Code, §26.001.

(1) The following are point sources requiring TPDES permits for discharges:

(A) concentrated animal feeding operations as defined in Chapter 321, Subchapter B of this title (relating to Commercial Livestock and Poultry Production Operations);

(B) concentrated aquatic animal production facilities as defined in 40 Code of Federal Regulations (CFR) §122.24;

(C) discharges into aquaculture projects as set forth in 40 CFR §122.25;

(D) discharges from separate storm sewers as set forth in 40 CFR §122.26; and

(E) silvicultural point sources as defined in 40 CFR §122.27.

(2) The TPDES permit program also applies to owners or operators of any treatment works treating domestic sewage, unless all requirements implementing the Clean Water Act (CWA), §405(d), applicable to the treatment works treating domestic sewage are included in a permit issued under the appropriate provisions of Subtitle C, the Federal Solid Waste Disposal Act, the Safe Drinking Water Act, Part C, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under state permit programs approved by the regional administrator as adequate to assure compliance with the CWA, §405.

(3) The executive director may designate any person subject to the standards for sewage sludge use and disposal as a "treatment works treating domestic sewage" as defined in §305.2 of this title (relating to Definitions), where the executive director finds that a permit is necessary to protect public health and the environment from the adverse effects of sewage sludge or to ensure compliance with the technical standards for sludge use and disposal developed under the CWA, §405(d). Any person designated as a treatment works treating domestic sewage shall submit an application for a permit within 120 days of being notified by the executive director that a permit is required. The executive director's decision to designate a person as a treatment works treating domestic sewage shall be stated in the fact sheet or statement of basis for the permit.

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 August 25, 2000.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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Proposal publication date: June 16, 2000
For further information, please call: (512) 239-0348

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SUBCHAPTER C. APPLICATION FOR PERMIT

30 TAC §§305.42, 305.45, 305.54

STATUTORY AUTHORITY

The amendments are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

30 TAC §§305.62, 305.65, 305.67

STATUTORY AUTHORITY

The amendments are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101,

401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

§305.62. Amendment.

(a) Amendments generally. A change in a term, condition, or provision of a permit requires an amendment, except under §305.70 of this title (relating to Municipal Solid Waste Class I Modifications), under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), under §305.66 of this title (relating to Corrections of Permits), and under §305.64 of this title (relating to Transfer of Permits). The permittee or an affected person may request an amendment. If the permittee requests an amendment, the application shall be processed under Chapter 281 of this title (relating to Applications Processing). If the permittee requests a modification of a solid waste permit, the application shall be processed under §305.69 of this title. If the permittee requests a modification of a municipal solid waste permit, the application shall be processed in accordance with §305.70 of this title. If an affected person requests an amendment, the request shall be submitted to the executive director for review. If the executive director determines the request is not justified, the executive director will respond within 60 days of submittal of the request, stating the reasons for that determination. The person requesting an amendment may petition the commission for a review of the request and the executive director's recommendation. If the executive director determines that an amendment is justified, the amendment will be processed under subsections (d) and (f) of this section.

(b) Application for amendment. An application for amendment shall include all requested changes to the permit. Information sufficient to review the application shall be submitted in the form and manner and under the procedures specified in Subchapter C of this chapter (relating to Application for Permit). The application shall include a statement describing the reason for the requested changes.

(c) Types of amendments.

(1) A major amendment is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit. In case of a license issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste), a major amendment is one which:

(A) authorizes a change in the type or concentration limits of wastes to be received;

(B) authorizes receipt of wastes from other states not authorized in the existing license;

(C) authorizes a change in the operator of the facility;

(D) authorizes closure and the final closure plan for the disposal site;

(E) transfers the license to the custodial agency; or

(F) authorizes a change which has a significant effect on the human environment and for which the executive director has prepared a written environmental analysis or has determined that an environmental analysis is required.

(2) A minor amendment is an amendment to improve or maintain the permitted quality or method of disposal of waste, or injection of fluid if there is neither a significant increase of the quantity of waste or fluid to be discharged or injected nor a material change in the pattern or place of discharge of injection. A minor amendment includes any other change to a permit issued under this chapter that will not cause or relax a standard or criterion which may result in a potential deterioration of quality of water in the state. A minor amendment may also include, but is not limited to:

(A) except for Texas Pollutant Discharge Elimination System (TPDES) permits, changing an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date; and

(B) except for TPDES permits, requiring more frequent monitoring or reporting by the permittee.

(3) Minor modifications for TPDES permits. The executive director may modify a TPDES permit to make corrections or allowances for changes in the permitted activity listed in this subsection (see also §50.45 of this title (relating to Corrections to Permits)). Notice requirements for a minor modification are in §39.151 of this title (relating to Application for Wastewater Discharge Permit, including Application for the Disposal of Sewage Sludge or Water Treatment Sludge). Minor modifications to TPDES permits may only:

(A) correct typographical errors;

(B) require more frequent monitoring or reporting by the permittee;

(C) change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date;

(D) change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation before discharge under §305.534 of this title (relating to New Sources and New Dischargers);

(E) delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except within permit limits;

(F) when the permit becomes final and effective on or after March 9, 1982, add or change provisions to conform with §§305.125, 305.126, 305.531(1), 305.535(c)(1)(B), and 305.537 of this title (relating to Standard Permit Conditions; Additional Standard Permit Conditions for Waste Discharge Permits; Establishing and Calculating Additional Conditions and Limitations for TPDES Permits; Bypasses from TPDES Permitted Facilities; Minimum Requirements for TPDES Permitted Facilities; and Reporting Requirements for Planned Physical Changes to a Permitted Facility); or

(G) incorporate enforceable conditions of a publicly owned treatment works pretreatment program approved under the procedures in 40 CFR §403.11, as adopted by §315.1 of this title (relating to General Pretreatment Regulations for Existing and New Sources of Pollution).

(d) Good cause for amendments. If good cause exists, the executive director may initiate and the commission may order a major amendment, minor amendment, modification, or minor modification to a permit and the executive director may request an updated application if necessary. Good cause includes, but is not limited to:

(1) there are material and substantial changes to the permitted facility or activity which justify permit conditions that are different or absent in the existing permit;

(2) information, not available at the time of permit issuance, is received by the executive director, justifying amendment of existing permit conditions;

(3) the standards or regulations on which the permit or a permit condition was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued;

(4) an act of God, strike, flood, material shortage, or other event over which the permittee has no control and for which there is no reasonably available alternative may be determined to constitute good cause for amendment of a compliance schedule;

(5) for underground injection wells, a determination that the waste being injected is a hazardous waste as defined under §335.1 of this title (relating to Definitions) either because the definition has been revised, or because a previous determination has been changed; and

(6) for Underground Injection Control (UIC) area permits, any information that cumulative effects on the environment are unacceptable.

(e) Amendment of land disposal facility permit. When a permit for a land disposal facility used to manage hazardous waste is reviewed by the commission under §305.127(1)(B)(iii) of this title (relating to Conditions to be Determined for Individual Permits), the commission shall modify the permit as necessary to assure that the facility continues to comply with currently applicable requirements of this chapter and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(f) Amendment initiated by the executive director. If the executive director determines to file a petition to amend a permit, notice of the determination stating the grounds therefor and a copy of a proposed amendment draft shall be personally served on or mailed to the permittee at the last address of record with the commission. This notice should be given at least 15 days before a petition is filed with the commission. However, such notice period shall not be jurisdictional.

(g) Amendment initiated permit expiration. The existing permit will remain effective and will not expire until commission action on the application for amendment is final. The commission may extend the term of a permit when taking action on an application for amendment.

(h) Amendment application considered a request for renewal. For applications filed under the Texas Water Code, Chapter 26, an application for a major amendment to a permit may also be considered as an application for a renewal of the permit if so requested by the applicant.

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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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-0348

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SUBCHAPTER F. PERMIT CHARACTERISTICS AND CONDITIONS

30 TAC §§305.121, 305.123, 305.125, 305.127

STATUTORY AUTHORITY

The amendments are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

§305.125. Standard Permit Conditions.

Conditions applicable to all permits issued under this chapter, and which shall be incorporated into each permit expressly or by reference to this chapter are as follows.

(1) The permittee has a duty to comply with all permit conditions. Failure to comply with any permit condition is a violation of the permit and statutes under which it was issued and is grounds for enforcement action, for permit amendment, revocation or suspension, or for denial of a permit renewal application or an application for a permit for another facility.

(2) The permittee must apply for an amendment or renewal before the expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. Authorization to continue such activity terminates upon the effective denial of said application.

(3) It is not a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the permit conditions.

(4) The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation which has a reasonable likelihood of adversely affecting human health or the environment.

(5) The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) installed or used by the permittee to achieve compliance with the permit conditions. For Underground Injection Control permits, proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the permit conditions.

(6) The permittee shall furnish to the executive director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending, or terminating the permit, and copies of records required to be kept by the permit.

(7) The permittee shall give notice to the executive director before physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements.

(8) Authorization from the commission is required before beginning any change in the permitted facility or activity that would result in noncompliance with other permit requirements.

(9) The permittee shall report any noncompliance to the executive director which may endanger human health or safety, or the environment.

(A) Such information shall be provided orally within 24 hours from the time the permittee becomes aware of the noncompliance. A written submission shall also be provided within five days of

the time the permittee becomes aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

(B) The following must be reported within 24 hours under this paragraph.

(i) any unanticipated bypass which exceeds any effluent limitation in a TPDES permit.

(ii) violation of a maximum daily discharge limitation for any pollutants listed in a TPDES permit to be reported within 24 hours.

(C) Holders of radioactive material licenses issued under Chapter 336 of this title (relating to Radioactive Substance Rules) shall report noncompliances/incidents to the executive director according to the requirements of §336.335 of this title (relating to Reporting Requirements for Incidents).

(10) Inspection and entry shall be allowed under Texas Water Code, Chapters 26 - 28, Texas Health and Safety Code, §§361.032 - 361.033, 361.037, and 401.063, and 40 Code of Federal Regulations (CFR), §122.41(i). The statement in Texas Water Code, §26.014 that commission entry of a facility shall occur in accordance with an establishment's rules and regulations concerning safety, internal security, and fire protection is not grounds for denial or restriction of entry to any part of the facility, but merely describes the commission's duty to observe appropriate rules and regulations during an inspection.

(11) Monitoring and reporting requirements are as follows.

(A) Monitoring samples and measurements shall be taken at times and in a manner so as to be representative of the monitored activity.

(B) Except as otherwise required by Chapter 336 of this title or for records of monitoring information required by a permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by the permit, records of all data used to complete the application for this permit, and the certification required by 40 CFR §264.73(b)(9) shall be retained at the facility site for a period of three years from the date of the record or sample, measurement, report, application, or certification. This period shall be extended at the request of the executive director.

(C) Records of monitoring activities shall include:

(i) date, time and place of sample or measurement;

(ii) identity of individual who collected the sample or made the measurement;

(iii) date of analysis;

(iv) identity of the individual and laboratory who performed the analysis;

(v) the technique or method of analysis; and

(vi) the results of the analysis or measurement.

(12) Any noncompliance other than that specified in this section, or any required information not submitted or submitted incorrectly shall be reported to the executive director as promptly as possible.

(13) A permit may be transferred only according to the provisions of §305.64 of this title (relating to Transfer of Permits) and §305.97 of this title (relating to Action on Application for Transfer).

(14) All reports and other information requested by the executive director shall be signed by the person and in the manner required by §305.128 of this title (relating to Signatories to Reports).

(15) A permit may be amended, suspended and reissued, or revoked for cause. The filing of a request by the permittee for a permit amendment, suspension and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(16) A permit does not convey any property rights of any sort, or any exclusive privilege.

(17) Monitoring results shall be provided at the intervals specified in the permit.

(18) Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date.

(19) Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application, or in any report to the executive director, it shall promptly submit such facts or information.

(20) The permittee is subject to administrative, civil, and criminal penalties, as applicable, under Texas Water Code, §§26.136, 26.212, and 26.213 for violations including but not limited to the following:

(A) negligently or knowingly violating CWA, §§301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under CWA, §402, or any requirement imposed in a pretreatment program approved under CWA, §402(a)(3) or (b)(8);

(B) falsifying, tampering with, or knowingly rendering inaccurate any monitoring device or method required to be maintained under a permit; or

(C) knowingly making any false statement, representation, or certification in any record or other document submitted or required to be maintained under a permit, including monitoring reports or reports of compliance or noncompliance.

(21) For hazardous waste management facility permits, the executive director may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in 40 CFR, §124.33(b), as amended through December 11, 1995, at 60 FedReg 63417. The information repository will be governed by the provisions in 40 CFR §124.33(c) - (f), as amended through December 11, 1995, at 60 FedReg 63417.

(22) Notice of bankruptcy.

(A) Each permittee shall notify the executive director, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code (11 USC) by or against:

(i) the permittee;

(ii) an entity (as that term is defined in 11 USC, §101(14)) controlling the permittee or listing the permit or permittee as property of the estate; or

(iii) an affiliate (as that term is defined in 11 USC, §101(2)) of the permittee.

(B) This notification must indicate:

(i) the name of the permittee;

(ii) the permit number(s);

(iii) the bankruptcy court in which the petition for bankruptcy was filed; and

(iv) the date of filing of the petition.

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 August 25, 2000.

TRD-200005981
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 14, 2000
Proposal publication date: June 16, 2000
For further information, please call: (512) 239-0348

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SUBCHAPTER M. WASTE TREATMENT INSPECTION FEE PROGRAM

30 TAC §305.502, §305.503

The Texas Natural Resource Conservation Commission (commission or TNRCC) adopts amendments to §305.502, Definitions and Abbreviations, and §305.503, Fee Assessment. Section 305.503 is adopted *with changes* to the proposed text as published in the April 7, 2000 issue of the *Texas Register* (25 TexReg 2969). Section 305.502 is adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted amendments incorporate recent legislative changes impacting fees for aquaculture production facilities. Senate Bill (SB) 873, 76th Legislature, 1999, added §26.0292 to the Texas Water Code (TWC) which directs that combined fees for the waste treatment inspection program and the Clean Rivers Program may not total more than $5,000 in any year. Prior to adoption, annual waste treatment inspection fees for industrial dischargers, including aquaculture facilities, were established with a cap not to exceed $25,000.

The commission adopts amendments to §305.503 to include a provision, in subsection (g)(3), capping the waste treatment inspection fee for aquaculture production facilities at $5,000. Currently, no fee is assessed for aquaculture facilities for the Clean Rivers Program, under 30 TAC §220.21(d). The commission determined that because the number of aquaculture facilities with active individual wastewater discharge permits is relatively small, the amount of funds that would be collected by the Clean Rivers Program through a redistribution of the fees for aquaculture production facilities is insignificant. Therefore, the Clean Rivers Program fee for aquaculture facilities will remain at zero, and the waste treatment inspection fee was set so as not to exceed $5,000 annually.

Senate Bill 873 also directs that the commission by rule provide that fees charged among aquaculture facilities be reasonably assessed according to the pollutant load of the facility. The current fee rate schedule is based in part upon the assignment of "points" as a measure of pollutant potential, flow volume, contamination, and pollutant parameters (e.g. ammonia, suspended solids, oxygen demand, etc.). Under the adopted rules, fees for aquaculture facilities will continue to be assessed according to this point system. A separate fee rate schedule was not proposed for aquaculture facilities because pollutant loadings and pollutant potential from these facilities were not determined to be significantly different than those from many other industries for which fees are calculated. In order to distribute the waste treatment inspection fee more proportionately among aquaculture facilities, the adopted rule, in §305.503(g)(3), provides that in determining the flow volume points for a facility, the flow for the facility shall be the permitted annual average flow for the facility or, if the facility's permit does not have an annual average flow limitation, the flow shall be the projected annual average flow for the facility. The projected annual average flow, for the period from September 1, 2000 to August 31, 2001, for a facility that does not have an annual average flow permit limitation shall be submitted to the executive director by November 1, 2000 and shall be signed and certified as required by 30 TAC §305.44. In subsequent years, if the facility's permit does not have an annual average flow limitation, the facility's projected annual average flow for the upcoming period from September 1 to August 31 shall be submitted to the executive director by June 30 and shall be signed and certified as required by §305.44. This change will lower the waste treatment inspection fee for those facilities that only discharge a limited number of days per year, which is typical for certain types of aquaculture production facilities.

SECTION BY SECTION DISCUSSION

Adopted §305.502 added a definition for aquaculture production facilities, corrected typographical errors, incorporated minor style changes for consistency with the *Texas Register* format, and improved readability.

Adopted §305.503 was revised to cap the annual waste treatment inspection fee for aquaculture production facilities at $5,000. Adopted §305.503 was also revised to provide that in determining flow volume points for aquaculture production facilities, the flow for the facility shall be the annual average flow for the facility or, if the facility's permit does not have an annual average flow limitation, the flow shall be the projected annual average flow for the facility. The projected annual average flow, for the period from September 1, 2000 to August 31, 2001, for a facility that does not have an annual average flow permit limitation shall be submitted to the executive director by November 1, 2000 and shall be signed and certified as required by §305.44. In subsequent years, if the facility's permit does not have an annual average flow, the facility's projected annual average flow for the upcoming period from September 1 to August 31 shall be submitted to the executive director by June 30 and shall be signed and certified as required by §305.44. In addition, the amendment included minor style changes for consistency with the *Texas Register* format and to improve readability.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of "major environmental rule." The specific intent of this rulemaking was

to designate the maximum amount of waste treatment inspection fees that may be charged to aquaculture production facilities. The specific purpose of the fee is to help pay the expenses of the TNRCC in inspecting waste treatment facilities and enforcing the laws of the state and rules of the commission governing waste discharges and waste treatment facilities. The adopted rules will not impact substantive requirements for aquaculture production facilities so there will be no material effect on the items listed in the definition. In addition, the rules do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a), in that the waste treatment inspection fees are specifically required by TWC, §26.0292; the amendments do not exceed any express requirements of state law; and the amendments do not involve any delegation agreements or contracts.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking was to implement provisions of legislation, SB 873, that place a cap on fees that may be assessed on aquaculture production facilities. The legislation directs the commission to limit fees charged to aquaculture production facilities for the waste treatment inspection program and Clean Rivers Program to no more than $5,000 total in any one year. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because most aquaculture facilities will realize a cost savings as a result of the amendments.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking and found that the proposal is a rulemaking subject to the Texas Coastal Management Program (CMP) and must be consistent with all applicable goals and policies of the CMP. The commission prepared a consistency determination for this rule pursuant to 31 TAC §505.22 and found that the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goals applicable to the rulemaking are the goals to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). CMP policies applicable to the rules include the following: 1) discharges in the coastal zone shall comply with water-quality-based effluent limits; 2) discharges in the coastal zone that increase pollutant loadings to coastal waters shall not impair designated uses of coastal waters and shall not significantly degrade coastal water quality unless necessary for important economic or social development; and 3) to the greatest extent practicable, new wastewater outfalls shall be located where they will not adversely affect critical areas. Promulgation and enforcement of the rules will be consistent with the applicable CMP goals and policies because the rule amendments will require that the combined total of waste treatment inspection fees and Clean Rivers fees charged to aquaculture facilities cannot exceed $5,000. These amendments will not adversely affect the applicable CMP goals which are to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, because the amendments are not substantive in nature but rather only affect the amount of fees charged aquaculture production facilities. In addition, the rules do not violate any applicable provisions of the CMP's stated goals and policies.

HEARINGS AND COMMENTERS

The public comment period closed May 8, 2000. A public hearing was not held. Written comments were received form Fred B. Werkenthin, Jr. representing the Texas Aquaculture Association (TAA). The TAA generally opposed the rulemaking in its current form and suggested significant changes to the rulemaking as stated in the ANALYSIS OF TESTIMONY section of this preamble.

ANALYSIS OF TESTIMONY

The TAA stated that the proposed rulemaking failed to meet the legislative intent of SB 873 of having the fees proportionally assessed among various aquaculture facilities. Additionally, TAA stated that the proposal would result in many aquaculture facilities of various sizes paying fees at or near the $5,000 cap. The TAA expressed that a different methodology for calculating fees is appropriate. For example, TAA stated that TNRCC should develop a methodology in which the largest facility would be charged $5,000 in fees; a facility one-half its size would pay about $2,500. The TAA requested that the commission consider two different ways of calculating fees for aquaculture facilities. One method would be based on actual flow; the other based on pond size under production.

The commission agrees in part with this comment. The commission agrees that the proposed rulemaking failed to meet the legislative intent of SB 873 by failing to provide that the wastewater treatment inspection fee assessed after the effective date of the proposed rules would be reasonably proportional among aquaculture production facilities. Under the proposed rules, fees for an aquaculture production facility would have been calculated under the same methodology as for other facilities. Under that methodology, the flow volume points used, in part, to calculate the fee, is based upon the permitted flow from the facility, either the daily average flow or annual average flow. All permitted aquaculture production facilities currently have a daily average flow limitation. Due to the seasonal nature of most types of aquaculture production facilities, in which discharges are normally made from the facility only during certain times of the year, an annual average flow limitation would result in a lower flow limitation and, therefore, a lower assessed fee. Under the proposed rulemaking, the fees assessed aquaculture facilities would have been made reasonably proportional among the facilities by using the permitted annual average flow limitation for the facilities to calculate the fees only after the permits were amended to include an annual average flow limitation. During the interim, the fee calculation would have been based on the existing methodology using the permitted flow from the facility which, for all permitted aquaculture facilities, is a daily average flow. This would have generally resulted in a higher and less proportional fee than if an annual average flow were used in determining the fee.

Therefore, in order to provide for the reasonably proportional assessment of fees among aquaculture facilities after the effective date of the rules, the adopted rules provide that in order to determine the flow volume points used, in part, to calculate the waste treatment inspection fee, the flow for the facility shall be the permitted annual average flow or, if the facility's permit does not have an annual average flow limitation, the flow for the facility shall be the projected annual average flow for the facility. The adopted rules also provide that the projected annual average flow, for the period from September 1, 2000 to August 31, 2001, for a facility that does not have an annual average flow permit limitation shall be submitted to the executive director by November 1, 2000 and shall be signed and certified as required by §305.44. In subsequent years, if the facility's permit does not

have an annual average flow limitation, the facility's projected annual average flow for the upcoming period from September 1 to August 31 shall be submitted to the executive director by June 30 and shall be signed and certified as required by §305.44.This will ensure that wastewater treatment inspection fees assessed after the effective date of the adopted rules are reasonably proportional among aquaculture production facilities without requiring the facilities to take any action to amend their permits.

The commission does not agree that implementation of SB 873 requires that the assessment of wastewater treatment inspection fees must be entirely proportional so that the largest facility should be assessed $5,000 in fees and a facility one-half its size should be assessed $2,500 in fees. The TWC, §26.0292(c), enacted by SB 873, provides that the commission must provide that "among aquaculture facilities, the fees charged under this section are reasonably assessed according to the pollutant load of the facility." The statute does not require exact proportionality according to the size of the facility but rather requires that among aquaculture facilities the fees must be reasonably assessed according to the pollutant load of the facility. The fee calculations made under §305.503 are based upon a schedule that takes into account the pollutant load (oxygen demand, total suspended solids, ammonia nitrogen) of an aquaculture production facility along with other factors such as flow and the type and size of the facility. This generally results in higher fees for facilities with higher pollutant loads. While this fee calculation schedule may not result in exact proportionality based upon the size of a facility, it results in a reasonably proportional assessment according to the pollutant load amongst the facility.

The commission disagrees that fees for aquaculture production facilities should be based on pond size under production. Production pond acreage is not a good representation of pollutant load because larger pond acreage does not necessarily coincide with larger discharges or pollutant load especially if the facility recycles a large portion of the water in its ponds. Instead the fee should be based upon the annual average flow from the facility, either the permitted annual average flow, or if there is no permitted annual average flow, the projected annual average flow for the facility. The annual average flow from the facility is a better indicator of the pollutant load from the facility than the pond sizes under production.

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.102, which provides the commission with general powers to carry out duties under the TWC and §§5.103, 5.105, and 5.120, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state and to establish and approve all general policies of the commission. Additionally, these amendments are adopted under TWC, §26.0291 and §26.0292, which provide the commission with the authority to impose an annual waste treatment inspection fee on permittees and require the commission to cap fees for aquaculture facilities at $5,000 per year.

§305.503. Fee Assessment.

(a) An annual waste treatment fee is assessed against each person holding a permit or other authorization issued under the authority of the Texas Water Code, Chapter 26. The amount of the fee is determined by specific permit parameters for which a facility is authorized as of each September 1. The maximum fee which may be assessed each permit is $11,000, except that for Texas Pollutant Discharge Elimination Systems (TPDES) permits, the maximum fee which may be assessed is $25,000.

(b) In assessing a fee, the commission may consider the following parameters for each permit:

(1) pollutant potential;

(2) flow volume;

(3) traditional pollutants;

(4) heat load;

(5) major/minor designation;

(6) the designated uses and ranking classification of waters affected by waste discharges; and

(7) the costs of obtaining and administering the TPDES program, upon delegation by the EPA.

(c) Except as provided in subsections (g) and (j) of this section, the commission shall assign a point value to each of the permit parameters in subsection (b) of this section. The assigned value(s) shall be weighted according to the specific permit limits and the weighted values summed. The sum of the variable point values under subsection (f) of this section and the set values established under subsection (g) of this section are multiplied by the current fee rate under subsection (h) of this section to determine the fee to be assessed.

(d) For the purpose of fee calculation, chemical oxygen demand (COD) and total organic carbon (TOC) are converted to biochemical oxygen demand (BOD) values and the higher value is assessed points. The conversion for TOC is three pounds of TOC is equal to one pound of BOD (3:1). The conversion for COD is eight pounds of COD is equal to one pound of BOD (8:1).

(e) For the purpose of fee calculation, a permit which authorizes a secondary treatment system consisting of ponds or lagoons at limits of 30 milligrams per liter (mg/l) BOD and 90 mg/l total suspended solids (TSS) shall be assumed to be equivalent to 20 mg/l BOD and 20 mg/l TSS. This equivalency is based on treatment provided by different types of secondary treatment systems.

(f) Fee rate schedule. Except as provided in subsection (g) of this section, each permit shall be assessed a fee based on the specific parameters assigned to the permit and determined by the following schedule. Each permit shall be reviewed to determine the individual values for the parameters covered by this schedule.

(1) Pollutant potential

(A) Industrial discharges: Group I = 2 Points; Group II = 10 Points; Group III = 15 Points; Group IV = 20 Points; Group V = 30 Points; Group VI = 40 Points.

(B) Domestic discharges: Group I (less than 1.0 mgd, no biomonitoring or toxicant numerical limit) = 2 Points; Group II (greater than or equal to 1.0 mgd and/or biomonitoring, but no toxicant numerical limit) = 10 Points; Group III (toxicant numerical limit) = 15 Points.

(C) Evaporation/land application permits with a toxic rating of I will be assessed only one point for pollutant potential. Pollutant potential points = _____.

(2) Flow volume.

(A) Type I:

Figure: 30 TAC §305.503(f)(2)(A) (No change.)

(B) Type II:

Figure: 30 TAC §305.503(f)(2)(B) (No change.)

(C) Flow volume points = _____.

(3) Traditional pollutants.

(A) Oxygen demand. (COD and TOC limits are converted to BOD values and the higher value is used).
Figure: 30 TAC §305.503(f)(3)(A) (No change.)

(B) Total suspended solids.
Figure: 30 TAC §305.503(f)(3)(B) (No change.)

(4) Heat load. If heat loading parameter is not present = 0 points; if heat loading parameter is present = 10 points. Heat Load Points = _____.

(5) Major/minor designation: EPA minor facility = 0 points; EPA major facility = 10 points. Major Facility Points = _____.

(g) Set point permits. The following fees are assessed for permits to which the parameters under subsection (f) of this section are not applicable.

(1) Evaporation/land application permits.
Figure: 30 TAC §305.503(g)(1) (No change.)

(2) Report only or stormwater outfall(s) and permits 12 points. Stormwater permit outfalls for which flow discharge parameters have been established shall be assessed a fee under subsection (f) of this section. Set points = _____.

(3) Aquaculture production facility discharge permits. In determining the flow volume points for an aquaculture production facility under subsection (f)(2) of this section, the flow for the facility shall be the facility's permitted annual average flow, or the facility's projected annual average flow if the permit does not have an annual average flow limitation. If the facility's permit does not have an annual average flow limitation, the facility's projected annual average flow for the 12-month period from September 1, 2000 to August 31, 2001, shall be submitted to the executive director by November 1, 2000 and shall be signed and certified as required by §305.44 of this title (relating to Signatories to Applications). In subsequent years, if the facility's permit does not have an annual average flow limitation, the facility's projected annual average flow for the upcoming period from September 1 to August 31 shall be submitted to the executive director by June 30 and shall be signed and certified as required by §305.44 of this title. The annual fee for aquaculture production facilities shall not exceed $5,000.

(h) The annual fee to be assessed is calculated by multiplying the total points determined under subsections (f) and (g) of this section by the rate of $75 per point. Permits having both process wastewater discharges assessed under subsection (f) of this section and stormwater discharges assessed under subsection (g) of this section shall be assessed the total of the fees determined under the respective subsections, not to exceed the maximum fee under subsection (a) of this section.

(i) The fee assessed an inactive permit shall be 50% of that calculated under subsection (f) and subsection (g) of this section. In no event shall the fee for an inactive permit be less than $150 per year.

(j) Upon delegation of the National Pollutant Discharge Elimination System, a fee shall be determined by multiplying the base fee provided by subsection (c) of this section by a factor not to exceed 2.3. The minimum fee shall not be less than $150 more than the pre-existing fee. This subsection shall not apply to domestic wastewater treatment facilities or confined/concentrated animal feeding operations until August 31, 1999.

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 August 25, 2000.

TRD-200006003
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 14, 2000
Proposal publication date: April 7, 2000
For further information, please call: (512) 239-0348

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SUBCHAPTER O. ADDITIONAL CONDITIONS AND PROCEDURES FOR WASTEWATER DISCHARGE PERMITS AND SEWAGE SLUDGE PERMITS

30 TAC §305.539

The Texas Natural Resource Conservation Commission (commission or TNRCC) adopts new §305.539, Additional Requirements for Shrimp Aquaculture Facilities Within the Coastal Zone, *with changes* to the proposed text as published in the May 5, 2000 issue of the *Texas Register* (25 TexReg 3918).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The new section is adopted to implement Senate Bill (SB) 873, which became law as an act of the 76th Texas Legislature, 1999. The specific requirements of that statute which are embodied in this rule are listed in the STATUTORY AUTHORITY section of this preamble. Among other requirements, this new rule addresses the provisions of SB 873 by requiring a commercial aquaculture facility engaged in shrimp production and located within the coastal zone to obtain an individual Texas Pollutant Discharge Elimination System (TPDES) wastewater discharge permit if the facility will discharge into water in the state. Currently, all existing permitted commercial shrimp aquaculture facilities operate under individual permits. This rule would ensure that commercial shrimp aquaculture production facilities will not be eligible to operate under an aquaculture general permit or be permitted by rule. Additionally, the rule would require a permit applicant to submit a site-assessment environmental report and an emergency plan, approved by Texas Parks and Wildlife Department (TPWD), with the permit application. The rule also requires that the TPDES wastewater discharge permit contain conditions related to suspended solids that prevent adverse impacts to aquatic organisms and plants, and prevent excessive sedimentation and changes to receiving water flow patterns.

SECTION BY SECTION DISCUSSION

New §305.539(a) sets requirements for commercial aquaculture facilities located within the coastal zone and engaged in the production of shrimp that will discharge into water in the state. Under §305.539(a)(1), each such facility, hereinafter referred to as "facility," must submit an application for an individual TPDES permit which includes a copy of the site-assessment environmental report submitted to the Texas Department of Agriculture (TDA) and a copy of the emergency plan approved by TPWD, unless

the application was submitted for an existing facility, as defined in §321.271 of this title, prior to January 26, 1998 as required under §321.272(m) of this title. Since SB 873 became effective on September 1, 1999, long after existing facilities submitted permit applications under Chapter 321, Subchapter O, the requirement in SB 873 that the permit application include a copy of the site-assessment environmental report approved by TDA and the emergency plan approved by TPWD does not apply to pending applications that were submitted by existing facilities prior to January 26, 1998 under §321.272(m) of this title.

New §305.539(a)(2) requires a facility to obtain an individual TPDES wastewater discharge permit prior to discharging into water in the state unless the facility is an existing facility, as defined in §321.271 of this title, that submitted an application for an individual permit prior to January 26, 1998, and the application has not been withdrawn by the applicant or denied by the commission. This allows an existing facility that submitted a timely permit application under the requirements of Chapter 321, Subchapter O, that is still pending before the commission, to continue discharging prior to issuance of the individual permit, as is currently allowed under Chapter 321, Subchapter O.

New §305.539(a)(3) requires a facility to obtain an amendment to an individual TPDES permit prior to an increase in the amount of discharge above the level allowed in the existing permit or a change in the nature of the discharge, unless the facility obtains a temporary or emergency order authorizing the discharge, under Chapter 35, Subchapter F.

New §305.539(a)(4) allows a facility, during times of flooding or other defined emergencies, to discharge wastewater in excess of permitted flow rates in order to prevent the release of exotic species or the violation of a quarantine condition imposed by the TPWD. Emergency discharges will be allowed only to the extent necessary to comply with the emergency plan approved by TPWD. The new rule also contains reporting requirements and other requirements related to discharges by a facility under an emergency plan approved by TPWD. For example, under §305.539(a)(4)(B), a facility must notify the appropriate TNRCC regional office at least 48 hours, or as soon as practicable, before initiating any action under an emergency plan in response to an emergency event. A follow-up report is required within 30 days following initiation of the emergency plan, according to the requirements of §305.539(a)(4)(D). New §305.539(a)(4)(C) requires the facility to control discharges made under an emergency plan in the most environmentally sound practicable manner. New §305.539(a)(4)(E) makes the facility responsible for demonstrating that the discharges were necessary and that conditions required initiation of the emergency plan.

New §305.539(a)(5) requires a facility to immediately report manifestations of disease in shrimp to the TNRCC regional office and Wastewater Permitting Section, and to TPWD. The facility must comply with 31 TAC §57.114 and §69.77, must immediately notify the executive director of the results of any analyses by a shellfish disease specialist, and must act to prevent the transmission of the disease to aquatic life endemic to the state. The executive director may require suspension or termination of the discharge of effluent from infected portions of the facility in order to protect aquatic life.

New §305.539(a)(6) requires a facility to immediately notify the TNRCC regional office and Wastewater Permitting Section when TPWD places the facility under quarantine. This paragraph also prohibits any discharge from a facility under quarantine unless the discharge is approved by the executive director and TPWD under certain conditions, such as to allow implementation of the facility's emergency plan approved by TPWD.

New §305.539(a)(7) requires a facility to comply with the terms and conditions of their individual TPDES permit except as provided in paragraph (4), regarding discharge under an emergency plan approved by TPWD, discussed earlier in this preamble. The new rule also provides that the permit shall include conditions related to suspended solids based on levels and measures adequate to prevent a potential significant adverse response in aquatic organisms, changes in receiving waters flow patterns, excessive sedimentation of bays, and potential significant adverse responses in aquatic plants caused by reduction in light due to suspended solids in discharges.

New §305.539(b) provides that individual TPDES permits applications to which the requirements of this section apply are subject to review by a three-member application review committee comprised of one representative each from the executive director, TPWD, and the TDA.

New §305.539(c) requires the commission, when determining whether to approve an application for a TPDES permit for an aquaculture facility, to consider all relevant factors, including the applicant's site-assessment environmental report, any sensitive aquatic habitat guidelines established by TPWD, and comments by the three-member application review committee.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has 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. "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. This rule is adopted with the specific intent of protecting the environment by requiring commercial aquaculture facilities located within the coastal zone and engaged in the production of shrimp that will discharge into water in the state to obtain an individual TPDES wastewater discharge permit that will include conditions relating to suspended solids as well as other environmentally protective requirements. However, the rulemaking is not a major environmental rule because it will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the rule is consistent with legislation enacted in SB 873, which expressly sets out in statute many of the requirements which were already being required of commercial aquaculture facilities under the commission's general authority in the TWC, Chapter 26.

Even if the rule is a major environmental rule, the rule is not subject to a full regulatory analysis under Texas Government Code, §2001.0225, because the rule does not meet one of the four threshold requirements in that statute. The rule does not exceed a standard set by federal law which is not specifically required by state law because each requirement set out in the rule is expressly required by SB 873. For the same reason, the rule does not exceed an express requirement of state law that is not specifically required by federal law. The rule does not exceed a requirement of a delegation agreement or contract between the state

and federal government to implement a federal program. Rather, the rule is consistent with the September 14, 1998 Memorandum of Understanding (MOU) between the United States Environmental Protection Agency (EPA) and TNRCC, which authorizes the TNRCC to implement the NPDES program in Texas, because the MOU provides that the TNRCC will require a TPDES permit for facilities that will discharge wastewater into waters in the United States. Finally, the rule is not adopted under the general powers of the TNRCC, but rather, under SB 873.

TAKING IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for the new rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule is to implement changes made by SB 873. The rule sets additional standards for commercial aquaculture facilities located within the coastal zone and engaged in the production of shrimp that will discharge into water in the state by requiring them to obtain an individual TPDES wastewater discharge permit. Promulgation and enforcement of the rule will not burden private real property which is the subject of the rule because the rulemaking is intended to make the current rules consistent with statutory language. This rulemaking does not constitute a taking of private property because a commercial shrimp aquaculture facility located in the coastal zone which discharges into water in the state will still be able to operate, provided the facility obtains an individual TPDES permit from the commission.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking and found that this is a rulemaking subject to the Texas Coastal Management Program (CMP) and must be consistent with all applicable goals and policies of the CMP. The commission has prepared a consistency determination for this rule pursuant to 31 TAC §505.22 and has found that the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goals applicable to the rulemaking are the goals to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are those related to discharge of industrial wastewater to coastal waters in 31 TAC §501.14(f)(1). These policies require that commission rules comply with the requirements of the federal Clean Water Act and implementing regulations; provide for the assessment of water quality on a coastal watershed basis once every two years; to the greatest extent practicable, provide that all permits for the discharge of wastewater within a given watershed contain the same expiration date; identify and rank waters that are not attaining designated uses and establish total maximum daily loads according to the rankings; and require that increases in pollutant loads to coastal waters shall not impair designated uses of coastal waters or result in degradation of coastal waters that exceed swimmable/fishable quality except when necessary for important economic or social development. Promulgation and enforcement of this rule would be consistent with the applicable CMP goals and policies because the rule sets additional standards for commercial aquaculture facilities located within the coastal zone and engaged in the production of shrimp that will discharge into or water in the state by requiring them to obtain an individual TPDES wastewater discharge permit that will include conditions relating to suspended solids as well as other environmentally protective requirements. This will protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs and is consistent with the applicable policies set out above. In addition, the rule does not violate any applicable provisions of the CMP's stated goals and policies.

HEARING AND COMMENTERS

The public comment period closed June 5, 2000. No public hearing was held. Written comments were received from: The Texas Parks and Wildlife Department (TPWD); and the Texas Aquaculture Association (TAA). TPWD generally supported the proposal but suggested changes as stated in the ANALYSIS OF TESTIMONY portion of this preamble. TAA requested an extension of time for submitting comments, a delay to the rulemaking pending further scientific studies, and suggested changes to the rulemaking as stated in the ANALYSIS OF TESTIMONY portion of this preamble.

ANALYSIS OF TESTIMONY

TPWD commented that the commission should clarify language under §305.539(a)(4)(B), on when a facility must notify the TNRCC regional office prior to initiating any action under an emergency plan. Under the proposed rule, a facility must notify the TNRCC regional office at least 48 hours prior to initiating action under an emergency plan. TPWD stated that the provision could potentially put the operator in the problematic position of having to either meet TNRCC requirements and wait 48 hours prior to discharging under an emergency plan or meeting TPWD requirements to lower pond levels prior to the landfall of a hurricane. TPWD proposed that the rule allow notification to be provided "as soon as practicable" prior to initiation of an emergency plan.

The commission agrees with this comment. Therefore, the rule has been modified to provide that operator shall notify the TNRCC regional office at least 48 hours or "as soon as practicable" prior to initiating an action under an emergency plan.

TPWD commented that the proposed rule under §305.539(a)(4) and (6), could be read as allowing TNRCC to supersede TPWD's authority in the areas of disease management and quarantines. In addition, TPWD requested that language be added to the rule in §305.539(a)(5), that specifically referred to TPWD rules defining disease and disease management requirements.

The commission agrees with these comments. Therefore, §305.539(a)(4) has been modified to delete language that implied that the executive director could impose a quarantine condition, and §305.539(a)(6) has been modified to clarify that approval by both the executive director and TPWD is required in order to discharge during the quarantine period. In addition, the adopted rule has been modified in §305.539(a)(5) to include specific references to TPWD rules on disease management.

TPWD commented that the powers of the Application Review Committee, established by SB 873 extend to all aquaculture permits, not just shrimp aquaculture facilities. TPWD requested that the commission open this rulemaking up to define the duties of the Application Review Committee and its role in all aquaculture permitting activities.

The commission agrees in part with this comment. However, the statutory provision in Texas Agriculture Code, §134.031(b), creating the Application Review Committee is contained within the section of the statute requiring TNRCC, TPWD, and TDA to enter into a MOU for the regulation of all matters related to aquaculture. As such, the commission believes that the duties of the Application Review Committee should be set out in the MOU rather than

this rulemaking. An MOU between TNRCC, TPWD, and the TDA regarding the licensing and regulation of all aquaculture facilities and the role and responsibilities of the Application Review Committee is currently being negotiated between the agencies. The commission acknowledges that several issues, including the issues raised by TPWD, still need to be resolved. The commission anticipates resolving those issues within the MOU, not in additional rulemaking outside the MOU. The commission has made no changes to the rule language in response to this comment.

TAA urged the commission to adopt a coastwide permit condition for suspended solids discharges from aquaculture facilities located within the coastal zone and engaged in shrimp production. TAA contends that the very purpose of including Texas Water Code, §26.0345, in SB 873, was to either require TNRCC to develop effluent limits or treatment practices that are protective.

The commission disagrees with this comment. The commission believes that SB 873 requires the agency to develop individual permits for wastewater discharges from aquaculture facilities engaged in shrimp production located in the coastal zone. Additionally, SB 873 specifically requires the TNRCC to regulate suspended solids from these facilities. The commission disagrees with TAA's statement that the intent of the legislation was to have the TNRCC develop a coastwide effluent standards or treatment practices. To do so would eliminate the need for individual permits, a requirement of SB 873, and allow for the issuance of general permits. Wastewater discharge permits for individual aquaculture facilities, like other TNRCC individual wastewater permits, will address all pollutants of concerns, including suspended solids, and will include limits that will ensure that the discharge meets the Texas Surface Water Quality Standards. Information and data from EPA and the stakeholders will be considered in the development and issuance of individual aquaculture permits. No change was made to the proposed rule in response to this comment.

TAA argued that because TNRCC and EPA have not reached an agreement on the most appropriate manner of regulating suspended solids in wastewater discharge permits from aquaculture facilities, and studies of the effects of suspended solids on seagrasses are currently being conducted by the United States Army Corps of Engineers (COE), the commission should postpone rulemaking until TNRCC and EPA reach agreement and until the COE study is complete.

The commission disagrees with this comment. The shrimp aquaculture industry in the United States and Texas is relatively new and scientific research evaluating the best management of solids is ongoing. The commission has not postponed this rulemaking to allow this research to conclude because this rulemaking will not include suspended solids requirements that will be included in all permits. Instead, these requirements will be developed on a case-by-case basis for each permit application based on the data available. New information and data from EPA, the stakeholders, and others will be considered in the development and issuance of individual aquaculture permits. No extension of comment time was granted and no change was made to the proposed rule as a result of this comment.

STATUTORY AUTHORITY

The new section is adopted under TWC, §5.102, which provides the commission with general powers to carry out duties under TWC, §§5.103, 5.105, and 5.120, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state and to establish and approve all general policies of the commission. The rule is also adopted under and implements TWC, §26.0345, which requires the commission to establish permit conditions relating to suspended solids in discharge permits for shrimp aquaculture facilities located in the coastal zone; Texas Agriculture Code, §134.013, which requires commercial shrimp aquaculture facilities located in the coastal zone to obtain an individual permit from the commission prior to discharging wastewater into water in the state and requires the applicant to provide an environmental site assessment report as part of its application for a permit; Texas Agriculture Code, §134.031, which requires the commission, TPWD, and TDA to enter into a memorandum of understanding related to regulation of aquaculture and the establishment of a three-member application review committee, comprised of one member each appointed by the commission, TPWD, and TDA, to review permit applications to ensure that the proposed discharge will not adversely affect water in the state; Texas Parks and Wildlife Code, §66.007(j), which provides that an aquaculture facility placed under quarantine condition by TPWD may not discharge wastewater from the facility except with approval of the TPWD and authorization from the commission; and Texas Parks and Wildlife Code, §66.007(k), which provides that even if under a quarantine condition, an aquaculture facility shall discharge wastewater as necessary to comply with an emergency plan approved by TPWD and incorporated into a wastewater discharge authorization issued by the commission.

§305.539. Additional Requirements for Shrimp Aquaculture Facilities Within the Coastal Zone.

(a) A commercial aquaculture facility, located within the coastal zone as delineated under rules of the Coastal Coordination Council, 31 TAC §503.1, and engaged in the production of shrimp that will discharge into water in the state shall comply with the following requirements.

(1) The applicant shall apply to the executive director for an individual Texas pollutant discharge elimination system (TPDES) permit. Unless the application was submitted for an existing facility, as defined in §321.271 of this title, before January 26, 1998, the application, in addition to the information required by the application form, shall include:

(A) a copy of the site-assessment environmental report submitted to the Texas Department of Agriculture (TDA) as part of the application for an aquaculture license; and

(B) a copy of an emergency plan, approved by the Texas Parks and Wildlife Department (TPWD), for incorporation into the TPDES permit.

(2) The applicant shall obtain an individual TPDES wastewater discharge permit in accordance with the requirements of this chapter before discharging into water in the state, except for an existing facility, as defined in §321.271 of this title, that submitted an application for an individual permit before January 26, 1998 that has not been withdrawn by the applicant or denied by the commission.

(3) The applicant shall obtain an amendment to an individual TPDES permit prior to an increase in the amount of discharge above the levels allowed in the existing permit or a change in the nature of the discharge, except as otherwise provided by Chapter 35, Subchapter F of this title (relating to Water Quality Emergency and Temporary Orders).

(4) The facility shall comply with the terms and conditions of its individual TPDES permit, and any quarantine conditions imposed by TPWD, except in cases where the facility is in imminent danger

of overflow, flooding, or similar conditions that could result in either the release of exotic species that are regulated by the TPWD or that would result in the violation of a quarantine condition imposed by the TPWD. In such cases, the facility may discharge effluent in excess of the permitted flow rates, but only to the extent necessary to comply with an emergency plan that is approved by the TPWD, and the following provisions shall also apply.

(A) The facility is not subject to effluent limitations, discharge flow limitations, and other effluent monitoring requirements in the permit for discharges that comply with an emergency plan approved by the TPWD.

(B) A facility shall notify the appropriate TNRCC regional office at least 48 hours, or as soon as practicable, prior to initiating any action under an emergency plan in response to an emergency event, such as landfall of a hurricane, and shall notify the regional office as soon as practicable following initiation of the emergency plan.

(C) The facility shall control discharges made under an emergency plan in the most environmentally sound manner that is practicable.

(D) Within 30 days following initiation of the emergency plan, the facility shall submit a written report to the appropriate TNRCC regional office that includes the following information:

(i) the reason for initiation of the plan;

(ii) actions taken to prevent or mitigate impacts of the discharge to the receiving stream;

(iii) volumes of wastewater discharged;

(iv) the dates that discharges occurred; and

(v) a general summary of receiving stream conditions at the time of the discharges.

(E) The facility is responsible for demonstrating that the discharges were necessary and that conditions required initiation of the emergency plan.

(5) A facility engaged in the propagation or rearing of shrimp which exhibit one or more manifestations of disease as defined by TPWD in 31 TAC §57.111 and §69.75 shall immediately report the apparent disease to the TNRCC regional office and Wastewater Permitting Section, and to TPWD, and shall comply with 31 TAC §57.114 and §69.77. The executive director shall be immediately notified of the results of any analyses by a shellfish disease specialist. Any actions which are deemed necessary by the discharger to prevent transmission of the disease to aquatic life endemic to waters in the state shall be implemented as soon as possible. The executive director may require suspension or termination of the discharge of effluent from infected portions of the facility as is necessary to protect aquatic life in the receiving stream from potential adverse effects.

(6) A facility required to hold a permit from TPWD regulating the possession and sale of exotic fish and shellfish shall immediately notify the TNRCC regional office and Wastewater Permitting Section if the TPWD places the facility under quarantine condition. There shall be no discharge during the quarantine period, except upon approval by the executive director and TPWD. The executive director and TPWD may suspend or terminate the prohibition on discharge to allow for implementation of the facility's emergency plan approved by TPWD, following the lifting of the quarantine condition by TPWD, or based on other relevant factors.

(7) Except as provided in paragraph (4) of this subsection, a facility shall comply with the terms and conditions in its individual TPDES permit, which shall include conditions related to suspended solids based on levels and measures adequate to prevent:

(A) a potential significant adverse response in aquatic organisms, changes in flow patterns of receiving waters, or excessive sedimentation of bays; and

(B) a potential significant adverse response in aquatic plants caused by reduction of light due to suspended solids in discharges.

(b) All new, amendment, or renewal applications for an individual TPDES permits to which the requirements of this section apply are subject to review by a three-member application review committee comprised of one representative each from the executive director, TPWD, and TDA.

(c) In considering whether to approve an application for a new, amended, or renewed individual TPDES permit for a commercial aquaculture facility located within the coastal zone and engaged in the production of shrimp, the commission shall consider all relevant factors, including:

(1) the site-assessment environmental report provided by the applicant under subsection (a)(1)(A) of this section;

(2) any sensitive aquatic habitat guidelines established by TPWD; and

(3) any comments on the application provided by the three-member application review committee referred to in subsection (b) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2000.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-6087

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CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §336.1, Scope and General Provisions; §336.2, Definitions; §336.5, Exemptions; §336.103, Schedule of Fees for Subchapter H Licenses; §336.105, Schedule of Fees for Subchapter F Licenses; §336.107, Annual License Fee Due Date and Period Covered; §336.301, Purpose and Scope; §336.308, Determination of Internal Exposure; §336.313, Dose Limits for Individual Members of the Public; §336.341, General Recordkeeping Requirements for Licensees; §336.352, Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Limits; §336.355, Reports of Individual Monitoring; §336.405, Notifications and Reports to Individuals; §336.513, Technical Requirements for Active Disposal Sites; §336.601, Applicability; §336.607, Criteria for License Termination under Restricted Conditions; §336.613, Additional Requirements; §336.701, Scope and General Provisions;

§336.702, Definitions; §336.705, Content of Application; and §336.718, Application for Renewal or Closure.

The TNRCC also adopts new §336.201, Purpose and Scope; §336.203, License Required; §336.205, Application Requirements; §336.207, General Requirements for Issuance of a License; §336.209, Issuance of License; §336.211, General Requirements for Radioactive Material Disposal; §336.213, Method of Obtaining Approval of Proposed Disposal Procedures; §336.215, Disposal by Release into Sanitary Sewerage; §336.217, Disposal by Burial in Soil; §336.219, Disposal by Release into Septic Tanks; §336.221, Treatment or Disposal by Incineration; §336.223, Disposal in Underground Injection Control Class I Injection Wells; §336.225, Disposal of Specific Wastes; §336.229, Prohibition of Dilution; §336.331, Transfer of Radioactive Material; §336.332, Preparation of Radioactive Material for Transport; §336.335, Reporting Requirements for Incidents; §336.336, Tests; §336.338, General Recordkeeping Requirements for Disposal; §336.339, Form of Records; and §336.501, Scope and General Provisions; §336.602, Definitions; §336.615, Inactive Disposal Sites; §336.617, Technical Requirements for Inactive Disposal Sites; §336.619, Financial Assurance for Decommissioning; §336.621, Recordkeeping for Decommissioning; §336.623, Financial Assurance for Control and Maintenance; §336.625, Expiration and Termination of Licenses; and §336.627, Appendix A. Radionuclide Quantities for Use in Determining Financial Assurance for Decommissioning.

The TNRCC also adopts the repeal of existing §336.201, Additional Application Requirements; §336.203, Environmental Analysis; §336.205, Transfer of Radioactive Material; §336.207, Preparation of Radioactive Material for Transport; §336.209, Records and Reports; §336.210, Complaints; §336.211, Reporting Requirements for Incidents; §336.213, Tests; §336.215, Inspections; §336.219, Notice of Bankruptcy; §336.331, General Requirements for Waste Disposal; §336.332, Method of Obtaining Approval of Proposed Disposal Procedures; §336.333, Disposal by Release into Sanitary Sewerage; §336.334, Disposal by Burial in Soil; §336.335, Disposal by Release into Septic Tanks; §336.336, Treatment or Disposal by Incineration; §336.337, Disposal of Specific Wastes; §336.338, Transfer for Disposal at Licensed Land Disposal Facility and Manifests; §336.339, Texas Department of Health Inspection and Regulation of Shipments of Radioactive Waste; §336.340, Compliance with Environmental and Health Protection Regulations; §336.348, Records of Waste Disposal; §336.349, Form of Records; §336.351, Notification of Incidents; §336.361, Appendix D. Requirements for Receipt of Low-Level Radioactive Waste for Disposal at Licensed Land Disposal Facilities and Manifests; §336.501, Scope and General Provisions; §336.502, Definitions; §336.503, Filing of Application; §336.504, General Requirements for Issuance of a License; §336.505, Issuance of License; §336.512, Technical Requirements for Inactive Disposal Sites; §336.514, Financial Assurance for Decommissioning; §336.515, Recordkeeping for Decommissioning; §336.517, Financial Assurance for Control and Maintenance; §336.519, Expiration and Termination of Licenses; §336.521, Appendix A. Radionuclide Quantities for Use in Determining Financial Assurance for Decommissioning; and §336.742, Inspections of Land Disposal Facilities.

Sections 336.1, 336.2, 336.5, 336.211, 336.335, 336.341, 336.501, 333.613, 336.617, 336.621, 336.625, and 336.701 are adopted *with changes* to the proposed text as published in the June 16, 2000, issue of the *Texas Register* (25 TexReg 5817). Sections 336.103, 336.105, 336.107, 336.201, 336.203, 336.205, 336.207, 336.209, 336.213, 336.215, 336.217, 336.219, 336.221, 336.223, 336.225, 336.229, 336.301, 336.308, 336.313, 336.331, 336.332, 336.336, 336.338, 336.339, 336.352, 336.355, 336.405, 336.513, 336.601, 336.602, 336.607, 336.615, 336.619, 336.623, 336.627, 336.702, 336.705, and 336.718 and the repeals, 336.201, 336.203, 336.205, 336.207, 336.209 - 336.211, 336.213, 336.215, 336.219, 336.331 - 336.340, 336.348, 336.349, 336.351, 336.361, 336.501 - 336.505, 336.512, 336.514, 336.515, 336.517, 336.519, 336.521, and 336.742 are adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted rule package has three major goals: (1) implement House Bill (HB) 1172, 76th Legislature, 1999, and its amendments to the Texas Health and Safety Code (THSC); (2) implement the recommendations of the TNRCC's Business Process Review Permit Implementation Team (BPR-PIT) to provide for consistency between the administrative procedures of the radiation control program and the other permitting programs of the agency; and (3) improve readability and understanding by reorganizing Chapter 336, putting its requirements into plain English, and eliminating its redundancies and conflicts.

Changes to implement HB 1172 are: (1) amending the definition of low-level radioactive waste to be compatible with the United States Nuclear Regulatory Commission's (NRC's) definition; (2) incorporating the TNRCC's new authority to exempt from application of a rule; (3) adding an exemption to continue or expand on-site low-level radioactive waste disposal licensed before September 9, 1989; and (4) adding exemptions from radioactive material licensing requirements for facilities participating in the Voluntary Cleanup Program or Superfund cleanups.

The BPR-PIT changes are part of an agency-wide effort to make programs consistent where feasible. The agency's management has mandated the consistency effort to make agency processes more efficient and "user friendly." Major adopted changes are: (1) that the radiation control program will begin using the agency's definitions for major and minor amendments; and (2) the radiation control program application process will be moved from Chapter 336 to Chapter 281 (relating to Applications Processing) and Chapter 305 (relating to Consolidated Permits) with technical requirements remaining in Chapter 336 and amended to be consistent with agency administrative procedures.

Lastly, Chapter 336 is made more understandable by partially reorganizing the chapter. Existing Subchapter C is repealed, with those sections being moved to more appropriate locations, or eliminated if redundant with other rules. The agency also corrected discrepancies within the chapter. For example, Subchapter C reporting requirements were moved to and merged with Subchapter D reporting requirements. Additionally, the application process was moved to and merged with the agency's application process requirements in Chapters 281 and 305. The disposal requirements in Subchapter D were moved to form a new Subchapter C, General Disposal Requirements. All of the decommissioning requirements were moved to Subchapter G, including inactive disposal site clean-up requirements. The commission also made distinctions between exemptions and requirements outside TNRCC's jurisdiction in §336.1 and §336.5.

In addition to the reorganization, wording in some areas was clarified. The changes are as follows: (1) putting requirements into

plain English, thereby resolving problems where the intent of the rule may have been unclear; (2) eliminating or simplifying unnecessary or repetitive language; (3) breaking long, complicated sections into shorter subsections; and (4) shortening sentences for readability.

This rule package does not: (1) make any substantive changes unless a provision clearly conflicted with statutory requirements (e.g., recordkeeping requirements in THSC, §401.057 and §401.058) or a change was needed to implement either HB 1172 or the BPR-PIT recommendations; (2) address whether rule requirements are Texas Department of Health (TDH) or TNRCC jurisdiction; (3) address new NRC compatibility issues, beyond the definition of low-level radioactive waste; or (4) make any changes affecting the regulation of naturally occurring radioactive material (NORM) waste disposal.

The adopted version of the rules has been approved by the Texas Radiation Advisory Board (TRAB).

SECTION BY SECTION DISCUSSION

Subchapter A - General Provisions

Section §336.1 was amended to change the reference to the United States Nuclear Regulatory Commission to the acronym "NRC" throughout the section. Section 336.1(a) was amended to simplify the reference to Chapter 336 and to break part of it out into paragraphs (1) and (5) so that new paragraphs (2) - (4) could be added to clarify the meaning of the rule. Section 336.1(a)(2) language was moved, unchanged from §336.5(c), to spell out exemptions to the agency's rules and the agency's jurisdiction early in the subchapter, except the §336.5(c) catchline, "United States Department of Energy contractors and United States Nuclear Regulatory Commission contractors" was deleted. Section 336.1(a)(3) provides clarification that radioactive material transferred outside of the possession of the federal government is subject to state jurisdiction. Section 336.1(a)(4) provides clarification that transportation issues are outside the TNRCC's jurisdiction, but that a transporter is still subject to applicable requirements of other government agencies. Section 336.1(a)(5) was moved, unchanged, from the last sentence in existing §336.1(a). Section 336.1(b) was amended to refer interested parties to the agency for a copy of the Articles of Agreement between the NRC and the State of Texas, rather than to a specific internal organization that might change in a future agency reorganization. A correction to the title of the Articles of Agreement in §336.1(b) was made from proposal to adoption, in which "United States Atomic Energy Commission" was corrected to refer to the "United States Nuclear Regulatory Commission" because the agreement is now with the NRC. Also a change was made from proposal to adoption to correct the acronym for United States Nuclear Regulatory Commission from "USNRC" to "NRC" in two places. Section 336.1(d) was amended to clarify that persons licensed under the "chapter," rather than the "subchapter," are required to confine "disposal," as well as "possession and use," of licensed radioactive material to the locations and purposes authorized under the license. Section 336.1(f) merges, clarifies, and restates in plain English, prohibitions regarding radioactive material waste disposal, derived from repealed §336.334 and from repealed §336.501(a) and (b), regarding the requirement for a license to dispose of low-level radioactive material or waste on-site; from repealed §336.332(e), regarding receiving low-level radioactive waste from other persons; and from repealed §336.501(a) and §336.332(a), regarding NORM waste disposal. A minor correction to §336.1(f)(3) was made from proposal to adoption which hyphenated "radium 226" and "radium 228" for consistency with other rule citations. Section 336.1(g) provides clarification that accelerator-produced radioactive material, though not a low-level radioactive waste by definition, is regulated in the same manner as low-level radioactive waste. This provision maintains the status quo regarding the regulation of accelerator-produced radioactive material, yet does not conflict with the new definition of low-level radioactive waste mandated by HB 1172 or with the definition of low-level radioactive waste of the NRC.

The §336.2 definition of "Agreement state" was amended from proposal to adoption to correct the acronym for the "United States Nuclear Regulatory Commission" from "USNRC" to "NRC." The definition of "Byproduct material" was amended to insert "or" in place of "and" to maintain compatibility with the federal definition and Senate Bill (SB) 1857, 74th Legislature, 1997. The definition of "Disposal" was added as a new definition to implement HB 1172's amendments to THSC, §401.003(8). Definitions were subsequently renumbered throughout this section to account for definition additions and deletions. The definition of "Generally applicable environmental radiation standards" was amended to abbreviate "United States Environmental Protection Agency" as "EPA." The definition of "Land disposal facility" was amended to add "Low-level" in front of "radioactive waste" to conform with HB 1172. The definition of "Low-level radioactive waste" was amended to conform with HB 1172's new THSC, §401.004 and the definition of "Waste" in Title 10 Code of Federal Regulations (CFR) §61.2. However, at the request of the Texas Radiation Advisory Board (TRAB), a chapter specific definition of "transuranic waste" was added in §336.2(107) and a reference was included in §336.2(57)(B)(iii) to exclude transuranic waste from the definition of low-level radioactive waste. Subparagraph (c) was derived from HB 1172. The TRAB members requested this change to eliminate potential confusion between low-level radioactive waste and high-level radioactive waste. The definition of "Major amendment" was deleted to provide consistency between the permitting programs in the agency, as recommended by the agency's BPR- PIT, and as discussed in amendments to §305.62(c) in a concurrent rulemaking in this issue of the *Texas Register*. The radiation control program will now use the agency's definition of major amendment in §305.62(c)(1). The definition of "Minor amendment" was also deleted to provide consistency in agency applications processing, as recommended by the agency's BPR-PIT, which was discussed in the preamble to §305.62(c)(2). The radiation control program will use the agency's definition of minor amendment in §305.62(c)(2). The rule moves the definition of "On- site" without change from §336.502(3) because it applies to more than one subchapter. The definition of "Radioactive substance" was amended to conform with THSC, §401.003(19). The definition of "Radioactive waste" was deleted because it was replaced with the new HB 1172 definition of "Low-level radioactive waste." For the purpose of this chapter, a new definition of "Transuranic waste," based upon the waste classification system in 10 CFR §61.55 and §336.362, was added to provide a definition for this term that was referenced in the definition of "Low-level radioactive waste." Transuranic waste is specific to waste with radionuclide concentration levels that exceed the Class C low-level radioactive waste classification threshold. Waste with transuranic radionuclide concentrations at or below the 100 nanocurie/gm level would fall into the category of either byproduct material under §336.2(13)(A), or accelerator-produced radioactive material under §336.2(2).

Section 336.5(a) was amended to delete the subtitle "General provision" and to make its language conform with HB 1172 amendments to THSC, §401.106(b) and (c). However, a minor change was made from proposal to adoption. In §336.5(a), the first sentence, "shall" was changed to "may" to agree with the statutory language in THSC §401.106(b). Section 336.5(a)(1) - (4) were new provisions added providing more detail on the processing of requests for exemption from rule and on the information required to be submitted with the request.

A commission order authorizing or denying a request for an exemption from the application of a rule would be the authorization or denial for that activity. In some cases, the commission order may also specify the requirement to obtain or maintain a license. Since HB 1172 did not authorize the TNRCC to exempt persons from statutory requirements, requests for exemption from the requirement to get a license will not be entertained. Because the process of 30 TAC Chapter 90 will be used, the public participation requirements contained in Chapter 90 will be followed.

New §336.5(b) is adopted to conform with HB 1172's new THSC, §401.104(e) to exempt from licensing requirements, persons participating in the agency's Voluntary Cleanup Program or Superfund cleanups. Former §336.5(b) was deleted because radioactive material transportation is not within the agency's jurisdiction, and therefore is not an exemption. The deleted language was simplified and moved to §336.1(a)(4). New §336.5(c) clearly delineates that radioactive materials exempted from licensing requirements by TDH under THSC, §401.106(a) are not subject to regulation as radioactive materials by the TNRCC. Former §336.5(c) was deleted and moved to §336.1(a)(2) because it pertains to activities outside of the agency's jurisdiction rather than an exemption from rule.

Subchapter B - Radioactive Substance Fees

Section 336.103 was amended to add "low-level" to "radioactive waste" wherever it appears in subsections (a) - (c) to conform with HB 1172.

Section 336.105 was amended to be consistent with the nonsubstantive organizational changes made throughout Subchapters F and G to improve readability. Existing fee amounts remain unchanged. The section title was amended to "Schedule of Fees for Other Licenses." Section 336.105(a) was amended to delete the catchline "Application fee" and add "or Subchapter G of this title (relating to Decommissioning Standards)"; §336.105(a)(1) was amended to delete "facility at which active disposal operations have ceased" and replace that language with "facilities regulated under Subchapter G"; and §336.5(a)(2) was amended to delete "proposed facility with active disposal operations" and replace that language with "facilities regulated under Subchapter F of this chapter." Section 336.105(b) was amended to delete the catchline "Annual license fees," and add "and Subchapter G;" §336.105(b)(1) was amended to delete "licensed facility at which active disposal operations have ceased" and replace that language with "facilities regulated under Subchapter G of this chapter;" and §336.105(b)(2) was amended to delete "licensed facility with active disposal operations" and replace that language with "facilities regulated under Subchapter F of this chapter." Section 336.105(c) was amended to delete the catchline "fees for certain amendment requests," add "a major" in front of "amendment," add "or Subchapter G," and delete "if the amendment involves expansion of previously authorized disposal facilities or addition of disposal facilities" to make the fee applicable to all major amendments under Subchapter F or G. Section 336.105(d) clarifies what fees apply when a facility ceases disposal activities and has received approval of the final decommissioning plan since a decommissioning plan is approved as a license amendment and the decommissioning will be carried out under the amended license.

Section 336.107(a) was amended to correct a cross-reference and reflect the newly adopted section title for §336.105.

Subchapter C - Additional Application, Operation, and License Requirements

This subchapter is repealed entirely and its requirements moved to new, more appropriate locations or completely repealed if those requirements are addressed elsewhere in the agency rules. The first sentence in §336.201(a) was moved to §336.205. The requirement that application information be complete and accurate in §336.201(a) was repealed because it is redundant with language in §305.44(b). Section 336.201(b) - (d) language was moved to §305.54 with minor modifications such as adding the words "low-level" and taking out obsolete dates. Repealed §336.203 language was moved to §281.21(f) with minor modifications. Repealed §336.205 and §336.338 language was moved to §336.331 with minor modifications. Repealed §336.207 language was moved in part to §336.332. Repealed §336.209 language was moved to and merged with §336.341 with the exception of §336.209(d) (which was moved to §336.339) and §336.209(f) (which is being repealed) to clarify that these recordkeeping requirements are applicable to all licensees. Section 336.210 is repealed because THSC, §401.392, which is the basis for it, was repealed in 1997. Repealed §336.211 language was moved to §336.335 with additional language from §336.351. Repealed §336.213 language was moved to §336.336 with modifications. Section 336.215 is repealed, along with §336.742, because both provisions were redundant with §305.125(10). Repealed §336.219 language was moved to §305.125(22) and amended to apply to all programs as discussed in the concurrent Chapter 305 adoption in this issue of the *Texas Register*.

New Subchapter C - General Disposal Requirements

This new subchapter is adopted to provide a central location for all of the general radioactive material disposal requirements and to clarify existing radioactive material disposal requirements. This new subchapter is based on existing disposal requirements in THSC, Chapter 401 and 30 TAC Chapter 336.

New §336.201 states that the new subchapter pertains to the disposal of all radioactive materials, except byproduct material that is under TDH jurisdiction (§336.2(13)(B)) and oil and gas NORM waste.

Section 336.203 sets forth the statutory requirement that all radioactive material disposal must be authorized by either a TNRCC license (THSC, §401.101) or an exemption by the TDH (THSC, §401.106(a)).

New §336.205(a) states that applications are to be submitted under the requirements of Chapter 305 (which also refers to the applicable subchapters under Chapter 336). Section 336.205(b) states that applications are to be accompanied by the appropriate fee from Subchapter B.

Section 336.207 consolidates requirements from repealed §336.504(1) - (4), and applies to all radioactive material licensing actions. Section 336.504(5) is repealed because it is redundant with §305.127(4)(C) requirements.

Section 336.209 language was moved from repealed §336.505 and amended to include compliance with Texas statutes and the agency rules relating to radioactive material licensing, as a precondition for license issuance. This adopted change is part of the agency effort to make the radioactive material licensing process consistent with the administrative procedures of other permitting programs of the agency.

Section 336.211 clarifies general requirements for radioactive material disposal. Section 336.211(a) contains language which was moved essentially unchanged from deleted §336.331(a), except to correct cross-references and to modify paragraph (3). Section 336.211(a)(3) is modified to clarify that once a radioactive material has decayed in storage, it shall be disposed of as authorized by other applicable laws, such as the Solid Waste Disposal Act. Adopted new subsection (b), relating to receipt of licensed materials from other persons, is based on 10 CFR §20.2001(b), and addresses a federal Level C compatibility category requirement. For NRC regulations that are assigned a Level C compatibility category, Agreement States are required to adopt the essential objectives of the NRC's program elements in rule but do not have to have a rule requirement identical to the federal regulation. Subsection (c) contains language which was moved from former §336.331(b) and clarified to reflect the TDH's jurisdiction. Subsection (d) is a clarification of regulatory jurisdiction over the disposal of radioactive materials. Subsection (e) is necessary to conform with HB 1172's new THSC, §401.106(c), and states that on-site disposal of low-level radioactive waste is prohibited in Texas, except that the commission may authorize the continued on-site disposal of low-level radioactive waste at facilities which began low-level radioactive waste disposal operations before September 1, 1989. Subsection (e) also clarifies that persons authorized to continue on-site disposal activities are to be licensed under Subchapter F. One minor change to §336.211(e) was made from proposal to adoption; in the second sentence, "shall" was changed to "may" to agree with the statutory language in THSC §401.106(c). Subsection (f) is a clarification from §336.701(a).

Section 336.213 is adopted as a clarification and major rewrite of former §336.332, which was based upon 10 CFR §20.2002. The section refers persons applying for a license to Chapter 305 for requirements regarding the application process. Within Chapter 336, there are three subchapters under which a license may be issued. Decommissioning licenses may be issued under Subchapter G, low-level radioactive waste disposal licenses may be issued under Subchapter H, and other on-site radioactive material disposal licenses for activities not licensed under Subchapter G or H will be issued under Subchapter F. Section 336.213(a) language was moved from former §336.332(c) and has been rewritten to clarify that these license applications will be submitted and processed under Chapter 305. Section 336.213(b) language was moved from former §336.332(b) and has been rewritten to clarify that changes to radioactive material license conditions are to be submitted and processed according to the amendment process in Chapter 305, Subchapter D. Section 336.213(c) language was moved from repealed §336.332(a) and (d) and has been rewritten to clarify the purpose of Subchapter F (relating to Licensing of Alternative Methods of Disposal of Radioactive Materials). Repealed §336.332(a) addressed activities not clearly regulated elsewhere in the rules. Sections 336.501 and 336.213(c) now serve this function. Subchapter F is intended to be used in instances where an applicant applies for authorization for on-site disposal not covered by any other Chapter 336 subchapter. Subchapter F is not intended to be used to authorize activities regulated under Subchapter G or H or to authorize disposal of radioactive material received from other persons.

Section 336.215 contains language moved unchanged from repealed §336.333, except for minor style and format changes.

Section 336.217 addresses the same requirements as repealed §336.334, and has been amended as necessary to correct cross-references, reflect the reorganization of Chapter 336, and to implement the new requirements of HB 1172 relating to exemptions.

Section 336.219 contains those provisions moved from repealed §336.335 and amended to reference Subchapter F rather than repealed §336.332 because of reorganization under adopted §336.213.

Section 336.221 contains language moved from §336.336, with modifications for readability and correction of cross-references.

Section 336.223 is a clarification of the relationship between the radiation control and underground injection control (UIC) programs, based upon the following existing rules and statutes. Title 40 CFR §144.11 prohibits any underground injection unless authorized under the UIC program. Section 331.7(a) of this title requires that all injection wells and activities be authorized by permit. Adopted §336.203, based on THSC, §401.101 and §401.106(a), requires that all disposal of radioactive material be licensed by the TNRCC or exempted by the TDH. Thus, adopted §336.223 requires disposal of "radioactive material by injection" to be authorized under both the UIC and radiation control rules.

Section 336.225 contains language moved from repealed §336.337, which has been modified to correct cross-references, correct a typographical error in repealed §336.337(c) by changing an incorrect reference from subsection (b) to (d), change "may" to "shall" in subsection (d) to make clear that the requirements are mandatory, and delete general license language originally in repealed §336.337(f) because it is not within the agency's jurisdiction. It also changes "executive director" to "agency" in subsection (d) for consistency with rules in other programs.

Section 336.229 is a clarification of existing TNRCC policy. Once a waste is classified as a radioactive material, whether low-level radioactive waste, NORM waste, or byproduct material, it maintains that classification for the purposes of determining the appropriate means of disposal under Chapter 336.

Subchapter D - Standards for Protection Against Radiation

The changes to Subchapter D are primarily organizational in nature. The disposal requirements in this subchapter were moved to the new Subchapter C - General Disposal Requirements. Transfer, transportation, and reporting and testing requirements from Subchapter C were moved to Subchapter D to be merged with similar requirements, or eliminated if redundant.

Section 336.301(a) was amended to add "and establishes minimum standards for all persons who dispose of radioactive materials" to clarify that some provisions within the subchapter apply to all persons and not just licensees. New §336.301(d) contains language moved unchanged from repealed §336.340, which stated that compliance with the rules in Chapter 336 does not preclude a licensee from having to comply with other federal, state, and local regulations.

Section 336.308 was amended to correct a cross-reference in §336.308(d) to reflect the new adopted section for incident reporting requirements and to change the numeral "7" to "seven."

Section 336.313(a)(1) was amended to correct a cross-reference to reflect the new adopted section for disposal into sanitary sewerage requirements. Section 336.313 also includes usage changes such as changing the numeral "1" to "one," and using "EPA" rather than spelling out "United States Environmental Protection Agency."

Former §336.331 is repealed as discussed in relation to §336.211. The adopted new §336.331 contains language moved from repealed §336.205 with grammatical changes. The language moved from §305.205(b)(4) was edited to remove redundant language by deleting "to any person otherwise authorized to receive this material by the Federal government or any agency thereof, the commission, the TDH, or any Agreement State; or." In §336.331(b)(1), the words "executive director" have been changed to "agency" to reflect the authority of the agency to receive transferred radioactive material. Also, "may" has been changed to "shall" to make it clear that such transfers should occur only after agency approval. Subsections (g) and (h) consist of language moved from repealed §336.338, as amended to remove obsolete manifest requirements in repealed §336.338(b)(2).

Former §336.332 is repealed as discussed in relation to adopted new §336.213. The adopted new §336.332 is moved from repealed §336.207 with grammatical changes.

Section 336.333 is repealed and its language moved to §336.215 with grammatical changes.

Section 336.334 was repealed and its language moved to §336.217, as discussed in relation to §336.217.

Former §336.335 is repealed. The adopted new §336.335 moves incident reporting requirements from former §336.211 and §336.351, merges the incident reporting requirements for ease of use, and amends the existing language as needed to clarify the requirements and to conform with the federal requirements in 10 CFR §20.2202, §30.50, §40.60, Part 40 Appendix A, and Part 61. New §336.335 clarifies that notifications in any form should be submitted to the executive director which by definition, includes staff. As such, the redundant reference to "or staff" was deleted in §336.335(a), (b), and (c)(1) and (2). The following minor typographical corrections were made from proposal to adoption. In §336.335(a), inside the parenthetical entry at the end of the first sentence, "shall" was changed to "may" to conform with the language in 10 CFR §30.50; and in the last sentence, the second "shall" was changed to "may" to agree with language in repealed §336.351(a). In §336.335(b), the second "shall" was changed to "may" to agree with language in repealed §336.351(b); and in §336.335(c)(2), the second sentence, "shall" was changed to "may" to agree with language in repealed §336.211(3)(B).

Former §336.336 is repealed as discussed in relation to §336.221. Language for new adopted §336.336 was moved substantially unchanged from repealed §336.213.

Section 336.337 is repealed as discussed in relation to adopted §336.225.

Former §336.338 is repealed as discussed in relation to adopted new §336.331. Adopted new §336.338 contains language moved from repealed §336.348 and amended to conform to THSC, §401.057 by eliminating a time limit for record retention, by substituting the term "person" for "licensee," and adding language from §401.057(c) and (d).

Former §336.339 is repealed, and the language was moved with modifications to adopted new §336.701(e) because repealed §336.339 applied to low-level radioactive waste. Adopted new §336.339 contains language from former §336.349 and §336.209(d).

Section 336.340 is repealed as discussed in relation to adopted §336.301.

The §336.341 title was amended to "General Recordkeeping Requirements for Licensees" to centrally locate general recordkeeping requirements for licensees (as opposed to general recordkeeping requirements for all disposal of sources of radiation in new §336.338). Section 336.341(b) was amended to update the cross-reference from §336.338 to §336.331(h). The language in adopted new §336.341(d) - (g) was moved from repealed §336.209(a) - (c) and (e), respectively. A typographical correction was made from proposal to adoption. In §336.341(d), the second sentence, the second "shall" was changed to "may" to agree with language from former §336.209(a).

Section 336.348 is repealed as discussed in relation to adopted §336.338.

Section 336.349 is repealed as discussed in relation to adopted §336.339.

Section 336.351 is repealed as discussed in relation to adopted §336.335.

Section 336.352(a) and paragraph (1) were amended to correct cross-references from §336.351 to §336.335 to reflect the reorganization amendments of this chapter.

Section 336.355(a) was amended to add "low-level" in front of "radioactive waste" to conform with HB 1172.

Section 336.361 is repealed to delete an obsolete manifesting provision which applied only to low-level radioactive waste received from other persons for disposal at a licensed land disposal facility before March 1, 1998. Because there was no land disposal facility licensed to receive waste from others in Texas before March 1, 1998, the requirement was obsolete and was deleted.

Subchapter E: Notices, Instructions, and Reports to Workers and Inspections

Section 336.405(d) was amended to correct a cross-reference to reflect the chapter reorganization.

Subchapter F: Licensing of Alternative Methods of Disposal of Radioactive Material

The rules adopt a new regulatory scheme that requires decommissioning of a site to be considered a separate and distinct action from the act of obtaining a license to dispose of radioactive material. When Subchapter F was originally adopted, owners of facilities with radioactive material contaminated soils and buildings and/or old radioactive material landfills were considered to be in "possession" of radioactive material. After NRC promulgated its "Timeliness in Decommissioning Rules (59 Fed Reg 36026), published July 15, 1994, effective August 15, 1994," and "Radiological Criteria for License Termination, (62 Fed Reg 39058) published July 21, 1995, effective August 20, 1997," it was no longer appropriate to license contaminated areas as "possessing" radioactive material for extended periods

of time without decommissioning. A new concept of timely decommissioning, followed by release for unrestricted or restricted use, had to be implemented in conformance with the new NRC requirements.

The following sections relating to decommissioning requirements in Subchapter F are repealed and moved to Subchapter G: §§336.502 - 336.505, 336.512, 336.514, 336.515, 336.517, 336.519, and 336.521. These decommissioning provisions were moved substantially unchanged to Subchapter G to consolidate all decommissioning requirements in one subchapter. This separates by chapter the decommissioning of inactive sites from the disposal of radioactive material at active sites. The remaining requirements in Subchapter F were modified to more closely reflect the NRC's methods of licensing (10 CFR §20.2002) and were clarified and put into plain English.

No substantive changes were made other than to comply with federal and state laws and regulations. This federal regulation provides a mechanism to consider requests for approval of on-site disposal activities that do not fit the licensing criteria in Subchapter H or G. As amended and subject to applicable limitations, the commission may continue to consider requests for on-site disposal of radioactive materials which are not addressed by Subchapters G and H under Subchapter F (e.g., diffuse NORM waste having concentrations of radium-226 or radium-228 of less than 2,000 pCi/g).

The receipt and disposal of radioactive materials from off-site (other persons/commercial disposal) is not intended to be authorized by Subchapter F. This represents no change from current agency practice.

In conformance with HB 1172, 76th Legislature, 1999 under Subchapter F, the commission may also consider requests for on-site disposal of low-level radioactive waste on a specific basis at any facility at which low-level radioactive waste disposal operations began before September 1, 1989.

Section 336.501 is repealed and replaced with new provisions to reflect organizational changes discussed previously where requirements for active disposal of radioactive material and for the decommissioning of inactive facilities were separated between Subchapters F and G. Adopted new §336.501(a) states that Subchapter F applies only to on-site disposal of radioactive material generated in the person's activities, and thus, may not be used to authorize commercial disposal of radioactive material or disposal of radioactive material received from other persons. Language from repealed §336.501(a) was added in part to §336.601(a) to move the decommissioning requirements for inactive disposal sites to Subchapter G; and to §336.615. A minor typographical correction was made from proposal to adoption. In adopted new §336.501(a) "shall" was changed to "may" to agree with language formerly in repealed §336.501(a). Adopted new §336.501(b) conforms with HB 1172's new definition of low-level radioactive waste and new THSC, §401.106(c). A minor change to new §336.501(b) was made from proposal to adoption; in the second sentence, "shall" was changed to "may" to agree with the statutory language in THSC, §401.106(c). The language in repealed §336.501(c) was moved unchanged to §336.615. The language in repealed §336.501(d) was deleted to eliminate duplicative language. NRC requires all contaminated facilities, including those previously authorized or closed, to meet the new decommissioning standards for unrestricted or restricted release. Before NRC promulgated its timeliness-in-decommissioning regulations and new decommissioning standards, facilities which had contamination or waste disposed of on their property were licensed for possession of the radioactive material. The NRC's timeliness-in-decommissioning regulations changed that by requiring facilities to be decommissioned within a specific time frame upon cessation of activities. The preamble for the NRC's decommissioning standard also stated that the new standard was to be applied retroactively to all sites that exceeded the standard for release for unrestricted use. Therefore, sites previously authorized by the TNRCC or TDH are subject to current decommissioning standards. Section 336.501(e) was moved to new §336.501(c) and amended to remove "or waste" because the definition of "Radioactive material" includes "Low-level radioactive waste."

Former §336.502 is repealed because §336.502(1) and (2) relate to decommissioning standards and §336.502(3) applies to all of Chapter 336 and not just Subchapter F. Section 336.502(1) and (2) were moved to adopted §336.602, and §336.502(3) was moved to adopted §336.2.

Former §336.503 is repealed, and its language moved with changes to adopted §336.205 as part of the reorganization of the chapter. These changes require that applicants use the application process in Chapters 281 and 305.

Former §336.504 is repealed, and its language moved to adopted §336.207 as part of the reorganization of the chapter. These changes require that applicants use the application process in Chapters 281 and 305.

Former §336.505 is repealed, and its language moved to adopted §336.209, as part of the reorganization of the chapter. These changes require that applicants use the application process in Chapters 281 and 305.

Section 336.512 is repealed, and its language moved with minor modifications (e.g., eliminate redundant requirements, renumber accordingly, correct cross-references, and adjust one catchline) to adopted §336.617.

Section 336.513(a) was amended to add information required by Chapter 305 and to refer applicants to Chapter 305 for the information required to be submitted for a license to authorize radioactive material disposal. Section 336.513(a)(1) was deleted because it was redundant with §305.45. Subsequent paragraphs were renumbered to account for paragraph deletions. Former §336.513(a)(6) was deleted because it is redundant with §305.45(a)(6). Section 336.513(a)(19) was amended to correct a cross-reference. Section 336.513(b)(1)(H) was also amended to correct a cross-reference.

Former §336.514 is repealed with the language moved unchanged except to correct cross- references to adopted §336.619.

Former §336.515 is repealed as discussed in relation to adopted §336.621.

Former §336.517 is repealed as discussed in relation to adopted §336.623.

Former §336.519 is repealed as discussed in relation to adopted §336.625.

Former §336.521 is repealed with its language moved unchanged to adopted §336.627.

Subchapter G: Decommissioning Standards

Section 336.601(a) was amended to add "the inactive disposal sites regulated under this subchapter" to confirm that the decommissioning of inactive sites previously addressed in Subchapter

F is now addressed in this subchapter and to add "low-level" in front of "radioactive waste" in two locations to conform with HB 1172. Section 336.601(b) was amended to add, "This subchapter also establishes the criteria under which a facility may be licensed for decommissioning" in place of deleted "Licensees who have submitted a decommissioning plan to the commission and have received commission approval of the plan before the effective date of these criteria may decommission according to the regulations in place at the time of filing of the plan or according to these criteria" to indicate that this subchapter establishes the criteria under which a facility may be "licensed" to be decommissioned.

New §336.602 was added to this subchapter. The definitions of "Control and maintenance" and "Institutional control" were taken from NRC's draft regulatory guidance DG-4006, "Demonstrating Compliance With the Radiological Criteria for License Termination," dated August 1998, and are terms which are also used in Subchapter G and the programs' financial assurance requirements. The definition of "Inactive disposal site" was moved from repealed §336.502 with modifications to eliminate redundancies. The definition of "Funding plan" was moved from repealed §336.502 because it applies to decommissioning provisions.

Section 336.607(3) was amended to reflect the adopted new titles for Chapter 37, Subchapters S and T.

Section 336.613(a) was amended to add "do not apply to licenses issued under Subchapter H of this chapter (relating to Licensing Requirements for Near-surface Land Disposal of Low-Level Radioactive Waste)" in place of deleted "(apply only to licenses issued under Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material)" to clarify that the section requirements apply to all licenses, except for those issued under Subchapter H. Because of the reorganization of this chapter, §336.613(b) was amended to correct two cross- references and §336.613(c) was amended to correct a cross-reference. A minor typographical correction to §336.613(c) was made from proposal to adoption in which "shall" was corrected to "may" to agree with the original language in §336.613(c).

Section 336.615 is a new section adopted with its language moved unchanged from the last sentence of repealed §336.501(a) and from repealed §336.501(c).

Section 336.617 is a new section adopted with its language moved from repealed §336.512 unchanged, except to eliminate redundant requirements and to make minor formatting changes (e.g., deletions of catchlines and changing a reference from Subchapter G to "of this chapter"). From proposal to adoption, the catchlines from repealed §336.512 were added back to this section's subsections for proper *Texas Register* formatting and greater clarity. The adopted new language does not include former §336.512(a)(1) and instead requires the applicant to submit information as provided in Chapter 305. New §336.617(a)(7), (b)(1), and (g) includes updated cross-references due to the adopted reorganization of this chapter.

Section 336.619 is a new section adopted with its language moved from repealed §336.514 unchanged, except for cross-references.

Section 336.621 is a new section adopted with its language moved from repealed §336.515 unchanged, except for cross-references and to amend the language moved to §336.621(3)(D) to be consistent with NRC's decommissioning standards. Some minor typographical corrections were made from proposal to adoption. In §336.621(1), the second sentence, "shall" was changed to "may" in two places to agree with original language in repealed §336.515(1). Also in §336.621(2), "shall" was changed to "may" to agree with original language in repealed §336.515(2).

Section 336.623 is a new section adopted with its language moved unchanged from repealed §336.517 except for an updated cross-reference in §336.623(a).

Section 336.625 is a new section adopted with its language moved from repealed §336.519 unchanged, except for cross-references, clarification of language, and elimination of redundancies. Minor typograhical corrections have been made from proposal to adoption. In §336.625(f), in the last line, "with" was corrected to "within." In §336.625(g)(2) and (4), and (h), in the last sentence, "shall" was changed to "may" to agree with original language in repealed §336.519(g)(2) and (4) and (h).

Section 336.627 is a new section adopted with its language moved unchanged from repealed §336.521, except for an introductory sentence that this table is to be used for calculating financial assurance for decommissioning.

Subchapter H: Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste

The adopted changes to this subchapter are primarily to reflect the new term "low-level radioactive waste" and to make other conforming changes required by HB 1172. Other changes include clarification of language, correction of citations, elimination of redundancies, and changes to maintain compatibility with the NRC rules.

The title of Subchapter H was amended to add "Low-Level" in front of "Radioactive Waste" to incorporate the new HB 1172 term "low-level radioactive waste."

Throughout §336.701, "low-level" was inserted in front of "radioactive waste" to conform to HB 1172. Section 336.701(a) was amended to add "and accelerator-produced radioactive material" in three places. To indicate that accelerator-produced radioactive material continues to be regulated to the same standards as low-level radioactive waste, the commission amended §336.701(a) to add the following sentence: "For the purpose of this subchapter, the term 'low-level radioactive waste' includes accelerator-produced radioactive material." Section 336.701(b)(2) was amended to correct a cross-reference and to delete "except as provided in subsection (c) of this section" which conforms to changes elsewhere in this adoption. Section 336.701(b)(3) was deleted to conform with the new definition of low-level radioactive waste in HB 1172 and the waste classification and characteristic requirements in §336.362 and 10 CFR §61.55. Note that for purposes of this chapter, low- level radioactive waste does not include transuranic waste as defined in §336.2(107). The remaining paragraphs were renumbered accordingly. Section 336.701(b)(4) was amended to include the title of the referenced §336.362. Section 336.701(c) was deleted because the TNRCC no longer has jurisdiction over byproduct material as defined in §336.2(13)(B). The subsequent subsections were relettered. Newly renumbered §336.701(c) was amended to correct the title of Subchapter C, as adopted. A further clarification to §336.701(c) was made from proposal to adoption. A sentence was added to clarify that Chapter 336, Subchapter G only applies to ancillary surface facilities at a Subchapter H licensed facility. This clarification conforms with Chapter 336, Subchapter G, §336.601(a). Section

336.701(d) was amended to clarify that facilities authorized under §336.501(b) are to be licensed under Subchapter F and are not subject to Subchapter H. Section 336.701(e) contains language, with some change, moved from repealed §336.339.

Section 336.702 was amended to delete the former paragraph (6) definition of "Disposal" to conform with the HB 1172 definition of "Disposal," which is located in adopted §336.2(27), and the remaining paragraphs were renumbered accordingly. Because of HB 1172 changes, the renumbered paragraph (21) replaces the former definition of "Waste" with a reference to the definition of low-level radioactive waste in §336.2.

Section 336.705 was amended to add "Chapter 305 of this title (relating to Consolidated Permits)" as part of the effort to make the radiation control program's application process consistent with that of the other permitting programs of the agency.

Section 336.718(b) was amended to add "Chapter 305 of this title (relating to Consolidated Permits)" to indicate that license renewal applications must also be filed in accordance with Chapter 305 to make the radiation control program's application process consistent with that of the other permitting programs of the agency.

Section 336.742 is repealed because it is duplicative of language in §305.125(10) (relating to Inspections), which under these adopted rules will apply to Subchapter H.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has 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 adopted amendments to Chapter 336 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because there are no significant requirements added to radioactive material disposal facilities. The amendments are either required by state or federal laws, or are part of agency efforts to streamline its permitting process. (Also see discussion in adopted amendments to Chapter 305 in this issue of the *Texas Register*.)

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to: (1) implement HB 1172, 76th Legislature, 1999, and its amendments to the THSC; (2) implement the recommendations of the TNRCC's BPR-PIT to provide for consistency between the procedures of the radiation control program and the other permitting programs of the agency; and (3) improve readability and understanding by reorganizing Chapter 336, putting its requirements into plain English and eliminating redundancies and conflicts. The rules will substantially advance these specific purposes by incorporating these changes to implement HB 1172: (1) amending the definition of low-level radioactive waste to be compatible with the NRC's definition; (2) incorporating the TNRCC's new authority to exempt from application of a rule; (3) adding an exemption to continue or expand on-site low-level radioactive waste disposal licensed before September 9, 1989; and (4) adding exemptions from radioactive material licensing requirements for facilities participating in the Voluntary Cleanup Program or Superfund cleanups. In addition, the rules implement recommendations of the BPR-PIT by using the agency's definitions for major and minor amendments rather than radiation control program specific definitions; by moving the application process from Chapter 336 to Chapter 281 and Chapter 305 and amending it to be consistent with other agency application procedures; by making Chapter 336 more understandable by partially reorganizing the chapter; and by clarifying wording, eliminating unnecessary or repetitive language, and improving readability. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because there are no significant requirements added to radioactive material disposal facilities. The amendments are either required by state or federal laws, or are part of agency efforts to streamline its permitting process.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the adopted rulemaking and found that the rules are neither identified in the 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/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 on the proposed amendments was held on July 6, 2000; however, no public comment was received. Two commenters, Envirocare of Texas, Inc. (Envirocare), and TXU Business Services on behalf of TXU Generation (TXU) submitted written comments on the proposed rules during the public comment period which closed on July 17, 2000.

ANALYSIS OF TESTIMONY

Envirocare commented that §336.1(a)(2)(D) of the proposed rule allows the State of Texas and the NRC to declare a Department of Energy contractor or subcontractor to be exempt from state regulation. It further commented that the rule should be amended to be clear that this determination would be subject to public notice and the opportunity for a hearing.

Section 336.1 establishes the scope of the chapter. The §336.1(a)(2)(D) exemption is mandated by federal statute rather than being a discretionary exemption granted by the commission. The proposed language already existed in §336.5(c)(4), which was intended to only apply to exemptions within the commission's regulatory jurisdiction. Therefore, this federal exemption was moved from the commission's exemptions section to the section defining the scope of the chapter. Because this federal exemption is outside the jurisdiction of the TNRCC, this agency cannot create a rule requirement regarding public comment and a hearing on federal prime contractors and subcontractors as suggested by the commenter. The commission has made no change in response to the comments.

TXU commented that it strongly supports the TNRCC's language to modify the definition of low- level radioactive waste to conform to the federal definition.

The commission appreciates the statement of support.

TXU also requested that the TDH exclusion of fossil fuel combustion byproducts in 25 TAC §289.259(d) be specifically cited within §336.5 and §336.203. The commenter proposed that the reference to "Texas Health and Safety Code Section 401.106(a)" be replaced with a specific reference to "25 TAC §289.259(d)."

The requested change would limit the provision recognizing TDH exemptions by rule to just one specific exemption in the TDH radiation control rules. The commission's proposed rule language covers all TDH radioactive material exemptions by rule. The commission's proposed rule language provides more flexibility than the language proposed by the commenter. The commission prefers to cite the statutory authority for the TDH exemptions, THSC, §401.106(a), rather than numerous specific TDH rule citations because it minimizes the need for future TNRCC rulemaking if the TDH modifies its rules. The commission has made no change in response to the comments.

Envirocare commented that §336.211(a)(3) suggests that decay in storage is a disposal option subject to the licensing requirements of the TNRCC. It further commented that some long-term storage options that are subject to the jurisdiction of the TDH also result in some wastes decaying during the storage period and that §336.211 should be clarified to make sure that long-term storage is not inadvertently classified as "disposal."

The commission would like to clarify that the issue of long-term storage as a radioactive material management technique is not addressed in the current rulemaking. As part of its Agreement State obligations, the commission must maintain a regulatory program and rules that are compatible with those of the federal NRC. This language in §336.211(a)(3) is derived from NRC's equivalent requirement regarding decay in storage in 10 CFR §20.2001(a)(2). The language in §336.211(a)(3) is being moved essentially unchanged from repealed §336.331(a)(3), except for the additional non-substantive language regarding legal authority to conduct the activity. The commission's proposed language is intended to clarify that, even though radioactive material has decayed in storage below TDH exemption levels, it is still subject to the other applicable laws relating to disposal, such as the Solid Waste Disposal Act.

The issue of long-term storage options for low-level radioactive waste and other radioactive material is currently being studied as part of a legislative directive for the TNRCC to investigate techniques for managing low-level radioactive waste including, but not limited to, aboveground isolation facilities. Therefore, the commission believes that it would be premature to address this issue at this time.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§336.1, 336.2, 336.5

STATUTORY AUTHORITY

The amendments are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

§336.1. Scope and General Provisions.

(a) Except as otherwise specifically provided, the rules in this chapter apply to all persons who dispose of radioactive substances, except byproduct material defined by §336.2(13)(B) of this title (relating to Definitions).

(1) However, nothing in these rules shall apply to any person to the extent that person is subject to regulation by the United States Nuclear Regulatory Commission (NRC) or to radioactive material in the possession of federal agencies.

(2) Any United States Department of Energy contractor or subcontractor or any NRC contractor or subcontractor of the following categories operating within the state, is exempt from the rules in this chapter, with the exception of any applicable fee set forth in Subchapter B of this chapter, to the extent that such contractor or subcontractor under his contract receives, possesses, uses, transfers, or acquires sources of radiation:

(A) prime contractors performing work for the United States Department of Energy at a United States government-owned or controlled site, including the transportation of radioactive material to or from the site and the performance of contract services during temporary interruptions of transportation;

(B) prime contractors of the United States Department of Energy performing research in or development, manufacture, storage, testing, or transportation of atomic weapons or components thereof;

(C) prime contractors of the United States Department of Energy using or operating nuclear reactors or other nuclear devices in a United States government-owned vehicle or vessel; and

(D) any other prime contractor or subcontractor of the United States Department of Energy or the NRC when the state and the NRC jointly determine that:

(i) the exemption of the prime contractor or subcontractor is authorized by law; and

(ii) under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety or the environment.

(3) Radioactive material that is physically received from the federal government by a non-federal facility is subject to state jurisdiction except as provided in paragraph (2) of this subsection.

(4) The rules of this chapter do not apply to transportation of radioactive materials. This provision does not exempt a transporter from other applicable requirements.

(5) The rules in this chapter do not apply to the disposal of radiation machines as defined in this subchapter or electronic devices which produce non-ionizing radiation.

(b) Regulation by the State of Texas of source material, byproduct material, and special nuclear material in quantities not sufficient to form a critical mass is subject to the provisions of the agreement between the State of Texas and the NRC and to Part 150 of Title 10 Code of Federal Regulations (10 CFR Part 150) (Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274). (A copy of the Texas agreement, "Articles of Agreement between the United States Nuclear Regulatory Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended" (Agreement), may be obtained from this agency.) Under the Agreement and 10 CFR Part 150, the NRC retains certain regulatory authorities over source material, byproduct material, and special nuclear material in the State of Texas. Persons in the State of Texas are not exempt from the regulatory requirements of the NRC with respect to these retained authorities.

(c) No person may receive, possess, use, transfer, or dispose of radioactive material, which is subject to the rules in this chapter, in such a manner that the standards for protection against radiation prescribed in these rules are exceeded.

(d) Each person licensed by the commission under this chapter shall confine possession, use, and disposal of licensed radioactive material to the locations and purposes authorized in the license.

(e) No person may cause or allow the release of radioactive material, which is subject to the rules in this chapter, to the environment in violation of this chapter or of any rule, license, or order of the Texas Natural Resource Conservation Commission (commission).

(f) No person shall:

(1) dispose of low-level radioactive waste on site, except as authorized under §336.501(b) of this title (relating to Scope and General Provisions);

(2) receive low-level radioactive waste from other persons for the purpose of disposal, except for a public entity specifically licensed for the disposal of low-level radioactive waste; or

(3) dispose of radioactive materials other than low-level radioactive waste, except for diffuse naturally occurring radioactive material waste having concentrations of less than 2000 pCi/g radium-226 or radium-228.

(g) For the purpose of this chapter, any time the term "low-level radioactive waste" is used, the provision also applies to accelerator-produced radioactive material.

§336.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, or as described in Chapter 3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Additional definitions used only in a certain subchapter will be found in that subchapter.

(1) Absorbed dose - The energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the rad and the gray (Gy).

(2) Accelerator-produced radioactive material - Any material made radioactive by exposing it to the radiation from a particle accelerator.

(3) Activity - The rate of disintegration (transformation) or decay of radioactive material. The units of activity are the curie (Ci) and the becquerel (Bq).

(4) Adult - An individual 18 or more years of age.

(5) Agreement state - Any state with which the United States Nuclear Regulatory Commission (NRC) or the Atomic Energy Commission has entered into an effective agreement under the Atomic Energy Act of 1954, §274b, as amended through October 24, 1992 (Public Law 102-486).

(6) Airborne radioactive material - Any radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

(7) Airborne radioactivity area - A room, enclosure, or area in which airborne radioactive materials, composed wholly or partly of licensed material, exist in concentrations:

(A) in excess of the derived air concentrations (DACs) specified in §336.359, Appendix B, Table I, Column 1, of this title (relating to Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage); or

(B) to a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6% of the ALI or 12 DAC- hours.

(8) Annual limit on intake (ALI) - The derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the "reference man" that would result in a committed effective dose equivalent of 5 rems (0.05 sievert) or a committed dose equivalent of 50 rems (0.5 sievert) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table I, Columns 1 and 2, of §336.359, Appendix B, of this title.

(9) As low as is reasonably achievable (ALARA) - Making every reasonable effort to maintain exposures to radiation as far below the dose limits in this chapter as is practical, consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of ionizing radiation and licensed radioactive materials in the public interest.

(10) Background radiation - Radiation from cosmic sources; non-technologically enhanced naturally- occurring radioactive material, including radon (except as a decay product of source or special nuclear material) and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include radiation from radioactive materials regulated by the commission, Texas Department of Health, NRC, or an Agreement State.

(11) Becquerel (Bq) - See §336.4 of this title (relating to Units of Radioactivity).

(12) Bioassay - The determination of kinds, quantities, or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body. For purposes of the rules in this chapter, "radiobioassay" is an equivalent term.

(13) Byproduct material -

(A) A radioactive material, other than special nuclear material, that is produced in or made radioactive by exposure to radiation incident to the process of producing or using special nuclear material; or

(B) The tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes, and other tailings having similar radiological characteristics. Underground ore bodies depleted by these solution extraction processes do not constitute "byproduct material" within this definition.

(14) CFR - Code of Federal Regulations.

(15) Class - A classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of

clearance half-times: for Class D (Days) of less than ten days, for Class W (Weeks) from 10 to 100 days, and for Class Y (Years) of greater than 100 days. For purposes of the rules in this chapter, "lung class" and "inhalation class" are equivalent terms.

(16) Collective dose - The sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(17) Committed dose equivalent ($H_{T,50}$) (CDE) - The dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

(18) Committed effective dose equivalent ($H_{E,50}$) (CEDE) - The sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues.

(19) Critical group - The group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

(20) Curie (Ci) - See §336.4 of this title.

(21) Declared pregnant woman - A woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception.

(22) Decommission - To remove (as a facility) safely from service and reduce residual radioactivity to a level that permits:

(A) release of the property for unrestricted use and termination of license; or

(B) release of the property under restricted conditions and termination of the license.

(23) Deep-dose equivalent (H_d) (which applies to external whole-body exposure) - The dose equivalent at a tissue depth of one centimeter (1,000 milligrams/square centimeter).

(24) Depleted uranium - The source material uranium in which the isotope uranium-235 is less than 0.711%, by weight, of the total uranium present. Depleted uranium does not include special nuclear material.

(25) Derived air concentration (DAC) - The concentration of a given radionuclide in air which, if breathed by the "reference man" for a working year of 2,000 hours under conditions of light work (inhalation rate of 1.2 cubic meters of air/hour), results in an intake of one ALI. DAC values are given in Table I, Column 3, of §336.359, Appendix B, of this title.

(26) Derived air concentration-hour (DAC-hour) - The product of the concentration of radioactive material in air (expressed as a fraction or multiple of the derived air concentration for each radionuclide) and the time of exposure to that radionuclide, in hours. A licensee shall take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of five rems (0.05 sievert).

(27) Disposal - With regard to low-level radioactive waste, the isolation or removal of low-level radioactive waste from mankind and mankind's environment without intent to retrieve that low-level radioactive waste later.

(28) Distinguishable from background - The detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

(29) Dose - A generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of the rules in this chapter, "radiation dose" is an equivalent term.

(30) Dose equivalent (H_T) - The product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert (Sv).

(31) Dose limits - The permissible upper bounds of radiation doses established in accordance with the rules in this chapter. For purposes of the rules in this chapter, "limits" is an equivalent term.

(32) Dosimetry processor - An individual or organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

(33) Effective dose equivalent (H_E) - The sum of the products of the dose equivalent to each organ or tissue (H_T) and the weighting factor (w_T) applicable to each of the body organs or tissues that are irradiated.

(34) Embryo/fetus - The developing human organism from conception until the time of birth.

(35) Entrance or access point - Any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed radioactive materials. This includes portals of sufficient size to permit human access, irrespective of their intended use.

(36) Exposure - Being exposed to ionizing radiation or to radioactive material.

(37) Exposure rate - The exposure per unit of time.

(38) External dose - That portion of the dose equivalent received from any source of radiation outside the body.

(39) Extremity - Hand, elbow, arm below the elbow, foot, knee, and leg below the knee. The arm above the elbow and the leg above the knee are considered part of the whole body.

(40) Eye dose equivalent - The external dose equivalent to the lens of the eye at a tissue depth of 0.3 centimeter (300 milligrams/square centimeter).

(41) General license - An authorization granted by an agency under its rules which is effective without the filing of an application with that agency or the issuance of a licensing document to the particular person.

(42) Generally applicable environmental radiation standards - Standards issued by the EPA under the authority of the Atomic Energy Act of 1954, as amended through October 4, 1996, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(43) Gray (Gy) - See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(44) High radiation area - An area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 millisievert) in one hour at 30 centimeters from any source of radiation or from any surface that the radiation penetrates.

(45) Individual - Any human being.

(46) Individual monitoring - The assessment of:

(A) dose equivalent by the use of individual monitoring devices; or

(B) committed effective dose equivalent by bioassay or by determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours; or

(C) dose equivalent by the use of survey data.

(47) Individual monitoring devices - Devices designed to be worn by a single individual for the assessment of dose equivalent. For purposes of the rules in this chapter, "individual monitoring equipment," "personnel dosimeter," and "dosimeter" are equivalent terms. Examples of individual monitoring devices are film badges, thermoluminescent dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

(48) Inhalation class - See "Class."

(49) Inspection - An official examination and/or observation including, but not limited to, records, tests, surveys, and monitoring to determine compliance with the Texas Radiation Control Act (TRCA) and rules, orders, and license conditions of the commission.

(50) Internal dose - That portion of the dose equivalent received from radioactive material taken into the body.

(51) Land disposal facility - The land, buildings and structures, and equipment which are intended to be used for the disposal of low-level radioactive wastes into the subsurface of the land. For purposes of this chapter, a "geologic repository" as defined in 10 CFR §60.2 as amended through October 27, 1988 (53 FedReg 43421) (relating to Definitions - high-level radioactive wastes in geologic repositories) is not considered a "land disposal facility."

(52) License - See "Specific license."

(53) Licensed material - Radioactive material received, possessed, used, processed, transferred, or disposed of under a license issued by the commission.

(54) Licensee - Any person who holds a license issued by the commission in accordance with the TRCA and the rules in this chapter. For purposes of the rules in this chapter, "radioactive material licensee" is an equivalent term. Unless stated otherwise, "licensee" as used in the rules of this chapter means the holder of a "specific license."

(55) Licensing state - Any state with rules equivalent to the Suggested State Regulations for Control of Radiation relating to, and having an effective program for, the regulatory control of naturally occurring or accelerator-produced radioactive material (NARM) and which has been designated as such by the Conference of Radiation Control Program Directors, Inc.

(56) Lost or missing licensed radioactive material - Licensed material whose location is unknown. This definition includes material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

(57) Low-level radioactive waste -

(A) Except as provided by subparagraph (B) of this paragraph, low-level radioactive waste means radioactive material that:

(i) is discarded or unwanted and is not exempt by a Texas Department of Health rule adopted under the Texas Health and Safety Code, §401.106;

(ii) is waste, as that term is defined by 10 CFR §61.2; and

(iii) is subject to:

(I) concentration limits established under this chapter; and

(II) disposal criteria established under this chapter.

(B) Low-level radioactive waste does not include:

(i) high-level radioactive waste defined by 10 CFR §60.2;

(ii) spent nuclear fuel as defined by 10 CFR §72.3;

(iii) transuranic waste as defined by paragraph (107) of this section;

(iv) byproduct material as defined by paragraph (13)(B) of this section;

(v) naturally occurring radioactive material (NORM) waste; or

(vi) oil and gas NORM waste.

(C) When used in this section, the references to 10 CFR sections mean those CFR sections as they existed on September 1, 1999, as required by Texas Health and Safety Code, §401.005.

(58) Lung class - See "Class."

(59) Member of the public - Any individual except when that individual is receiving an occupational dose.

(60) Minor - An individual less than 18 years of age.

(61) Monitoring - The measurement of radiation levels, radioactive material concentrations, surface area activities, or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of the rules in this chapter, "radiation monitoring" and "radiation protection monitoring" are equivalent terms.

(62) Naturally occurring or accelerator-produced radioactive material (NARM) - Any naturally occurring or accelerator-produced radioactive material except source material or special nuclear material.

(63) Naturally occurring radioactive material (NORM) waste - Solid, liquid, or gaseous material or combination of materials, excluding source material, special nuclear material, and byproduct material, that:

(A) in its natural physical state spontaneously emits radiation;

(B) is discarded or unwanted; and

(C) is not exempt under rules of the Texas Department of Health adopted under Texas Health and Safety Code, §401.106.

(64) Near-surface disposal facility - A land disposal facility in which low-level radioactive waste is disposed of in or within the upper 30 meters of the earth's surface.

(65) Nonstochastic effect - A health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of the rules in this chapter, "deterministic effect" is an equivalent term.

(66) Occupational dose - The dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation and/or to radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee or other person. Occupational dose does not include dose received from background radiation, as a patient from medical practices, from voluntary participation in medical research programs, or as a member of the public.

(67) Oil and gas naturally occurring radioactive material (NORM) waste - Naturally occurring radioactive material (NORM) waste that constitutes, is contained in, or has contaminated oil and gas waste as that term is defined in the Texas Natural Resources Code, §91.1011.

(68) On-site - The same or geographically contiguous property that may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way that the property owner controls and to which the public does not have access, is also considered on-site property.

(69) Personnel monitoring equipment - See "Individual monitoring devices."

(70) Planned special exposure - An infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

(71) Principal activities - Activities authorized by the license which are essential to achieving the purpose(s) for which the license is issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(72) Public dose - The dose received by a member of the public from exposure to radiation and/or radioactive material released by a licensee, or to any other source of radiation under the control of the licensee. It does not include occupational dose or doses received from background radiation, as a patient from medical practices, or from voluntary participation in medical research programs.

(73) Quality factor (Q) - The modifying factor listed in Table I or II of §336.3 of this title that is used to derive dose equivalent from absorbed dose.

(74) Quarter (Calendar quarter) - A period of time equal to one-fourth of the year observed by the licensee (approximately 13 consecutive weeks), providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(75) Rad - See §336.3 of this title.

(76) Radiation - Alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. For purposes of the rules in this chapter, "ionizing radiation" is an equivalent term. Radiation, as used in this chapter, does not include non-ionizing radiation, such as radio- or microwaves or visible, infrared, or ultraviolet light.

(77) Radiation and Perpetual Care Fund - A fund established in the treasury of the State of Texas for the purposes set forth in the TRCA, §401.305.

(78) Radiation area - Any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 millisievert) in one hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates.

(79) Radiation machine - Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(80) Radioactive material - A naturally-occurring or artificially-produced solid, liquid, or gas that emits radiation spontaneously.

(81) Radioactive substance - Includes byproduct material, radioactive material, low-level radioactive waste, source material, special nuclear material, source of radiation, and NORM waste, excluding oil and gas NORM waste.

(82) Radioactivity - The disintegration of unstable atomic nuclei with the emission of radiation.

(83) Radiobioassay - See "Bioassay."

(84) Reference man - A hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics shall be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base. A description of "reference man" is contained in the International Commission on Radiological Protection report, ICRP Publication 23, "Report of the Task Group on Reference Man."

(85) Rem - See §336.3 of this title.

(86) Residual radioactivity - Radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of 10 CFR Part 20.

(87) Respiratory protection equipment - An apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials. For purposes of the rules in this chapter, "respiratory protective device" is an equivalent term.

(88) Restricted area - An area, access to which is limited by the licensee for the purpose of protecting individuals against undue risks from exposure to radiation and radioactive materials. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building shall be set apart as a restricted area.

(89) Roentgen (R) - See §336.3 of this title.

(90) Sanitary sewerage - A system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee.

(91) Sealed source - Radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions that are likely to be encountered in normal use and handling.

(92) Shallow-dose equivalent (H_s) (which applies to the external exposure of the skin or an extremity) - The dose equivalent at a tissue depth of 0.007 centimeter (seven milligrams/square centimeter) averaged over an area of one square centimeter.

(93) SI - The abbreviation for the International System of Units.

(94) Sievert (Sv) - See §336.3 of this title.

(95) Site boundary - That line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.

(96) Source material -

(A) Uranium or thorium, or any combination thereof, in any physical or chemical form; or

(B) ores that contain, by weight, 0.05% or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.

(97) Special form radioactive material - Radioactive material which is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule and which has at least one dimension not less than five millimeters and which satisfies the test requirements of 10 CFR 71.75 as amended through September 28, 1995 (60 FedReg 50264) (Transportation of License Material).

(98) Special nuclear material -

(A) Plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the NRC, under the provisions of the Atomic Energy Act of 1954, §51, as amended through November 2, 1994 (Public Law 103-437), determines to be special nuclear material, but does not include source material; or

(B) any material artificially enriched by any of the foregoing, but does not include source material.

(99) Special nuclear material in quantities not sufficient to form a critical mass - Uranium enriched in the isotope 235 in quantities not exceeding 350 grams of contained uranium-235; uranium- 233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of these in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed 1. For example, the following quantities in combination would not exceed the limitation: (175 grams contained U-235/350 grams) + (50 grams U-233/200 grams) + (50 grams Pu/200 grams) = 1.

(100) Specific license - A licensing document issued by an agency upon an application filed under its rules. For purposes of the rules in this chapter, "radioactive material license" is an equivalent term. Unless stated otherwise, "license" as used in this chapter means a "specific license."

(101) State - The State of Texas.

(102) Stochastic effect - A health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of the rules in this chapter, "probabilistic effect" is an equivalent term.

(103) Survey - An evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, and/or presence of radioactive materials or other sources of radiation. When appropriate, this evaluation includes, but is not limited to, physical examination of the location of radioactive material and measurements or calculations of levels of radiation or concentrations or quantities of radioactive material present.

(104) Termination - As applied to a license, a release by the commission of the obligations and authorizations of the licensee under the terms of the license. It does not relieve a person of duties and responsibilities imposed by law.

(105) Total effective dose equivalent (TEDE) - The sum of the deep-dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

(106) Total organ dose equivalent (TODE) - The sum of the deep-dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in §336.346(a)(6) of this title (relating to Records of Individual Monitoring Results).

(107) Transuranic waste - For the purposes of this chapter, wastes containing alpha emitting transuranic radionuclides with a half-life greater than five years at concentrations greater than 100 nanocuries/gram.

(108) Type A quantity (for packaging) - A quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material or A_2 for normal form radioactive material, where A_1 and A_2 are given in or shall be determined by procedures in Appendix A to 10 CFR Part 71 as amended through September 28, 1995 (60 FedReg 50264) (Packaging and Transportation of Radioactive Material).

(109) Type B quantity (for packaging) - A quantity of radioactive material greater than a Type A quantity.

(110) Unrefined and unprocessed ore - Ore in its natural form before any processing, such as grinding, roasting, beneficiating, or refining.

(111) Unrestricted area - Any area that is not a restricted area.

(112) Very high radiation area - An area, accessible to individuals, in which radiation levels could result in an individual receiving an absorbed dose in excess of 500 rads (five grays) in one hour at one meter from a source of radiation or from any surface that the radiation penetrates. (At very high doses received at high dose rates, units of absorbed dose (rad and gray) are appropriate, rather than units of dose equivalent (rem and sievert).)

(113) Violation - An infringement of any provision of the TRCA or of any rule, order, or license condition of the commission issued under the TRCA or this chapter.

(114) Week - Seven consecutive days starting on Sunday.

(115) Weighting factor (w_T) for an organ or tissue (T) - The proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:
Figure: 30 TAC §336.2(115) (No change.)

(116) Whole body - For purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

(117) Worker - An individual engaged in activities under a license issued by the commission and controlled by a licensee, but does not include the licensee.

(118) Working level (WL) - Any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of 1.3×10^5 million electron volts (MeV) of potential alpha particle energy. The short-lived radon daughters are: for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212.

(119) Working level month (WLM) - An exposure to one working level for 170 hours (2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month).

(120) Year - The period of time beginning in January used to determine compliance with the provisions of the rules in this chapter. The licensee shall change the starting date of the year used to determine compliance by the licensee provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

§336.5. Exemptions.

(a) The commission may exempt a source of radiation or a kind of use or user from the application of a rule in this chapter if it determines that the exemption is not prohibited by law and will not result in a significant risk to public health and safety or the environment. Persons requesting an exemption shall submit an application to the agency using the process in Chapter 90 of this title (relating to Regulatory Flexibility), including the submittal of any fees and which includes:

(1) the nature of the request;

(2) a legal analysis to demonstrate that the exemption is not prohibited by law;

(3) a technical analysis to demonstrate that the exemption will not result in a significant risk to public health and safety or the environment; and

(4) a detailed explanation, including a demonstration as appropriate, that the proposed exemption is:

(A) not prohibited by law, including any requirement for a federally approved or authorized program; and

(B) at least as protective of the environment and the public health as the method or standard prescribed by the commission rule that would otherwise apply.

(b) A person who is subject to an order issued under Texas Health and Safety Code, §361.188 or §361.272, for sites subject to Texas Health and Safety Code, Subchapter F, Chapter 361, or an agreement entered into under Texas Health and Safety Code, §361.606, is exempt from the requirement to obtain a license or other authorization from the commission. This provision does not exempt the person from complying with technical standards under this chapter. The exemption applies only to the assessment and remediation of the contamination at the site.

(c) Waste, that is exempted from licensing requirements by the Texas Department of Health under Texas Health and Safety Code, §401.106(a), is exempted from the requirements of this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Margaret Hoffman
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SUBCHAPTER B. RADIOACTIVE SUBSTANCE FEES

30 TAC §§336.103, 336.105, 336.107

STATUTORY AUTHORITY

The amendments are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

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SUBCHAPTER C. ADDITIONAL APPLICATION, OPERATION, AND LICENSE REQUIREMENTS

30 TAC §§336.201, 336.203, 336.205, 336.207, 336.209 - 336.211, 336.213, 336.215, 336.219

STATUTORY AUTHORITY

The repeals are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

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SUBCHAPTER C. GENERAL DISPOSAL REQUIREMENTS

30 TAC §§336.201, 336.203, 336.205, 336.207, 336.209, 336.211, 336.213, 336.215, 336.217, 336.219, 336.221, 336.223, 336.225, 336.229

STATUTORY AUTHORITY

The new sections are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

§336.211. General Requirements for Radioactive Material Disposal.

(a) Unless otherwise exempted, a licensee shall dispose of licensed material, as appropriate to the type of licensed material, only:

(1) by transfer to an authorized recipient as provided in §336.331(g) and (h) of this title (relating to Transfer of Radioactive Material) or in Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste);

(2) by transfer to a recipient authorized in another state by license issued by the United States Nuclear Regulatory Commission or an Agreement State or to the United States Department of Energy;

(3) by decay in storage as authorized by law;

(4) by release in effluents within the limits specified in §336.313 of this title (relating to Dose Limits for Individual Members of the Public);

(5) as authorized under §336.213 of this title (relating to Method of Obtaining Approval of Proposed Disposal Procedures);

(6) as authorized under §336.215 of this title (relating to Disposal by Release into Sanitary Sewerage);

(7) as authorized under §336.225 of this title (relating to Disposal of Specific Wastes); or

(8) as specifically authorized by commission license issued under this chapter.

(b) A person must be specifically licensed to receive waste containing licensed material from other persons for:

(1) treatment prior to disposal;

(2) treatment by incineration;

(3) decay in storage; or

(4) disposal at a land disposal facility.

(c) The processing and storage of radioactive material is subject to applicable rules of the Texas Department of Health (TDH), except as provided in subsection (d) of this section.

(d) The receipt, storage, and/or processing of radioactive materials, except for byproduct material under the jurisdiction of the TDH and oil and gas naturally occurring radioactive material waste, received at a licensed commercial radioactive material disposal facility for the explicit purpose of disposal at that facility shall be regulated in accordance with 25 TAC §289.101(d)(1) (relating to Memorandum of Understanding Between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions).

(e) The on-site disposal of low-level radioactive waste is prohibited, except as provided by this section. The commission may, on request or its own initiative, authorize on-site disposal of low-level radioactive waste on a specific basis at any facility at which licensed low-level radioactive waste disposal operations began before September 1, 1989, if, after evaluation of the specific characteristics of the waste, the disposal site, and the method of disposal, the commission finds that the continuation of the disposal activity will not constitute a significant risk to public health and safety and to the environment. Persons subject to this subsection shall be licensed under Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material).

(f) The disposal of low-level radioactive waste received from other persons is prohibited, except by a public entity that is specifically licensed under Subchapter H of this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. STANDARDS FOR PROTECTION AGAINST RADIATION

30 TAC §§336.301, 336.308, 336.313, 336.331, 336.332, 336.335, 336.336, 336.338, 336.339, 336.341, 336.352, 336.355

STATUTORY AUTHORITY

The amendments and new sections are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

§336.335. Reporting Requirements for Incidents.

(a) Immediate notification. Each licensee shall notify the executive director as soon as possible, but not later than four hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits or releases of radioactive materials that could exceed limits (e.g., events may include fires, explosions, toxic gas releases, etc.). Notwithstanding any other requirements for notification, each licensee shall immediately report to the executive director each event involving licensed radioactive material possessed by the licensee that may have caused or threatens to cause any of the following conditions:

(1) an individual to receive:

(A) a total effective dose equivalent of 25 rems (0.25 sievert) or more;

(B) an eye dose equivalent of 75 rems (0.75 sievert) or more; or

(C) a shallow-dose equivalent to the skin or extremities or a total organ dose equivalent of 250 rads (2.5 grays) or more; or

(2) the release of radioactive material inside or outside of a restricted area so that, had an individual been present for 24 hours, the individual could have received an intake five times the annual limit

on intake (ALI). This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(b) Twenty-four hour notification. Each licensee shall, within 24 hours of discovery of the event, report to the executive director any event involving loss of control of licensed material possessed by the licensee that may have caused, or threatens to cause, any of the following conditions:

(1) an individual to receive, in a period of 24 hours:

(A) total effective dose equivalent exceeding five rems (0.05 sievert);

(B) an eye dose equivalent exceeding 15 rems (0.15 sievert); or

(C) a shallow-dose equivalent to the skin or extremities or a total organ dose equivalent exceeding 50 rems (0.5 sievert); or

(2) the release of radioactive material inside or outside of a restricted area so that, had an individual been present for 24 hours, the individual could have received an intake in excess of one ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures; or

(3) an unplanned contamination event that:

(A) requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;

(B) involves a quantity of material greater than five times the lowest annual limit on intake specified in §336.359 of this title (relating to Appendix B. Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage); and

(C) has access to the area restricted for a reason other than to allow isotopes with a half-life of less than 24 hours to decay prior to decontamination; or

(4) an event in which equipment is disabled or fails to function as designed when:

(A) the equipment is required by rule or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;

(B) the equipment is required to be available and operable when it is disabled or fails to function; and

(C) no redundant equipment is available and operable to perform the required safety function; or

(5) an event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body; or

(6) an unplanned fire or explosion damaging any radioactive material or any device, container, or equipment containing radioactive material when:

(A) the quantity of material involved is greater than five times the lowest annual limit on intake specified in §336.359 of this title; and

(B) the damage affects the integrity of the radioactive material or its container.

(c) Preparation and submission of reports. Reports made by licensees in response to the requirements of this section must be made as follows.

(1) Telephone report. Licensees shall make reports required by subsections (a) and (b) of this section by telephone, accompanied by a facsimile, to the executive director. To the extent that the information is available at the time of notification, the information provided in these reports must include:

(A) the caller's name and telephone number;

(B) a description of the event, including date and time;

(C) the exact location of the event;

(D) the isotopes, quantities, and chemical and physical form of the radioactive material involved; and

(E) any personnel radiation exposure data available.

(2) Written report. Each licensee who makes a report required by subsections (a) and (b) of this section shall submit a written follow-up report to the executive director within 30 days of the initial report. Written reports prepared under other regulations may be submitted to fulfill this requirement if the reports contain all of the necessary information. These written reports must be sent to the executive director. The reports must include:

(A) a description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;

(B) the exact location of the event;

(C) the isotopes, quantities, and chemical and physical form of the radioactive material involved;

(D) date and time of the event;

(E) corrective actions taken or planned and the results of any evaluations or assessments; and

(F) the extent of exposure of individuals to radiation or to radioactive materials. The licensee shall prepare the report so that names of individuals are stated in a separate and detachable part of the report.

(d) Confirmation of notification. Licensees shall make the reports required by subsections (a) and (b) of this section by telephone and shall confirm the telephone report within 24 hours by telegram, mailgram, or facsimile.

(e) Exception to notification. The provisions of this section do not apply to doses that result from planned special exposures, provided those doses are within the limits for planned special exposures and are reported under §336.353 of this title (relating to Reports of Planned Special Exposures).

§336.341. General Recordkeeping Requirements for Licensees.

(a) Each licensee shall use the units curie, rad, and rem, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this subchapter. Disintegrations per minute may be indicated on records of surveys performed to determine compliance with §336.605 of this title (relating to Surface Contamination Limits for Facilities, Equipment, and Materials) and §336.364, Appendix G, of this title (relating to Acceptable Surface Contamination Levels).

(b) Notwithstanding the requirements of subsection (a) of this section, information on shipment manifests for wastes received at a licensed land disposal facility, as required by §336.331(h) of this title

(relating to Transfer of Radioactive Material), shall be recorded in International System of Units (SI) units (becquerel, gray, and sievert) or in SI and units as specified in subsection (a) of this section.

(c) The licensee shall make a clear distinction among the quantities entered on the records required by this subchapter, such as total effective dose equivalent, shallow-dose equivalent, eye dose equivalent, deep-dose equivalent, and committed effective dose equivalent.

(d) Each licensee shall maintain records showing the receipt, transfer, and disposal of all source material, byproduct material, or other licensed radioactive material. Each licensee shall also maintain any records and make any reports as may be required by the conditions of the license, by the rules in this chapter, or by orders of the commission. Copies of any records or reports required by the license, rules, or orders shall be submitted to the executive director or commission on request. All records and reports required by the license, rules, or orders shall be complete and accurate.

(e) The licensee shall retain each record that is required by the rules in this chapter or by license conditions for the period specified by the appropriate rule or license condition. If a retention period is not otherwise specified, each record shall be maintained until the commission terminates each pertinent license requiring the record.

(f) If there is a conflict between the commission's rules, license condition, or other written approval or authorization from the executive director pertaining to the retention period for the same type of record, the longest retention period specified takes precedence.

(g) The executive director may require the licensee to provide the commission with copies of all records prior to termination of the license.

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30 TAC §§336.331 - 336.340, 336.348, 336.349, 336.351, 336.361

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SUBCHAPTER E. NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS AND INSPECTIONS

30 TAC §336.405

STATUTORY AUTHORITY

The amendment is adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

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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TRD-200005988
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: September 14, 2000
Proposal publication date: June 16, 2000
For further information, please call: (512) 239-0348

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SUBCHAPTER F. LICENSING OF ALTERNATIVE METHODS OF DISPOSAL OF RADIOACTIVE MATERIAL

30 TAC §§336.501 - 336.505, 336.512, 336.514, 336.515, 336.517, 336.519, 336.521

STATUTORY AUTHORITY

The repeals are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

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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30 TAC §336.501, §336.513

STATUTORY AUTHORITY

The amendment and new section are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

§336.501. Scope and General Provisions.

(a) This subchapter establishes alternative criteria, terms, and conditions under which the commission may issue, amend, or renew a license for on-site disposal of radioactive material generated in the person's activities, not otherwise specifically authorized in this chapter.

(b) Except as provided by this subsection, the commission shall not authorize new or additional facilities or the expansion of existing facilities for the on-site disposal of low-level radioactive waste, except to a public entity specifically authorized by law for low-level radioactive waste disposal. The commission may, on request or its own initiative, authorize, under this subchapter, on-site disposal of low-level radioactive waste on a specific basis at any facility at which low-level radioactive waste disposal operations began before September 1, 1989, if after evaluation of the specific characteristics of the waste, the disposal site, and the method of disposal, the commission finds that the continuation of the disposal activity will not constitute a significant risk to the public health and safety and to the environment.

(c) No person authorized to dispose of radioactive material under this subchapter shall receive radioactive material for the purpose of disposal from other persons, sources, other facilities owned or operated by the applicant or licensee, or any other off-site locations.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. DECOMMISSIONING STANDARDS

30 TAC §§336.601, 336.602, 336.607, 336.613, 336.615, 336.617, 336.619, 336.621, 336.623, 336.625, 336.627

STATUTORY AUTHORITY

The amendments and new sections are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

§336.613. Additional Requirements.

(a) The requirements of this section do not apply to licenses issued under Subchapter H of this chapter (relating to Licensing Requirements for Near-surface Land Disposal of Low-Level Radioactive Waste).

(b) A decommissioning plan shall be submitted with the license application required by §336.615 of this title relating to (Inactive Disposal Sites). Holders of licenses of inactive disposal sites shall submit a decommissioning plan with the renewal application. Holders of licenses of active disposal sites shall submit a decommissioning plan no later than the date specified in §336.625(e)(2) of this title (relating to Expiration and Termination of Licenses).

(c) The executive director may approve an alternate schedule for submittal of a decommissioning plan required under §336.625(e)(2) of this title if the executive director determines that:

(1) the alternative schedule is necessary for the effective conduct of decommissioning operations; and

(2) presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(d) A licensee shall request a license amendment to amend a decommissioning plan if revised procedures could increase potential health and safety impacts to workers or to the public. Examples of procedures that require a license amendment include, but are not limited to:

(1) procedures that involve techniques not applied routinely during cleanup or maintenance operations;

(2) workers entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(3) procedures that could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(4) procedures that could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(e) Procedures with potential health and safety impacts, such as those listed in subsection (d) of this section, may not be carried out prior to approval by the commission of the decommissioning plan.

(f) The proposed decommissioning plan for the site or separate building or outdoor area shall include:

(1) a description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(2) a description of planned decommissioning activities;

(3) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(4) a description of the planned final radiation survey;

(5) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning;

(6) for decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, a justification for the delay based on the criteria in subsection (h) of this section; and

(7) a description of the quality assurance/quality control program.

(g) The proposed decommissioning plan may be approved by the commission by license amendment if the information demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of workers and the public will be protected.

(h) Except as provided in subsection (j) of this section, the licensee shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

(i) Except as provided in subsection (j) of this section, when decommissioning involves the entire site, the licensee shall request license termination as the final step in decommissioning, which shall be as soon as practicable but no later than 24 months following the initiation of decommissioning.

(j) The commission may approve by license amendment a request for an alternate schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the commission determines that the alternative is warranted by consideration of the following:

(1) whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(2) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;

(3) whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(4) whether a significant reduction in radiation exposure to workers can be achieved by allowing short- lived radionuclides to decay; and

(5) other site-specific factors which the commission may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, groundwater treatment activities, monitored natural groundwater restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(k) As the final steps in decommissioning, the licensee shall:

(1) certify the disposition of all licensed material, including accumulated wastes;

(2) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in some other commission approved manner. The licensee shall, as appropriate:

(A) report levels of gamma radiation in units of microroentgens (millisieverts) per hour at 1 meter from surfaces, and report levels of radioactivity (removable and fixed), including alpha and beta, in units of disintegrations per minute or microcuries (megabecquerels) per 100 square centimeters for surfaces, microcuries (megabecquerels) per milliliter for water, and picocuries (becquerels) per gram for solids such as soils or concrete; and

(B) specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested; and

(3) submit a request for license termination, which includes, but is not limited to, the information required by paragraphs (1) and (2) of this subsection.

(l) The executive director may require the licensee to provide any other information necessary to demonstrate that the facilities and land are suitable for release.

§336.617. Technical Requirements for Inactive Disposal Sites.

(a) Content of license application. An applicant for a license to authorize possession of disposed radioactive material and subsequent decommissioning of an inactive disposal site shall submit the information required in Chapter 305 of this title (relating to Consolidated Permits), and the following, using the application form provided by the agency:

(1) information on the concentration and total activity of each radionuclide disposed of, packaging of the wastes, the characteristics of the disposal site (e.g., geological, hydrological, and topographical), as-built disposal trench or landfill construction, final cover construction, and depth of burial of wastes. This information shall be as complete and accurate as possible based on the full extent of information available to the applicant about the previous disposal activities;

(2) a description of any radiological monitoring performed at the site and the resulting data;

(3) the technical qualifications and identity of personnel responsible for radiation safety functions at the site;

(4) a description of the methods of restricting access to the site (e.g., fencing) and any permanent site markers;

(5) information on land ownership and any covenants on land use imposed by recorded title documents;

(6) a decommissioning plan that meets the standards in this subchapter including an evaluation of the alternative of disposing of the radioactive material at a licensed disposal facility;

(7) information regarding financial assurance for decommissioning as provided for in §336.619 of this title (relating to Financial Assurance for Decommissioning); and

(8) for license applications other than renewals, a description of how facility design and procedures for operation minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practicable, the generation of radioactive wastes.

(b) Content of application for renewal of license.

(1) An applicant for renewal of a license authorizing possession of disposed radioactive material in an inactive disposal site or to decommission an inactive disposal site shall submit information using the application form provided by the agency on:

(A) the current conditions of the site (e.g., site stability and any maintenance performed at the site);

(B) any radiological monitoring performed at the site by the licensee and the resulting data;

(C) the methods of restricting access to the site;

(D) any changes in or additions to the procedures or information contained in previous applications;

(E) the technical qualifications and identity of personnel responsible for radiation safety functions at the site;

(F) a decommissioning plan that meets the standards in this subchapter, if not previously submitted, including an evaluation of the alternative of disposing of the radioactive material at a licensed disposal facility; and

(G) financial assurance for decommissioning as provided for in §336.619 of this title.

(2) The executive director may request additional information, such as that required by subsection (a) of this section, if this information was not previously provided for the site or is not current.

(c) Performance objectives. The applicant's submittal shall include sufficient information to enable the executive director to assess the potential hazard to public health and safety and to determine whether the disposal site will have a significant impact on the environment. The executive director shall evaluate existing inactive disposal sites on a case-by-case basis and shall consider the following general criteria and performance objectives in making the evaluation.

(1) Radiation exposure and release of radioactive materials from a disposal site shall be maintained as low as is reasonably achievable. Reasonable assurance must be provided that the potential dose to an individual on or near the site will be within acceptable limits. The estimated committed effective dose equivalent resulting from a radiological assessment of a site will usually be the determining factor in the granting of authorization for a disposal site. If the projected dose to a member of the public exceeds 25 millirems per year, the executive director shall consider other factors in determining whether to grant authorization for the site, including, but not limited to, the use of institutional controls to restrict access for a specified period of time.

(2) The location and characteristics of a site shall be such as to preclude potential offsite migration or transport of radioactive materials or ready access to critical exposure pathways.

(3) The general topography of the disposal site shall be compatible with its use for waste burial. As an example, surface features shall direct surface water drainage away from the disposal site. Wastes must not be buried in locations which, once covered, would tend to collect surface water. The characteristics of the site shall minimize, to the extent practicable, the potential for erosion and contact of percolating or standing water with wastes.

(4) Water-bearing strata shall be a minimum of ten feet below the depth at which waste is buried.

(5) Waste shall be emplaced in a manner that minimizes the void spaces between packages and permits the void spaces to be filled.

(6) Void spaces between waste packages shall be filled with earth or other material to reduce future subsidence within the fill.

(7) Cover design shall minimize water infiltration to the extent practicable, direct percolating or surface water away from the disposed waste, and resist degradation by surface geologic processes and biotic activity.

(8) In general, a site authorized under this subchapter shall be located, designed, operated, and closed so that long-term isolation and custodial care for long-term stability would not be required beyond the time the licensee can reasonably be expected to occupy the site. If a site does not meet this objective, requirements for long-term care shall be evaluated.

(9) The location of a disposal site shall be compatible with the uses of surrounding environs (both the applicant's and adjacent properties).

§336.621. Recordkeeping for Decommissioning.

Each person licensed under this subchapter shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the commission. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information important to decommissioning consists of:

(1) records of spills or other unusual occurrences involving the spread of contamination in and around the disposal facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas, as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms, and concentrations;

(2) as-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are disposed of and of locations of possible inaccessible contamination (e.g., buried pipes) that may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations;

(3) except for areas containing only radioactive materials having half-lives of less than 65 days, a list contained in a single document and updated every two years of the following:

(A) all areas designated as restricted areas, as defined in §336.2 of this title (relating to Definitions), and all areas formerly designated as restricted areas under rules in effect before January 1, 1994;

(B) all areas outside of restricted areas that require documentation under paragraph (1) of this section;

(C) all areas outside of restricted areas where current and previous wastes have been buried as documented under §336.338 of this title (relating to General Recordkeeping Requirements for Disposal); and

(D) all areas outside of restricted areas which contain material such that, if the license expired, the licensee must be required to decontaminate the area to unrestricted release levels; and

(4) records of the cost estimate performed for the funding plan or of the amount certified for decommissioning, and records of the financial assurance mechanism used for assuring funds.

§336.625. Expiration and Termination of Licenses.

(a) Each license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal not less than 30 days before the expiration date stated in the existing license. If an application for renewal in proper form has been filed at least 30 days before the expiration date stated in the existing license, the existing license shall not expire until the application has been finally determined by the commission. For the purposes of this section, "proper form" shall mean that the application includes the information required by §336.617 of this title (relating to Technical Requirements for Inactive Disposal Sites) or §336.513 of this title (relating to Technical Requirements for Active Disposal Sites). The existing license expires at the end of the day on which the commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(b) Each license revoked by the commission expires at the end of the day on the date of the commission's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by commission order.

(c) Each license continues in effect, beyond the expiration date if necessary, with respect to possession of source material, byproduct material, or other radioactive material until the commission notifies the licensee in writing that the license is terminated. During this time, the licensee shall:

(1) limit actions involving source material, byproduct material, or other radioactive material to those related to decommissioning; and

(2) continue to control entry to restricted areas until they are suitable for release in accordance with commission requirements.

(d) Within 60 days of the occurrence of any of the following, each licensee of an active disposal site shall provide written notification to the executive director:

(1) the license has expired under subsection (a) or (b) of this section; or

(2) the licensee has decided to permanently cease principal activities at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for unrestricted release in accordance with commission requirements; or

(3) no principal activities under the license have been conducted for a period of 24 months; or

(4) no principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with commission requirements.

(e) The licensee of an active disposal site shall either:

(1) within 60 days of the occurrence for which notification is required by subsection (d) of this section, begin decommissioning its site or any separate building or outdoor area that contains residual radioactivity, according to an approved decommissioning plan, so that the building or outdoor area is suitable for release in accordance with commission requirements; or

(2) if no decommissioning plan has been submitted, submit a decommissioning plan to the executive director, including a signed statement adjusting the amount of financial assurance based upon the detailed cost estimate included in the decommissioning plan, within 12 months of the notification required by subsection (d) of this section and request an amendment of the license to incorporate the plan into the license; and

(3) begin decommissioning within 60 days of the approval of that plan by the commission.

(f) The licensee of an inactive disposal site licensed under §336.615 of this title (relating to Inactive Disposal Sites), shall provide notice of and begin decommissioning within 90 days of license renewal. The owner or operator of an unlicensed inactive disposal site must apply for a license to decommission the site and begin decommissioning within 90 days of license approval.

(g) All licensees shall follow a commission-approved closure plan for decontamination, decommissioning, restoration, and reclamation of buildings and the site.

(1) Coincident with the notification required by subsections (d) or (f) of this section, the licensee shall continue to maintain in effect all decommissioning financial assurance until the license is terminated by the commission.

(2) The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established under §336.613(f)(5) of this title (relating to Additional Requirements).

(3) Any licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so on or before January 1, 1998.

(4) Following approval of the decommissioning plan, with the approval of the executive director, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site.

(h) The executive director may grant in writing a request to extend the time periods established in subsections (d), (e), or (f) of this section, or to delay or postpone the decommissioning process, if the executive director determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted in writing no later than 30 days before notification under subsection (d) or (f) of this section. The schedule for decommissioning set forth in subsection (e) or (f) of this section may not commence until the executive director has made a determination on the request.

(i) Licenses, including expired licenses, will be terminated by the commission by written notice to the licensee when the executive director determines that:

(1) source material, byproduct material, and other radioactive material has been properly disposed;

(2) reasonable effort has been made to eliminate residual radioactive contamination, if present;

(3) the site is suitable for release;

(A) a radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with commission requirements; or

(B) other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with commission requirements;

(4) the licensee has paid any outstanding fees required by Subchapter B of this chapter (relating to Radioactive Substance Fees) and has resolved any outstanding notice(s) of violation issued to the licensee; and

(5) the licensee has complied with all other applicable decommissioning criteria required by this subchapter.

(j) A licensee may request that a subsite or a portion of a licensed area be released for unrestricted use before full license termination as long as release of the area of concern will not adversely impact the remaining unaffected areas and will not be recontaminated by ongoing authorized activities. When the licensee is confident that the area of concern will be acceptable to the state for release for unrestricted use, a written request for release for unrestricted use and agency confirmation of close-out work performed must be submitted to the executive director. The request should include a comprehensive report, accompanied by survey and sample results which show contamination is less than the limits specified in §336.603 of this title (relating to Radiological Criteria for Unrestricted Use), and an explanation of how ongoing authorized activities will not adversely affect the area proposed to be released. Upon confirmation by the executive director that the area of

concern is indeed releasable for unrestricted use, the licensee may apply for a license amendment, if required.

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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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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SUBCHAPTER H. LICENSING REQUIREMENTS FOR NEAR-SURFACE LAND DISPOSAL OF LOW-LEVEL RADIOACTIVE WASTE

30 TAC §§336.701, 336.702, 336.705, 336.718

STATUTORY AUTHORITY

The amendments are adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.116, 401.201 - 401.203, 401.303, 401.412, 401.413, and 401.415; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103, which give the commission the authority to adopt rules necessary to carry out its responsibilities to regulate and license the disposal of radioactive substances.

§336.701. Scope and General Provisions.

(a) This subchapter establishes, for near-surface land disposal of low-level radioactive waste and accelerator-produced radioactive material, the procedures, criteria, and terms and conditions upon which the commission issues a license for the disposal of low-level radioactive wastes and accelerator- produced radioactive material received from other persons. The rules in this subchapter apply to disposal of low-level radioactive waste and accelerator-produced radioactive material as defined in §336.2 of this title (relating to Definitions). For the purpose of this subchapter, the term "low- level radioactive waste" includes accelerator-produced radioactive material. If there is a conflict between the rules of the commission and the rules of this subchapter, the rules of this subchapter shall prevail. No person shall engage in disposal of low-level radioactive waste received from other persons except as authorized in a specific license issued under this subchapter. A licensee under this subchapter shall conduct processing of low-level radioactive waste received for disposal at the licensed site, incidental to the disposal of that waste, in accordance with provisions of the commission license which authorizes the disposal.

(b) A licensee authorized to dispose of low-level radioactive waste under the rules in this subchapter shall not accept for disposal:

(1) high-level radioactive waste as defined in 10 Code of Federal Regulations (CFR) 60.2 as amended through October 27, 1988 (53 FedReg 43421) (Definitions - high-level radioactive wastes in geologic repositories);

(2) byproduct material as defined in §336.2(13)(B) of this title;

(3) spent or irradiated nuclear fuel; or

(4) waste that is not generally acceptable for near-surface disposal as specified in §336.362 of this title (relating to Appendix E. Classification and Characteristics of Low-Level Radioactive Waste).

(c) In addition to the requirements of this subchapter, all licensees, unless otherwise specified, are subject to the requirements of Subchapters A - E and G of this chapter (relating to General Provisions; Radioactive Substance Fees; General Disposal Requirements; Standards for Protection Against Radiation; Notices, Instructions, and Reports to Workers and Inspections; and Decommissioning Standards). For Subchapter H licensees, the decommissioning and license termination criteria in Subchapter G of this chapter applies only to the ancillary surface facilities.

(d) On-site disposal of low-level radioactive waste at any site authorized under §336.501(b) of this title (relating to Scope and General Provisions), is not subject to licensing under this subchapter.

(e) Shipment and transportation of low-level radioactive waste to a licensed land disposal facility in Texas is subject to applicable rules of the Texas Department of Health, United States Department of Transportation, and United States Nuclear Regulatory Commission. Each shipment of low-level radioactive waste to a licensed land disposal facility in Texas is subject to inspection by the Texas Department of Health before shipment.

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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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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30 TAC §336.742

STATUTORY AUTHORITY

The repeal is adopted under the Texas Radiation Control Act; THSC, §§401.011, 401.051, 401.057, 401.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and Texas Water Code, §5.103.

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Margaret Hoffman
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Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-0348

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.366

The Comptroller of Public Accounts adopts a new §3.366, concerning Internet access services, without changes to the proposed text as published in the June 23, 2000, issue of the *Texas Register* (25 TexReg 6080).

The new section reflects the addition to the Tax Code of an exemption for Internet access service. The relevant statutory provisions are found in Tax Code, §§151.00303, 151.00394, and 151.325, and in changes made to Tax Code, §151.0101(a) and §151.0103, by Senate Bill 441, 76th Legislature, 1999, effective October 1, 1999.

No comments were received regarding adoption of the new rule.

This new section is adopted 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 new section implements Tax Code, §§151.00303, 151.00394, 151.325, 151.0101(a), and 151.0103.

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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Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: September 12, 2000
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For further information, please call: (512) 463-3699

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 146. REVOCATION OF PAROLE OR MANDATORY SUPERVISION

37 TAC §§146.3, 146.6 - 146.8

The Policy Board of the Texas Board of Pardons and Paroles adopts amendments to 37 TAC §§146.3, 146.6(c), 146.7(d), and 146.8(c) concerning revocation of parole or mandatory supervision, without changes to the proposed text as published in the June 30, 2000, issue of the *Texas Register* (25 TexReg 6303).

The amendment is necessary for the purpose of substituting up-to-date terminology to correct all references to "director of paroles, hearings, and clemency" to "board administrator."

One comment was received regarding adoption of the proposed amendment to 37 TAC §146.3 to the effect that any change in the rule should also provide that releasees have an absolute right to counsel in revocation hearings. The Policy Board considered the comment but declined to adopt the change, as the U.S. Supreme Court has held that there is no absolute right to counsel in revocation hearings, only a qualified right to counsel, and the rule reflects the standard set down by the federal court.

The amendments are adopted under §508.036, Government Code, which grants the Policy Board the power to promulgate rules relating to the decision-making process used by the Board and parole panels.

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 August 28, 2000.

TRD-200006005
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
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For further information, please call: (512) 463-1883

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CHAPTER 150. MEMORANDUM OF UNDERSTANDING AND BOARD POLICY STATEMENTS

SUBCHAPTER A. PUBLISHED POLICIES OF THE BOARD

37 TAC §150.56

The Policy Board of the Texas Board of Pardons and Paroles adopts an amendment to 37 TAC §150.56 concerning policies pertaining to the administration of the agency, without changes to the proposed text as published in the June 30, 2000, issue of the *Texas Register* (25 TexReg 6304).

The amendment is necessary for the purpose of substituting up-to-date terminology to correct all references to "board" to "policy board."

No comments were received regarding adoption of the proposed amendment.

The amendment is adopted under §508.036, Government Code, which grants the Policy Board the power to promulgate rules relating to the decision-making process used by the Board and parole panels.

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 August 28, 2000.

TRD-200006006

Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: September 17, 2000
Proposal publication date: June 30, 2000
For further information, please call: (512) 463-1883

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 11. TEXAS COMMISSION ON HUMAN RIGHTS

CHAPTER 323. COMMISSION

40 TAC §323.8

The Commissioners of the Texas Commission on Human Rights adopt new §323.8, concerning required compliance training for state agencies. This section is adopted without changes to the proposed text as published in the June 16, 2000, issue of the *Texas Register* (25 TexReg 5856) and will not be republished.

This section is necessary to comply with House Bill 1976 passed by the 76th Texas Legislature which resulted in comprehensive amendments relating to the continuation and functions of the Commission. This new provision will establish procedures for determining the number of complaints that constitute merit, who must participate in training, and what procedures and notice requirements the Commission will utilize in conducting the training of an agency's supervisors and managers.

This section requires the commission to provide a comprehensive equal employment opportunity training program to appropriate supervisory and managerial employees of a state agency that receives three or more complaints of employment discrimination. This training is for the purpose of preventing and reducing actual discrimination through instruction and training.

The commission will make a determination with each case of employment discrimination filed, either with the commission or the United States Equal Employment Opportunity Commission, whether the complaint is with or without merit. If a state agency receives three or more complaints of employment discrimination, that have been determined by the commission to have merit, then training shall be provided to supervisory and managerial employees. The state agency will be notified by the commission regarding compliance with this provision, including having training administered by the commission.

No comments were received.

This new section is adopted under the Texas Labor Code, Chapter 21, Sections 21.556 and 21.003, and Texas Administrative Code Chapter 321, Section 321.4 and Chapter 323, Section 323.5. The Texas Labor Code, Section 21.556, provides that the Commission shall promulgate rules as are necessary and proper to execute its duties and functions. The Texas Labor Code, Section 21.003, and the Texas Administrative Code, Sections 321.4 and 323.5, grant the Commission authority to adopt procedural rules to carry out the purposes and policies of Texas Commission on Human Rights Act.

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 August 23, 2000.

TRD-200005944
William M. Hale
Executive Director
Texas Commission on Human Rights
Effective date: September 12, 2000
Proposal publication date: June 16, 2000
For further information, please call: (512) 437-3457

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION
SUBCHAPTER B. ALLOCATIONS AND FUNDING

40 TAC §800.63

The Texas Workforce Commission adopts new §800.63, relating to allocation of funds under the Workforce Investment Act (WIA) (29 U.S.C.A. §2801 *et seq.*), without changes to the proposed text as published in the July 7, 2000, issue of the *Texas Register* (25 TexReg 6479). The text will not be republished.

Purpose: The purpose of the rule is to provide a basis for allocating funds under WIA Title I to local workforce development areas (workforce areas) to be used for youth activities, adult employment and training activities, and dislocated worker employment and training activities.

Background: WIA provides for the allocation of funds for employment and training activities to workforce areas and the reservation of funds for statewide activities and rapid response activities. The WIA allows the Commission the flexibility to allocate funds based on prior consistent State law and provides funding allocation formulas, weights and measures based on the needs of the State and workforce areas. Flexibility is allowed in the use of statewide activity funds for youth, adult, or dislocated worker activities without regard to the source of the funds. The Commission may reserve up to 15 percent of each of the three funding streams for statewide activities. These statewide funds will be a critical factor in creating an integrated statewide employment and training system for Texas. In the rule and this preamble, the term "Agency" refers to the daily operations of the Texas Workforce Commission under the direction of the executive director, and the term "Commission" refers to the three-member body of governance composed of Governor-appointed members.

The Commission, in the WIA State Plan, has adopted a formula, data elements, and weights to be used in allocating funds for adult employment and training activities, dislocated worker employment and training activities, and youth activities, except funds reserved for statewide or rapid response activities. With respect to allocations of funds for employment and training activities for dislocated workers, the rule continues the allocation provided for under prior law. This allocation has worked well in meeting the needs of the State and workforce areas undergoing structural change and the accompanying unemployment.

The Commission adopted a single rule to allocate funds that are subject to the oversight of local workforce development boards (Boards). The funds are allocated to workforce areas for the purpose of meeting the needs of eligible populations and for meeting or exceeding state performance measures. Section 800.63(a) is added to define area of substantial unemployment, disadvantaged adult, and disadvantaged youth. The remainder of §800.63 is added to describe the policies and procedures used to allocate WIA funds to the workforce areas and to clarify the roles of the Commission and the Agency.

No comments were received during the comment period.

The rule is adopted under Texas Labor Code §301.061 and §302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Agency's services and activities.

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 August 23, 2000.

TRD-200005928
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Effective date: September 12, 2000
Proposal publication date: July 7, 2000
For further information, please call: (512) 463-8812

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REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. 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.

Agency Rule Review Plans

Commission on State Emergency Communications

Title 1, Part 12

Filed: August 25, 2000

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Texas Groundwater Protection Committee

Title 31, Part 18

Filed: August 24, 2000

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Texas State Board of Medical Examiners

Title 22, Part 9

Filed: August 29, 2000

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Texas Motor Vehicle Board

Title 16, Part 6

Filed: August 25, 2000

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Texas Board of Professional Engineers

Title 22, Part 6

Filed: August 30, 2000

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Texas Workforce Commission

Title 40, Part 20

Filed: August 30, 2000

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Proposed Rule Reviews

Texas Commission for the Blind

Title 40, Part 4

The Texas Commission for the Blind files this notice of its intent, beginning September 1, to review all sections in Chapter 163 pertaining to Vocational Rehabilitation Program in accordance with the requirements of Texas Government Code, §2001.039; and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999, which requires state agencies to review and consider for readoption each of their rules every four years. A review must include an assessment of whether the reasons for the rules continue to exist.

A preliminary review of the rules indicates that the reasons for adopting the rules continue to exist. The rules are needed to implement provisions of Human Resources Code, Title 5, Chapter 91, Subchapter D, Vocational Rehabilitation of the Blind. The agency is required to administer the program in conformity with federal requirements to the extent necessary to obtain the full benefits of the federal law, and the preliminary review indicates that the rules conform to provisions of the Rehabilitation Act Amendments of 1998. The public is invited to make comments on the rules as they exist in Title 40 TAC, Part 4, Chapter 163. The comment period will last 30 days beginning with the publication of this notice of intention to review.

The Commission's Board will consider comments received in response to this notice at a meeting tentatively scheduled in November 2000. Any changes to the rules proposed by the Commission after the Board's review and considering comments received in response to this notice will appear thereafter in the proposed rules section of the *Texas Register* and will be adopted in accordance with state rule-making requirements.

Comments or questions regarding this rule review may be submitted in writing to Jean Crecelius, Policy & Rules Coordinator, Texas Commission for the Blind, P. O. Box 12866, Austin, Texas 78711 or via facsimile at (512) 377-0682.

TRD-200006061
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Filed: August 29, 2000

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The Texas Commission for the Blind files this notice of its intent, beginning September 1, to review Chapter 167 pertaining to Business Enterprises Program in accordance with the requirements of Texas Government Code, §2001.039; and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999, which requires state agencies to review and consider for readoption each of their rules every four years. A review must include an assessment of whether the reasons for the rules continue to exist.

A preliminary review of the rules indicates that the reasons for adopting the rules continue to exist. The rules are needed to implement provisions of Human Resources Code, Title 5, Chapter 94, Vending Facilities Operated by Blind Persons. The agency administers the program in conformity with federal requirements to the extent necessary to obtain the full benefits of the federal law, and the preliminary review indicates that the rules conform to provisions of the Randolph-Sheppard Act. The public is invited to make comments on the rules as they exist in Title 40 TAC, Part 4, Chapter 167. The comment period will last 30 days beginning with the publication of this notice of intention to review.

The Commission's Board will consider comments received in response to this notice at a meeting tentatively scheduled in November 2000. Any changes to the rules proposed by the Commission after the Board's review and considering comments received in response to this notice will appear thereafter in the proposed rules section of the *Texas Register* and will be adopted in accordance with state rule-making requirements.

Comments or questions regarding this rule review may be submitted in writing to Jean Crecelius, Policy & Rules Coordinator, Texas Commission for the Blind, P. O. Box 12866, Austin, Texas 78711 or via facsimile at (512) 377-0682.

TRD-200006062
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Filed: August 29, 2000

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Texas Department of Health

Title 25, Part 1

The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part 1, Chapter 143, Medical Radiologic Technologists, §§143.1 - 143.20.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, added by Chapter 1499, Article 1, §1.11(a), 76th Legislature (1999), the General Appropriations Act, 76th Legislature (1999) Article IX, §9-10.13.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200006085
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 30, 2000

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Department of Information Resources

Title 1, Part 10

The Department of Information Resources (DIR) files this notice of intention to review and consider for readoption, revision or repeal Title 1, Texas Administrative Code, Chapter 201, § 201.17, "Advisory Committees." This review and consideration are being conducted in accordance with the General Appropriations Act, House Bill 1, 76th Legislature, Article IX, § 9-10.13. The review will include, at a minimum, an assessment by DIR of whether the reasons the rule was initially adopted continue to exist and whether the rule should be readopted.

Any questions or written comments pertaining to this rule review may be submitted to Renee Mauzy, General Counsel, via mail at P. O. Box 13564, Austin, Texas 78711, via facsimile transmission at (512) 475-4759 or via electronic mail at renee.mauzy@dir.state.tx.us. The deadline for comments is thirty (30) days after publication of this notice in the Texas Register. Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule section of the Texas Register. The proposed rule changes will be open for public comment prior to final adoption or repeal of the rule by DIR in accordance with the requirements of the Administrative Procedure Act, Chapter 2001, Texas Government Code.

1 TAC §201.17, Advisory Committees.

TRD-200006027
Renee Mauzy
General Counsel
Department of Information Resources
Filed: August 28, 2000

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Texas Natural Resource Conservation Commission

Title 30, Part 1

The Texas Natural Resource Conservation Commission (commission) notices the intention to review and propose the readoption of Chapter 299, Dams and Reservoirs. This review of Chapter 299 is proposed in accordance with the requirements of Texas Government Code, §2001.039; and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999, which requires state agencies to review and consider for readoption each of their rules every four years. A review must include an assessment of whether the reasons for the rules continue to exist.

Chapter 299, Dams and Reservoirs, Subchapters A - E, provides for the safe construction, maintenance, repair and removal of dams located in the state. Subchapter A includes the general provisions of the rules including definitions; duties, obligations and liabilities of dam owners; the requirement that all specifications, and the construction, enlargement, alteration, repair or removal of dams shall be under the supervision of an engineer registered in the state. Subchapter B includes the classifications of dams, hazard classification criteria, hydrologic criteria, evaluation of existing dams, interim alternatives, emergency

management, and variances. Subchapter C includes construction requirements such as approval of plans and specifications, content of construction plans and specifications, maintenance of records, construction progress reports, plans and/or specification changes and amendments, non-compliance with approved plans and specifications, deliberate impoundments, certificate of completions, and record drawings and permanent reference marks. Subchapter D includes the removal of dams and reservoirs. Subchapter E includes emergency actions.

The commission conducted a preliminary review of the rules under Chapter 299 and has determined that the reasons for adopting these rules continue to exist. These rules are needed to implement provisions of state law, including Texas Water Code, §12.052. The commission invites comments on whether the reasons for the rules in Chapter 299 continue to exist.

Comments may be submitted to Ms. Patricia Duron, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-6087. All comments should reference Rule Log Number 2000-021-299-WT. Comments must be received by 5:00 p.m., October 9, 2000. For further information or questions concerning this proposal, please contact Mr. Michael Bame, Policy and Regulations Division, at (512) 239-5658.

TRD-200006056
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: August 29, 2000

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Texas Workers' Compensation Commission

Title 28, Part 2

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 147 concerning Dispute Resolution -- Agreements, Settlements, Commutation. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The agency's reason for adopting the rules contained in these chapters continues to exist and it proposes to readopt Chapter 147.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on October 9, 2000 and submitted to Cherie Zavitson, Office of General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH 35, Austin, Texas 78704-7491.

Chapter l47. Dispute Resolution Agreements, Settlements, Commutation

§147.1 Definitions

§147.2 Form

§147.3 Execution

§147.4 Filing Agreements with the Commission: Effective Dates

§147.5 Filing Settlements with the Commission: Effective Dates

§147.6 Settlement Conference

§147.7 Effect on Previously-Entered Decisions and Orders

§147.8 Withdrawal From Settlement

§147.9 Requirements for Agreements and Settlements

§147.10 Commutation of Impairment Income Benefits

§147.11 Notification of Commission of Proposed Judgments and Settlements

TRD-200005994
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: August 25, 2000

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Adopted Rule Reviews

General Services Commission

Title 1, Part 5

The General Services Commission (the "Commission") has completed the review of Title 1, Texas Administrative Code, Part V, Chapter 113 concerning the Central Purchasing Division as noticed in the June 9, 2000, publication of the *Texas Register* (25 TexReg 5697).

The Commission received no comments on the requirements of the Texas Government Code, §2001.039 as to whether the reasons for adopting the rules continue to exist. As a part of this review process, the Commission proposed amendments to Title 1, T.A.C., Chapter 113, Subchapter A - Purchasing, §§113.2 through 113.6, §§113.8 through 113.14, and §§113.18 through 113.20; Subchapter C - Specification, §113.33 and §113.34; Subchapter D - Inspection, §§113.51, 113.52 and 113.56; Subchapter E - Cooperative Purchasing Program, §113.85, and §113.87; and Subchapter G - Buying Under a Contract Established by an Agency Other than GSC, §113.125. The proposed amendments were published in the June 9, 2000, issue of the *Texas Register*, (25 TexReg 5515). The Commission also proposed the repeal of Title 1, T.A.C., Chapter 113, Subchapter A - Purchasing, §113.17; Subchapter B - Purchase of Alternative Fuel Vehicles, §113.21; Subchapter C - Specification, §113.31 and §113.32; Subchapter D - Inspection, §113.53; Subchapter E - Cooperative Purchasing Program, §113.83 and §113.88; and Subchapter F - Vendor Performance and Debarment Program, §113.100. The proposed repeal was published in the June 9, 2000, issue of the *Texas Register*, (25 TexReg 5531). The Commission received one written comment on the proposed amendments and have adopted the proposed rules with changes to the proposed text. The adoption of the amendments and the adoption of the repealed rules may be found in the Adopted Section of this *Texas Register*.

The Commission readopts Title 1, T.A.C., Chapter 113, Subchapter A - Purchasing; Subchapter B - Purchase of Alternative Fuel Vehicles; Subchapter C - Specification; Subchapter D - Inspection; Subchapter E - Cooperative Purchasing Program; Subchapter F - Vendor Performance and Debarment Program; and Subchapter G - Buying Under a Contract Established by an Agency Other than the General Services Commission.

TRD-200005903
Ann Dillon
General Counsel
General Services Commission
Filed: August 22, 2000

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Department of Information Resources

Title 1, Part 10

The Department of Information Resources readopts without change the provisions of 1 T.A.C. §201.13(d) concerning "standard for data transport networks for computers." However, due to the proposed amendment to delete subsection (c) of §201.13, upon final adoption of that proposed amendment, subsection (d) will be redesignated as subsection (c) of 1 T.A.C. §201.13. The readoption is pursuant to the General Appropriations Act of 1999, House Bill 1, 76th Legislature, Article IX, Section 9-10.13, "Review of Agency Rules." The notice of intention to review subsections (c) and (d) of §201.13 was published in the June 23, 2000 issue of the *Texas Register*. The department has determined that the reason for the initial adoption of subsection (d) of §201.13 continues to exist and that the reason for the initial adoption of subsection (c) of §201.13 no longer exists. No comments were received concerning readoption of subsection (d) of §201.13. No comments were received concerning the repeal through amendment of subsection (c) of §201.13.

TRD-200006030
Renee Mauzy
General Counsel
Department of Information Services
Filed: August 28, 2000

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Texas Natural Resource Conservation Commission

Title 30, Part 1

The Texas Natural Resource Conservation Commission (commission) approves the review of Chapter 297, Water Rights Substantive and readopts Chapter 297 with amendments. The rules review and readoption was conducted under Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §§9-10.13, which requires state agencies to review and consider for readoption each of their rules every four years. The reviews must include an assessment that the reason for the rules continues to exist. The commission has determined that the reason for these rules continues to exist. The proposed Notice of Intention to Review was published in the April 21, 2000 issue of the *Texas Register* (25 TexReg 3565). The commission concurrently adopts the amendments to Chapter 297 in the Adopted Rules section of this issue of the *Texas Register*. The specific changes are noted in the adopted rule preamble.

Chapter 297, Water Rights Substantive, was adopted pursuant to Texas Water Code, Chapter 11, Water Rights. The rules are necessary to provide details of the substantive requirements, including requirements for obtaining different types of permits or authorizations, how the commission decides whether to grant a permit, definitions of terms used in water rights, consideration of environmental effects in permitting, and requirements for cancellation of a water right, to implement the provisions of Chapter 11.

Chapter 297, Subchapter A, Definitions, provides definitions of terms used throughout the water rights rules. Subchapter B discusses the different types of water rights permits and authorizations which can be obtained from the commission. Subchapter C describes the uses which are exempt from permitting, including domestic and livestock use, mariculture activities, fire and emergency use, and irrigating certain historic cemeteries. Subchapter D governs diversions from unsponsored or storage- limited reservoirs. Subchapter E contains requirements for issuing permits and conditions that may be included in water rights. Subchapter F contains requirements for amending water rights by the executive director. Subchapter G lists requirements for canceling, revoking, or forfeiture of water rights. Subchapter H contains requirements for conveying land and water rights. Subchapter I contains the rules for bed and banks authorizations to convey water down the bed and banks of a river. Subchapter J lists the requirements for water supply contracts.

Comments were not received during the public comment period, which closed on May 22, 2000.

TRD-200005952
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: August 24, 2000

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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.

Graphic Material will not be reproduced in the Acrobat version of this issue of the *Texas Register* due to the large volume. To obtain a copy of the material please contact the Texas Register office at (512) 463-5561 or (800) 226-7199.

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.

Office of the Attorney General

Texas Clean Air Act and Texas Solid Waste Disposal Act Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air Act and Texas Solid Waste Disposal Act. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: Harris County, Texas, and the State of Texas, et al. v. Dora Garza, Individually and d/b/a Cabrito's Garza and Gerado Garza, Individually and d/b/a Cabrito's Garza, Case No. 1999-60219, 334th District Court of Harris County, Texas

Nature of Defendants' Operations: Defendant is a livestock slaughterhouse. Defendants are in violation of improperly disposing of manure offsite and the improper storing and processing of the animals, causing adverse affect on human health by the odors released into the surrounding environment and creating a nuisance.

Proposed Agreed Judgment: The judgment requires Defendants to remedy the violations by complying with injunctive provisions designed to bring the operation into compliance. Defendants are to follow the Sanitation and Standard Operating Procedures attached to the Agreed Judgment in its entirely and a limit was set on the amount of animals permitted on the property at any one time. The Agreed Judgment requires Defendants to pay Fourteen Thousand Dollars and no cents ($14,000.00) in civil penalties, Six Thousand ($6,000.00) of those penalties will be abated for three years, subject to future compliance with applicable environmental laws and regulations. Two Thousand Two Hundred Dollars and no cents ($2,200.00) in attorney fees and Defendants are also paying $174.00 in cost of court.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Lisa Sanders Richardson, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-200006071
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: August 29, 2000

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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. Requests for federal consistency review were received for the following projects(s) during the period of August 17, 2000, through August 24, 2000:

FEDERAL AGENCY ACTIONS:

Applicant: Vessel Repair, Inc.; Location: The site is located in the Sabine-Neches Canal near Corps of Engineers Station 420+00 at the Vessel Repair, Inc., facility at 5848 Proctor Street Extension, Jefferson County, Port Arthur, Texas. Approximate UTM coordinates: Zone 15; Easting: 414500; Northing: 331000. CCC Project No.: 00-0292-F1; Description of Proposed Action: The applicant proposes to amend existing permit 21762 to include addition of two breasting dolphins, no closer than 134 feet to the toe of the Sabine-Neches navigation channel, to increase the total number of authorized dolphins to nine. Type of Application: U.S.A.C.E. permit application #21762(01) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Vintage Petroleum, Inc. ; Location: The project site is located in State Tracts 6-7A, 5-8A and 5-8B in Trinity Bay, Chambers County, Texas. Approximate UTM coordinates: Zone 15; Easting: 328500; Northing: 3284500. CCC Project No.: 00-0293-F1; Description of Proposed Action: The applicant proposes to install approximately 7,700 feet of 41/2 inch diameter O.D. pipeline in support of ongoing oil and gas production under Oil Field Development Permit 09161(15). Type of Application: U.S.A.C.E. permit application #09161(15)/184 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Vintage Petroleum, Inc.; Location: The project area is located in the NE/4 of State Tract 9-12A, in Trinity Bay, Chambers County, Texas. UTM coordinates: Zone 15; Easting: 330000; Northing: 3286700. CCC Project No.: 00-0294-F1; Description of Proposed Action: The applicant proposes to drill their No. 1 Well in State Tract 9-12A in Trinity Bay under Oil Field Development Permit 09161(15). Type of Application: U.S.A.C.E. permit application #09161(15)/185 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).

Applicant: Vintage Petroleum, Inc.; Location: The site is located in the SW/4 of State Tract 1-4A, in Trinity Bay, Chambers County, Texas. Approximate UTM coordinates: Zone 15; Easting: 327800; Northing: 3283000. CCC Project No.: 00-0295-F1; Description of Proposed Action: The applicant proposes to drill their No. 2 Well in State Tract 1-4A in Trinity Bay under Oil Field Development Permit 09161(15). Type of Application: U.S.A.C.E. permit application #09161(15)/186 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).

Applicant: Vintage Petroleum, Inc.; Location: The site is located in the SW/4 of State Tract 6-7A, in Trinity Bay, Chambers County, Texas. Approximate UTM coordinates: Zone 15; Easting: 327000; Northing: 3285000. CCC Project No.: 00-0296-F1; Description of Proposed Action: The applicant proposes to drill their No. 2 Well in State Tract 6-7A in Trinity Bay under Oil Field Development Permit 09161(15). Type of Application: U.S.A.C.E. permit application #09161(15)/187 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).

Applicant: Vintage Petroleum, Inc.; Location: The project site is located in State Tracts 9-12B and 5-8B in Trinity Bay, Chambers County, Texas. UTM Coordinates: Zone 15; Easting: 330800; Northing: 3285000. CCC Project No.: 00-0297-F1; Description of Proposed Action: The applicant proposes to install a drilling barge, a shell pad 210 feet long by 64 feet wide, a 6-inch flowline, and appurtenant structures under Oil Field Development Permit 09161(15). Type of Application: U.S.A.C.E. permit application #09161(15)/183 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: The City of Houston; Location: The project site is located in Buffalo Bayou at stream mile 27.65 in Houston, Harris County, Texas. Approximate UTTM coordinates: Zone 15; Easting: 277600; Northing: 3293600. CCC Project No.: 00-0298-F1; Description of Proposed Action: The applicant proposes to amend Permit 19382 to perform hydraulic and mechanical maintenance dredging within Buffalo Bayou. Approximately 10,000 to 15,000 cubic yards of material will be excavated to a depth of 18 feet below mean sea level from the bayou to accommodate the wastewater treatment facility. The applicant proposes to utilize the Filter Bed, Glendale, Clinton, and House-Stimson Dredged Material Placement Areas. Type of Application: U.S.A.C.E. permit application #19382(01) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Henry R. Stevenson, Jr.; Location: The project site is located in the 1000 Block of West Freeway Boulevard, southwest of the intersection of Interstate Highway 10 with Church Road in Vidor, Orange County, Texas. Approximate UTM coordinates: Zone 15; Easting: 400500; Northing: 3332200. CCC Project No.: 00-0299-F1; Description of Proposed Action: The applicant proposes to fill 0.99 acre of wetlands and construct two crossings of Tiger Creek. As mitigation for unavoidable impacts, the applicant proposes to purchase 5 credits (i.e., 5 acres) from the Neches River Cypress Swamp Preserve Mitigation Bank. Type of Application: U.S.A.C.E. permit application #21859 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

FEDERAL AGENCY ACTIVITIES:

Applicant: U.S. Department of the Interior; CCC Project No.: 00-0300-F2; Description of Proposed Activity: The applicant has prepared a draft environmental impact statement (EIS) to examine the potential effects of the use of floating production, storage, and offloading (FPSO) systems in the deepwater areas in the Western and Central Planning Areas of the Gulf of Mexico (GOM) Outer Continental Shelf (OCS).

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. Janet Fatheree, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or janet.fatheree@glo.state.tx.us. Persons are encouraged to submit written comments as soon as possible within 30 days of publication of this notice. Comments should be sent to Ms. Fatheree at the above address or by fax at (512) 475-0680.

TRD-200006086
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: August 30, 2000

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Comptroller of Public Accounts

Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, Texas Government Code, and Section 403.020, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of its Request for Proposals (RFP) from qualified, independent firms to provide consulting services to the Comptroller. The successful respondent will assist the Comptroller in conducting a management and performance review of the Del Valle Independent School District (Del Valle ISD). The services sought under this RFP will culminate in a final report, which shall contain findings, recommendations, implementation timelines, plans, and be a component part of the review of the Del Valle ISD. The successful respondent will be expected to begin performance of the contract on or about October 18, 2000.

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, 78744, telephone number: (512) 305-8673, to obtain a copy of the RFP. The 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, September 8, 2000, between 2 p.m. and 5 p.m., Central Zone Time (CZT), and during normal business

hours thereafter. The Comptroller also made the complete RFP available electronically on the Texas Marketplace after Friday, September 8, 2000, 2 p.m. (CZT). All written inquiries, questions, and mandatory Letters of Intent to propose must be received at the above-referenced address prior to 2 p.m. (CZT) on Monday, September 25, 2000. Prospective respondents are encouraged to fax Letters of Intent and Questions to (512) 475-0973 to ensure timel! y receipt. The Letter of Intent must be addressed to Clay Harris, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Mandatory Letters of Intent and Questions received after this time and date will not be considered. The responses to questions and other information pertaining to this procurement will be posted on Wednesday, September 27, 2000, on the Texas Marketplace http://www.marketplace.state.tx.us.

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 Thursday, October 5, 2000. Proposals received after this time and date will not be considered.

Proposals will not be accepted from firms that do not submit Letters of Intent by the deadline specified above.

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. The Comptroller will make the final decision.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller of Public Accounts is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall pay for no costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - September 8, 2000, 2 p.m. CZT; Mandatory Letters of Intent and Questions Due - September 25, 2000, 2 p.m. CZT; Responses to Questions - September 27, 2000; Proposals Due - October 5, 2000, 2 p.m. CZT; Contract Execution - October 13, 2000, or as soon thereafter as practical; Commencement of Project Activities - October 18, 2000.

TRD-200006058
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: August 29, 2000

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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, 303.005, 303.008, 303.009, 304.003, and 346.101. Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and 303.009 for the period of 09/04/00 - 09/10/00 is 18% for Consumer [1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and 303.009 for the period of 09/04/00 - 09/10/00 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by Sec. 303.005 and 303.009[3]for the period of 09/01/00 - 09/30/00 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The monthly ceiling as prescribed by Sec. 303.005 and 303.009 for the period of 09/01/00 - 09/30/00 is 18% for Commercial over $250,000.

The standard quarterly rate as prescribed by Sec. 303.008 and 303.009 for the period of 10/01/00 - 12/31/00 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard quarterly rate as prescribed by Sec. 303.008 and 303.009 for the period of 10/01/00 - 12/31/00 is 18% for Commercial over $250,000.

The retail credit card quarterly rate as prescribed by Sec. 303.009 [1] for the period of 10/01/00 - 12/31/00 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The lender credit card quarterly rate as prescribed by Sec. 346.101 Tex. Fin. Code[1]for the period of 10/01/00 - 12/31/00 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard annual rate as prescribed by Sec. 303.008 and 303.009[4] for the period of 10/01/00 - 12/31/00 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard annual rate as prescribed by Sec. 303.008 and 303.009 for the period of 10/01/00 - 12/31/00 is 18% for Commercial over $250,000.

The retail credit card annual rate as prescribed by Sec. 303.009[1]for the period of 10/01/00 - 12/31/00 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 09/01/00 - 09/30/00 is 10% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed Sec. 304.003 for the period of 09/01/00 - 09/30/00 is 10% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

[4]Only for open-end credit as defined in Sec. 301.002(14), Tex. Fin. Code.

TRD-200006052
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 29, 2000

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Court Reporters Certification Board

New Certified Shorthand Reporters

Following the examination of applicants on July 28, 2000, the Texas Court Reporters Certification Board certified to the Supreme Court of Texas the following individuals who are qualified in the method indicated to practice shorthand reporting pursuant to Chapter 52 of the Texas Government Code, V.T.C.A.:

MACHINE SHORTHAND: Kelly Jean Bryant-Tulsa, OK; Schias K Carmon-Dallas, TX; Kimberly Jo Carter-Houston, TX; Esther V Collins-Houston, TX; Bonnie Sue Eggers-McKinney, TX; Charlotte Kay Haynsworth-Sulphur Springs, TX; Janel Renee Lambert-League City, TX; Iris Lorraine Leos-El Paso, TX; Brandy Marie Lunsford-Allen, TX; Jason Paul Mestas- Anthony, TX; Marnie J Pizzitola-Dallas, TX; Julie Elizabeth Verastegui-Abilene, TX; Angela Williams- Austin, TX

ORAL STENOGRAPHY: Jennifer Leigh Clark-Cypress, TX; Nancy Merrell-Robertson- Denton, TX; Dale Berneice Pahl-Grand Prairie, TX

TRD-200005995
Sheryl Jones
Director of Administration
Court Reporters Certification Board
Filed: August 25, 2000

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Texas Education Agency

Request for Applications Concerning 2000-2002 Investment Capital Fund Grant Program: Improving Student Achievement Through Staff Development and Parent Training for Campus Deregulation and Restructuring

Eligible Applicants. This is a campus-level grant. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-00-034 from public school districts (serving as fiscal agents) applying on behalf of individual campuses, or from open-enrollment charter schools. The school must have demonstrated a commitment to campus deregulation and to restructuring educational practices and conditions at the school by entering into a partnership with: TEA; school staff; parents of students at the school; community and business leaders; school district officers; and a nonprofit community-based organization that has a demonstrated capacity to train, develop, and organize parents and community leaders into a large, nonpartisan constituency that will hold the school and the school district accountable for achieving high academic standards. A separate application, specific to the applying campus, must be submitted for each grant. Any campus that has been selected for or is operating a 1999-2001 Investment Capital Fund grant is not eligible to apply for this grant; these campuses will be eligible to be served with continuation funding through separate applications.

Description. The primary objective of this grant is to improve student achievement through deregulation and restructuring that includes staff development, parent and community training, and may also include strategies designed to enrich or extend student learning experiences outside the regular school day. The applicant must identify local needs and provide strategies and activities to address those needs by meeting all of the program goals: train school staff, parents, and community leaders to understand academic standards; develop effective strategies to improve student performance; and organize a large constituency of parents and community leaders that will hold the school and the school district accountable for achieving high academic standards.

Dates of Project. This Investment Capital Fund Grant will be implemented and carried out during the 2000-2001 and 2001-2002 school years. Applicants should plan for a starting date of no earlier than April 2, 2001, and an ending date of no later than May 31, 2002.

Project Amount. Funding will be provided for approximately 100 projects. Each project will receive a maximum of $50,000 in a year. Project funding for a continuation 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. Prior to March 2002, selected applicants from this grant will be notified of availability of, and eligibility for, continuation funding.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant program and the extent to which the application addresses the primary objective, program goals, and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA # 701-00-034 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tmail.tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and telephone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://www.tea.state.tx.us/grant/announcements/grants2.cgi for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Ellsworth Schave, Director, School Improvement Initiatives Unit, TEA, (512) 936-2589.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Friday, November 3, 2000, to be considered for funding.

TRD-200006079
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: August 30, 2000

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Request for Applications Concerning Improving Teaching and Learning, Texas Title 1 Demonstration Program

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-00-050 from local education agencies (LEAs), including open-enrollment charter schools, and shared service arrangements of LEAs, on behalf of campuses across the state to implement effective, comprehensive school reforms that are based on reliable research and effective practices that result in improved student performance for all students.

Description. The purpose of this RFA is to provide school campuses that need to substantially improve student achievement, particularly Title I schools, with financial incentives to implement comprehensive school reform programs that are based on reliable research and effective practices. Programs will include a strong emphasis on parental involvement and on the foundation curriculum, aligned with the Texas Essential Knowledge and Skills (TEKS) and the Texas Assessment of Academic Skills (TAAS). A comprehensive school reform program must integrate, in a coherent manner, all nine of the following components: (1) effective, research-based methods and strategies; (2) comprehensive design with aligned components; (3) professional development; (4) measurable goals and objectives; (5) support within the school; (6) parental and community involvement; (7) external technical support and assistance; (8) evaluation strategies; and (9) coordination of resources. LEAs must provide technical assistance, evaluation data, and flexibility to the campuses receiving the Improving Teaching and Learning grants.

The TEA will analyze and review data from the Academic Excellence Indicator System (AEIS) and Public Education Information Management System (PEIMS) to determine program success. The LEA will be responsible for collecting and maintaining additional campus-specific data for determining program effectiveness. Data to be collected and maintained by the LEA will include the number of drug-use and violence incidents on campus; the number of parents participating in campus activities; the number of community volunteers, other than parents, participating in campus activities; and the status of program implementation. The campus must provide implementation reports to the TEA in the time and manner requested by the agency.

Dates of Project. Applicants should plan for a starting date of no earlier than July 1, 2001, and an ending date of no later than June 30, 2004. Applicants will submit a budget and program description for the full three-year period. Funding for the second and third years is contingent on appropriation of funds by Congress and accomplishment of program objectives at the local level.

Project Amount. Campuses will be awarded a minimum of $50,000 for each year of the three-year grant period. Applicants may apply for up to a maximum of $150,000 for each year of the three-year grant period. The campus may budget a maximum of 5% of the campus grant award, in addition to the campus amount requested, for administrative use, including indirect costs, for each year of the project. Eighty-three percent (83%) of funds will be awarded to Title I eligible schools whether they are currently served with Title I funds or not. The campus is required to complete the application in collaboration with the LEA. The project is funded 100% from Comprehensive School Reform Demonstration Program federal funds (estimated $24.2 million).

Selection Criteria. Applications will be selected based on the ability of the campus to carry out all requirements contained in the RFA. The TEA will base its selection on, among other things, demonstrated competence and qualifications of the applicant. The selection criteria and the review process are specified in the RFA. A comprehensive school reform program must integrate, in a coherent manner, all nine of the components described in the requirements of the RFA. LEAs must provide technical assistance, evaluation data, and flexibility to the campuses receiving Improving Teaching and Learning grants. Special consideration will be given to applicants that: (1) serve campuses identified as low-performing by the state Accountability Rating System in 2000; or (2) serve campuses with average campus scores of 40-69% passing rates on the spring 2000 TAAS Reading test. Consideration will also be given to diversity in size of district and diversity in geographic location. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs incurred before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or to pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-00-050 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701-1494; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tmail.tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and telephone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://www.tea.state.tx.us/grant/announcements/grants2.cgi for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Carole Smith, Division of Student Support Programs, TEA, (512) 463-9374 or via electronic mail at csrd@tmail.tea.state.tx.us.

Deadline for Receipt of Application. Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. Central Time, Friday, December 15, 2000, to be considered for funding.

TRD-200006078
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: August 30, 2000

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General Land Office

Notice of Availability and Request for Comments on a Proposed Settlement Agreement for a Natural Resource Damage Claim

AGENCIES: Texas Natural Resource Conservation Commission (TNRCC), Texas Parks and Wildlife Department (TPWD), and Texas General Land Office (GLO); hereinafter collectively referred to as the "Natural Resource Trustees."

ACTION: Notice of Availability of a proposed Settlement Agreement and of a 30-day period for public comment.

SUMMARY: Notice is hereby given of the following proposed resolution of a claim for natural resource damages under the Oil Pollution Act of 1990 and the Texas Oil Spill Prevention and Response Act.

The Natural Resource Trustees have reached a proposed agreement with Buffalo Marine Service, Inc. (Responsible Party) to resolve Buffalo Marine's liability for injuries to natural resources and the ecological services they provide caused by a discharge of fuel oil into the waters of the State of Texas.

On May 26, 1996, two tanks on the T/B Buffalo Marine 286 barge ruptured and released an estimated 619 barrels (bbls) of an intermediate fuel oil, IFO 380, into the navigable waters of the Houston Ship Channel in Galveston Bay at approximately Latitude 29° 34' 24" North, Longitude 94° 55' 30" West. The damaged barge was transported to the Bayport Ship Channel for lightering. Oil discharged from the barge for approximately two days, traveling from the vicinity of Five-Mile-Cut at the southern end of Atkinson Island to the Bayport Ship Channel, and across sections of western Galveston Bay.

The shoreline of Upper Galveston Bay was oiled as a result of the discharge, including the shorelines of Atkinson Island, Hogg Island, Morgan's Point, Wilson's Creek, Sylvan Beach, Bayport Ship Channel, Little Cedar Bayou, and Boggy Bayou. Natural Resource Trustees documented injuries to natural resources and the services they provided, which included injury to marshes, surface water and sediments. These resources provide important habitat for fish, aquatic invertebrates, shorebirds, and waterfowl. Shorebirds and waterfowl were impacted directly by contact with spilled oil. Recreational services were also impaired due to waterway closures that resulted from the spill.

Spill response actions undertaken by the Responsible Party did not compensate for the value of injured or lost natural resources and the services they provide. The response actions contained and/or removed only a limited amount of oil prior to its impacting natural resources. Because the quantity and concentration of the released oil was sufficient to result in injury to trust resources, the Natural Resource Trustees are seeking compensation for natural resource damages.

As compensation for injuries to natural resources and the services they provide, the proposed Settlement Agreement requires Buffalo Marine Services, Inc. to pay $15,146.00 to the State Natural Resource Trustees. This claim is based upon the results of field investigations, a Type A Natural Resource Damage model, a Habitat Equivalency Analysis, TPWD restitution values, and TPWD recreational uses data. The Natural Resource Trustees have determined that this settlement offer will fairly compensate the public for injuries to natural resources from the May 26, 1996, T/B Buffalo Marine 286 oil spill. Buffalo Marine Services, Inc. is also required to reimburse the Natural Resource Trustees for their administrative expenses in conducting the natural resource damage assessment in the amount of $20,773.77. Terms of the funds transfer are described in the Settlement Agreement.

The opportunity for public review and comment on the proposed Settlement Agreement announced in this notice is required under applicable state and federal law. Interested members of the public may obtain a copy of the proposed Settlement Agreement by contacting Dennis Rocha, Texas General Land Office, Resource Management, P.O. Box 12873, Austin, Texas 78711-2873, phone: (512) 475-1412. The Natural Resource Trustees will consider all written comments in finalizing the proposed Settlement Agreement. Comments must be received within 30 days of the posting of this notice.

TRD-200006080
Larry R. Soward
Chief Clerk
General Land Office
Filed: August 30, 2000

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General Services Commission

NTB 99-015-303 - Notice to Bidders

SEALED BIDS WILL BE RECEIVED BY THE GENERAL SERVICES COMMISSION (GSC), FACILITIES CONSTRUCTION & SPACE MANAGEMENT DIVISION (FCSM) FOR CONSTRUCTION OF PROJECT NO. 99-015-303, Renovate Reagan State Office Building, 105 W. 15th Street, Austin, Texas, 78701, on Tuesday, September 12, 2000, at 3:00PM. HUB Subcontracting Plans are due Wednesday, September 13, 2000, at 3:00PM. At that time, HUB Subcontracting Plans will be reviewed and, if found to be complete and responsive, the Bid will be opened and read.

The approximate total cost for contract: 99-015-303 - Renovate Reagan State Office Building is approximately $19,000,000.

Bid and HUB Subcontracting Plan Receipt Location: General Services Commission/FCSM will receive bids at Room 180, Bid Tabulation or, if mailed or shipped, Room 176, Mail Room, Central Services Building, 1711 San Jacinto, Austin, Texas 78701.

Contractor Qualifications: Contractors should submit information to FCSM on GSC's Contractor's Qualifications Form, which can be obtained from FCSM by calling (512) 463-3417. This form should be submitted as soon as possible, but no later than 5:00PM on Tuesday, September 5, 2000, to document compliance with contractor's qualification requirements for each project. Information is to be used in determining if a contractor is qualified to receive a contract award for the project. A review by FCSM of contractor qualification statements is required prior to opening bid proposals.

Good Faith Effort for use of Historically Underutilized Businesses (HUB): GENERAL SERVICES COMMISSION HAS DETERMINED THAT THE WORK TO BE PERFORMED UNDER THIS CONTRACT INCLUDES SUBCONTRACTING OPPORTUNITIES, PARTICULARLY IN THE INSTALLATION OF EQUIPMENT. THEREFORE, A HUB SUBCONTRACTING PLAN WILL BE REQUIRED. THE COMPLETED HUB SUBCONTRACTING PLAN MUST BE SUBMITTED AS PART OF THE CONTRACTOR'S PROPOSAL, OR THE PROPOSAL WILL BE REJECTED AS NON-RESPONSIVE. Prime Contractors are required to perform a Good Faith Effort in providing HUB firms with an opportunity to participate in the bid and construction process. General Services Commission's goal for HUB participation in Building Construction projects is 26.1% of the total contract. Mr. Don Pearce, telephone (512) 463-4313, with General Services Commission can assist in this process by providing lists of approved HUB firms and other sources for identifying HUB firms in the area. A listing of HUB firms is available on the web at www.gsc.state.tx.us and other web sites, see the Project Manual.

Bid Documents: Plans and specifications are available for prime contractors from Graeber, Simmons and Cowan, Architects, AIA, Phone - 512-433-2537, Fax: 512-477-9675, upon delivery of a refundable deposit of $200.00 per set. Bid documents will be available for review at the FCSM office, 1711 San Jacinto, Suite 202, Austin, Texas 78701, the architect's office and the Plan Rooms of Associated General Contractors, F. W. Dodge Corporation, the Builder's Exchange of Texas and the Associated Builder's and Contractors in Austin.

Pre-Bid Conference: There will be a MANDATORY Pre-Bid Conference on Wednesday, August 16, 2000, at 10:00AM, at Room 200B, General Services Commission, 1711 San Jacinto, Austin, Texas 78701.

BIDS ARE TO BE MADE IN ACCORDANCE WITH STATE PROCEDURES.

TRD-200006051
Ann Dillon
General Counsel
General Services Commission
Filed: August 28, 2000

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Texas Department of Health

Correction of Error

The Texas Department of Health adopted 25 TAC §157.33, concerning Emergency Medical Care. The rule appeared in the April 28, 2000, *Texas Register* (25 TexReg 3770), to be effective September 1, 2000.

On page 3773 in §157.33(l)(2) the reference to "...nonrefundable fee as in subsection (a)(3)..." is incorrect. The reference should read as follows.

"...nonrefundable fee as in subsection (a)(4)...".

TRD-200006091
Filed: August 30, 2000

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Notice of Emergency Cease and Desist Order on Foot Center of Orange

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Foot Center of Orange (registrant-R24528) Orange, Texas, to cease and desist performing foot (DP) procedures with the Min X-ray unit (Model Number P200; Serial Number 041) until the exposure at skin entrance is within regulatory limits. The bureau determined that continued radiation exposure to patients in excess of that required to produce a diagnostic image constitutes an immediate threat to public health and safety, and the existence of an emergency. The order will

remain in effect until the bureau authorizes the registrant to perform the procedure.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200006075
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 30, 2000

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Texas Health and Human Services Commission

Notice of Second Public Hearing

The Texas Health and Human Services Commission will hold a second public hearing on the proposed 1 TAC §355.8021 rule concerning reimbursement methodology for home health services and will begin at 1:30 p.m., Central Daylight Savings Time, on Monday, September 18, 2000, in the Public Hearing Room, Building 3, first floor of the Riata Crossing Facility, 12555 Riata Vista Circle, Austin, Texas 78727-6404, to accept comments on the proposal.

Comments on the proposal may be submitted to Jeff Phelps, Program Administrator, Medicaid Reimbursement Division, Texas Health and Human Services Commission, P.O. Box 13247, Austin, Texas 78711-3247 or (512) 424-6657 within 30 days of the proposal of this rule which was published in the August 25, 2000, issue of the *Texas Register* (25 TexReg 8113).

TRD-200006070
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: August 29, 2000

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Public Hearing

The Guardianship Advisory Board which was appointed to advise the Texas Health and Human Services Commission on the development of a guardianship plan for the State of Texas will conduct a public hearing to receive public comment for use in the development of the guardianship plan. The guardianship plan will be included in a report later this year to the Governor, the Legislature and the Commission pursuant to§531(D) of the Texas Government Code. The Board will accept public comment on the following topics: (1) the adoption of minimum standards for the provision of guardianship services by guardianship programs, volunteer guardians and private professional guardians; and, (2) the development and implementation of a plan to ensure that each incapacitated individual in Texas who needs a guardianship or another less restrictive type of assistance to make decisions concerning the individual's own welfare and financial affairs receives that assistance.

The hearing will be held on Wednesday, September 27, 2000, beginning at 1:00 p.m. in Padre A-B of the Omni Corpus Christi Hotel, Marina Tower, 707 North Shoreline Boulevard, Corpus Christi, Texas. Written comments may be submitted to the Guardianship Advisory Board until Monday, September 25, 2000 at 5:00 p.m. Please address written comments to Kathleen W. Anderson, Guardianship Alliance of Texas, 4900 N. Lamar Boulevard, 4th Floor, Austin, Texas 78751 or at kathleen.anderson@hhsc.state.tx.us.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Kathleen W. Anderson (512) 424-6599 by September 14, 2000, so that appropriate arrangements can be made.

TRD-200006087
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: August 30, 2000

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Texas Department of Insurance

Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for admission to the State of Texas by CAMICO MUTUAL INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Redwood City, California.

Application for admission to the State of Texas by GMAC INSURANCE ONLINE, INC., a foreign fire and casualty company. The home office is in Hazelwood, Missouri.

Application for admission to the State of Texas by GREAT RIVER INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Meridian, Mississippi.

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-200006082
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: August 30, 2000

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Notice of Applications by Small Employer Carriers to be Risk-Assuming Carriers

Notice is given to the public of the application of the listed small employer carrier to be a risk-assuming carrier under Texas Insurance Code Article 26.52. A small employer carrier is defined by Chapter 26 of the Texas Insurance Code as a health insurance carrier that offers, delivers or issues for delivery, or renews small employer health benefit plans subject to the chapter. A risk-assuming carrier is defined by Chapter 26 of the Texas Insurance Code as a small employer carrier that elects not to participate in the Texas Health Reinsurance System. The following small employer carrier has applied to be a risk-assuming carrier:

Aetna Life Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, Financial Monitoring Unit, 333 Guadalupe, Hobby Tower 3, 3rd Floor, Austin, Texas.

If you wish to comment on this application to be a risk-assuming carrier, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Lynda H. Nesenholtz, Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-91204. An additional copy of the comments must be submitted to Mike Boerner, Managing Actuary, Actuarial Division of the Financial Program, Mail Code 304-3A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104.

Upon consideration of the application, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the application to be a risk-assuming carrier.

TRD-200006057
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: August 29, 2000

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Notice of Application by Small Employer Carriers to be Risk-Assuming Carriers

Notice is given to the public of the application of the listed small employer carrier to be a risk-assuming carrier under Texas Insurance Code Article 26.52. A small employer carrier is defined by Chapter 26 of the Texas Insurance Code as a health insurance carrier that offers, delivers or issues for delivery, or renews small employer health benefit plans subject to the chapter. A risk-assuming carrier is defined by Chapter 26 of the Texas Insurance Code as a small employer carrier that elects not to participate in the Texas Health Reinsurance System. The following small employer carrier has applied to be a risk-assuming carrier:

Aetna U.S. Healthcare of North Texas, Inc.

The application is subject to public inspection at the offices of the Texas Department of Insurance, Financial Monitoring Unit, 333 Guadalupe, Hobby Tower 3, 3rd Floor, Austin, Texas.

If you wish to comment on this application to be a risk-assuming carrier, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Lynda H. Nesenholtz, Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-91204. An additional copy of the comments must be submitted to Mike Boerner, Managing Actuary, Actuarial Division of the Financial Program, Mail Code 304-3A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. Upon consideration of the application, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the application to be a risk-assuming carrier.

TRD-200006083
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: August 30, 2000

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of Hefner & Associates, Inc., a domestic third party administrator. The home office is Richardson, Texas.

Application for admission to Texas of Adjusting Alternatives, LLC, a foreign third party administrator. The home office is Albuquerque, New Mexico.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200006084
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: August 30, 2000

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Texas Lottery Commission

Instant Game No. 193 - "SPRING FEVER"

1.0 Name and Style of Game.

A. The name of Instant Game No. 193 is "SPRING FEVER". The play style of the game is a "match 3 of 9 with tripler" play style.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 193 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 193.

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, $4.00, $25.00, $1,000, $3,000 and a SUN 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

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$4.00	FOUR$
$25.00	TWY FIV
$1,000	ONE THOU
$3,000	THR THOU
SUN	TRIPLER

Table 2 of this section.

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
ONE	$1.00
TWO	$2.00
THR	$3.00
FOR	$4.00
SIX	$6.00
TWL	$12.00

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 Ø, 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, $4.00, $6.00 or $12.00.

H. Mid-Tier Prize - A prize of $25.00 or $75.00.

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 thirteen (13) digit number consisting of the three (3) digit game number (193), 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 : 193-0000001-000.

L. Pack - A pack of "SPRING FEVER" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one. Tickets 000 - 004 will be on the top page and tickets 005 - 009 will be on the next page and so forth with tickets 245 - 249 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 "SPRING FEVER" Instant Game No. 193 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 "SPRING FEVER" Instant Game is determined once the latex on the ticket is scratched off to expose nine (9) play symbols. If the player finds three (3) like amounts, the player wins that amount. If the player finds two (2) like amounts and a SUN symbol, the player wins triple that amount. 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 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 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 9 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 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 of a kind on a ticket.

C. No three or more pairs on a ticket.

D. The tripler symbol will never appear more than once on a ticket.

E. The tripler symbol will never appear on a ticket containing 3 like amounts.

2.3 Procedure for Claiming Prizes.

A. To claim a "SPRING FEVER" Instant Game prize of $1.00, $2.00, $3.00, $4.00, $6.00, $12.00, $25.00 or $75.00 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 $25.00 or $75.00 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 "SPRING FEVER" 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 "SPRING FEVER" 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

F. 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 "SPRING FEVER" 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 "SPRING FEVER" 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 20,000,000 tickets in the Instant Game No. 193. The expected number and value of prizes in the game are as follows:

Table 3 of this section

Prize Amount	Approximate Number of Winners	Chances of Winning
$1.00	1,693,440	1:11.90
$2.00	967,680	1:20.83
$3.00	1,209,600	1:16.67
$4.00	161,280	1:125.00
$6.00	161,280	1:125.00
$12.00	40,320	1:500.00
$25.00	44,100	1:457.14
$75.00	18,900	1:1,066.67
$1,000	80	1:252,000.00
$3,000	50	1:403,200.00

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. 193 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. 193, 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-200006067
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 29, 2000

Instant Game No. 196 - "$25,000 DIAMONDS"

1.0 Name and Style of Game.

A. The name of Instant Game No. 196 is "$25,000 DIAMONDS". The play style of the game is a "add up with auto win" play style.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 196 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 196.

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: DIAMOND, SPADE, CLUB, HEART and STAR symbols.

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

PLAY SYMBOL	CAPTION
DIAMOND	DIMND
SPADE	SPADE
CLUB	CLUB
HEART	HEART
STAR	WIN$50

Table 2 of this section.

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
TWO	$2.00
FIV	$5.00
TEN	$10.00
FTN	$15.00

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 Ø, 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, $5.00, $10.00, or $15.00.

H. Mid-Tier Prize - A prize of $25.00, $50.00, $100, $250 or $500.

I. High-Tier Prize - A prize of $1,000, $5,000 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 thirteen (13) digit number consisting of the three (3) digit game number (196), 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 : 196-0000001-000.

L. Pack - A pack of "$25,000 DIAMONDS" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of twos. Tickets 000 - 001 will be on the top page and tickets 002 - 003 will be on the next page and so forth with tickets 248 - 249 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 "$25,000 DIAMONDS" Instant Game No. 196 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 "$25,000 DIAMONDS" Instant Game is determined once the latex on the ticket is scratched off to expose twelve (12) play symbols. The player must count up the number of DIAMOND symbols under the cards and use the legend on the ticket to determine their prize amount based on the number of DIAMOND symbols found. If the player finds a STAR symbol under any card, the player wins $50 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 12 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 12 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 12 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 12 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 more than 4 duplicate non-winning play symbols on a ticket.

C. The STAR symbol will only appear on intended $50 winners.

D. The STAR symbol may appear only once on a ticket.

E. There will always be one diamond symbol on non-winning tickets.

2.3 Procedure for Claiming Prizes.

A. To claim a "$25,000 DIAMONDS" Instant Game prize of $2.00, $5.00, $10.00, $15.00, $25.00, $50.00, $100, $250 or $500 a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, 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 $25.00, $50.00, $100, $250 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "$25,000 DIAMONDS" Instant Game prize of $1,000, $5,000 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 "$25,000 DIAMONDS" 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

F. 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 "$25,000 DIAMONDS" 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 "$25,000 DIAMONDS" 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 20,040,000 tickets in the Instant Game No. 196. The expected number and value of prizes in the game are as follows:

Table 3 of this section

Prize Amount	Approximate Number of Winners	Chances of Winning
$2.00	1,683,360	1:11.90
$5.00	1,442,880	1:13.89
$10.00	641,280	1:31.25
$15.00	240,480	1:83.33
$25.00	80,160	1:250.00
$50.00	10,020	1:2,000.00
$100	5,845	1:3,428.57
$250	4,175	1:4,800.00
$500	1,336	1:15,000.00
$1,000	334	1:60,000.00
$5,000	25	1:801,600.00
$25,000	8	1:2,505,000.00

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. 196 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. 196, 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-200006064
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 29, 2000

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Instant Game No. 202 - "IN THE CHIPS"

1.0 Name and Style of Game.

A. The name of Instant Game No. 202 is "IN THE CHIPS". The play styles of the game are a "key symbol match" and "yours beats theirs" play style.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 202 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 202.

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: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $2000, and $20,000.

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

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SEV
08	EGT
09	NIN
10	TEN
11	ELEVN
12	TWELV
13	THIRTN
14	FOURTN
15	FIFTN
16	SIXTN
17	SEVTN
18	EGTN
19	NINTN
20	TWNTY
21	TWYONE
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$2,000	TWO THOU
$20,000	20 THOU

Table 2 of this section.

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
TWO	$2.00
FOR	$4.00
FIV	$5.00
SIX	$6.00
TEN	$10.00
TWN	$20.00

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 Ø, 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, $6.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $80.00, or $100.

I. High-Tier Prize - A prize of $2,000 or $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 thirteen (13) digit number consisting of the three (3) digit game number (202), 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 : 202-0000001-000.

L. Pack - A pack of "IN THE CHIPS" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of twos. Tickets 000 - 001 will be on the top page and tickets 002 - 003 will be on the next page and so forth with tickets 248 - 249 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 "IN THE CHIPS" Instant Game No. 202 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 "IN THE CHIPS" Instant Game is determined once the latex on the ticket is scratched off to expose twenty-two (22) play symbols. In the first game, if the player matches any of YOUR CHIPS to the WINNING CHIP, the player wins that amount shown for that chip. In the second game, if YOUR HAND beats the DEALER'S HAND, the player wins the prize shown for that hand. 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 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 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 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 22 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. In Play Area 1, the WINNING CHIP and YOUR CHIPS will range from 01 through 20.

C. In Play Area 2, the YOUR HAND and DEALER'S HAND symbols will range from 10 through 21.

D. Players can win up to six (6) times in Play Area 1.

E. On winning tickets in Play Area 1, all non-winning YOUR CHIPS will be different.

F. On non-winning tickets in Play Area 1, all sex (6) YOUR CHIPS will be different.

G. No non-winning ticket will contain two (2) or more like prize amounts in Play Area 1.

H. All games on winning and non-winning tickets in Play Area 2 will have different plays.

I. No hand value will appear more than twice in all positions over the three hands in Play Area 2.

J. The same prizes amount will never appear more than twice, except in the case of multiple wins in Play Area 2.

K. The difference in value between YOUR HAND and the corresponding DEALER'S HAND in Play Area 2 will never exceed 5.

L. The value of YOUR HAND will never be the same as the value of the corresponding DEALER'S HAND in Play Area 2.

M. Players can win up to 3 times on Play Area 2.

2.3 Procedure for Claiming Prizes.

A. To claim a "IN THE CHIPS" Instant Game prize of $2.00, $4.00, $5.00, $6.00, $10.00, $20.00, $50.00, $80.00 or $100 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, $80.00 or $100 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 "IN THE CHIPS" Instant Game prize of $2,000 or $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 "IN THE CHIPS" 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

F. 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 "IN THE CHIPS" 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 "IN THE CHIPS" 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 19,920,000 tickets in the Instant Game No. 202. The expected number and value of prizes in the game are as follows:

Table 3 of this section

Prize Amount	Approximate Number of Winners	Chances of Winning
$2.00	1,752,960	1:11.36
$4.00	1,593,600	1:12.50
$5.00	318,720	1:62.50
$6.00	318,720	1:62.50
$10.00	199,200	1:100.00
$20.00	99,600	1:200.00
$50.00	103,750	1:192.00
$80.00	16,600	1:1,200.00
$100	12,450	1:1,600.00
$2,000	200	1:99,600.00
$20,000	20	1:996,000.00

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. 202 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. 202, 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-200006065
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 29, 2000

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Instant Game No. 214 - "10 TIMES THE MONEY"

1.0 Name and Style of Game.

A. The name of Instant Game No. 214 is "10 TIMES THE MONEY". The play style of the game is a "key number match with bonus" play style.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 214 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 214.

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, $12.00, $20.00, $50.00, $200, $2,000, $20,000, 1X, 2X, 5X and 10X.

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

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
$1.00	NE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$12.00	TWELVE
$20.00	TWENTY
$50.00	FIFTY
$200	TWO HUND
$2,000	TWO THOU
$20,000	20 THOU
1X	PRIZE
2X	PRIZE
5X	PRIZE
10X	PRIZE

Table 2 of this section.

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
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWL	$12.00
TWN	$20.00
TFR	$24.00

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 Ø, 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, $20.00 or $24.00.

H. Mid-Tier Prize - A prize of $50.00, or $200.

I. High-Tier Prize - A prize of $2,000 or $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 thirteen (13) digit number consisting of the three (3) digit game number (214), a seven (7) digit pack number and a three (3) digit ticket number. Ticket numbers start with 000 and end with 124 within each pack. The format will be : 214-0000001-000.

L. Pack - A pack of "10 TIMES THE MONEY" Instant Game tickets contain 125 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of ones. Tickets 000 will be on the top page and ticket 001 will be on the next page and so forth with ticket 124 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 "10 TIMES THE MONEY" Instant Game No. 214 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 "10 TIMES THE MONEY" Instant Game is determined once the latex on the ticket is scratched off to expose twenty-three (23) play symbols. If the player matches any of YOUR NUMBERS to either LUCKY NUMBER, the player wins the prize shown for that number. If the player finds that any of YOUR NUMBERS matches either LUCKY NUMBER, the player should multiply their TOTAL WINNINGS by the number revealed in the BONUS BOX to win 1, 2, 5 or 10 times the prize amount. 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 23 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 23 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 23 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 23 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. The 2X, 5X and 10X features will only appear on intended winners.

C. No duplicate non-winning prize symbols on a ticket.

D. No duplicate non-winning Your Number play symbols on a ticket.

E. No duplicate Lucky Number play symbols on a ticket.

F. The Bonus Box symbol (1X, 2X, 5X, or 10X) will never correspond to a Lucky Number play symbol (1, 2, 5 or 10 respectively).

G. All tickets that do not win in the Bonus Box will contain the 1X play symbol in the Bonus Box.

H. There will be no correlation between a prize symbol and a play symbol on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "10 TIMES THE MONEY" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $12.00, 20.00, $24.00, $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 "10 TIMES THE MONEY" Instant Game prize of $2,000 or $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 "10 TIMES THE MONEY" 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

F. 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 "10 TIMES THE MONEY" 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 "10 TIMES THE MONEY" 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 20,040,000 tickets in the Instant Game No. 214. The expected number and value of prizes in the game are as follows:

Table 3 of this section

Prize Amount	Approximate Number of Winners	Chances of Winning
$2.00	2,725,440	1:7.35
$4.00	1,122,240	1:17.86
$5.00	240,480	1:83.33
$10.00	280,560	1:71.43
$12.00	80,160	1:250.00
$20.00	240,480	1:83.33
$24.00	120,240	1:166.67
$50.00	36,072	1:555.56
$200	6,680	1:3,000.00
$2,000	80	1:250,500.00
$20,000	9	1:2,226,666.67

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. 214 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. 214, 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-200006069
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 29, 2000

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Instant Game No. 216 - "BEAT THE HEAT"

1.0 Name and Style of Game.

A. The name of Instant Game No. 216 is "BEAT THE HEAT". The play style of the game is a "yours beats theirs" play style.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 216 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 216.

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: 80°, 82°, 84°, 85°, 86°, 88°, 89°, 90°, 92°, 94°, 96°, 98°, 99°, 101°, 105°, 110°, 115°, $1.00, $2.00, $4.00, $5.00, 10.00, $20.00, $50.00, and $1,000.

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

PLAY SYMBOL	CAPTION
80°	EIGHTY
82°	ETYTWO
84°	ETYFOR
85°	ETYFIV
86°	ETYSIX
88°	ETYEGT
89°	ETYNIN
90°	NINETY
92°	NTYTWO
94°	NTYFOR
96°	NTYSIX
98°	NTYEGT
99°	NTYNIN
101°	HUNONE
105°	HUNFIV
110°	HUNTEN
115°	HUNFTN
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$1,000	ONE THOU

Table 2 of this section.

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
ONE	$1.00
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

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 Ø, 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, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00, or $100.

I. High-Tier Prize - A prize of $1,000.

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 thirteen (13) digit number consisting of the three (3) digit game number (216), 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 : 216-0000001-000.

L. Pack - A pack of "BEAT THE HEAT" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of fives. Tickets 000 - 004 will be on the top page and tickets 005 - 009 will be on the next page and so forth with tickets 245 - 249 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 "BEAT THE HEAT" Instant Game No. 216 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 "BEAT THE HEAT" Instant Game is determined once the latex on the ticket is scratched off to expose eleven (11) play symbols. If any of YOUR TEMPERATURES are HIGHER than the RECORD TEMPERATURE, the player wins the prize shown for that temperature. 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 11 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 11 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 11 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 11 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 YOUR TEMPERATURES on a ticket.

C. No duplicate non-winning prize symbols on a ticket.

D. No ties between YOUR TEMPERATURE and the RECORD TEMPERATURE.

2.3 Procedure for Claiming Prizes.

A. To claim a "BEAT THE HEAT" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, or $100, 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 $100 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 "BEAT THE HEAT" Instant Game prize of $1,000, 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 "BEAT THE HEAT" 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

F. 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 "BEAT THE HEAT" 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 "BEAT THE HEAT" 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 20,160,000 tickets in the Instant Game No. 216. The expected number and value of prizes in the game are as follows:

Table 3 of this section

Prize Amount	Approximate Number of Winners	Chances of Winning
$1.00	2,257,920	1:8.93
$2.00	967,680	1:20.83
$4.00	564,480	1:35.71
$5.00	161,280	1:125.00
$10.00	120,960	1:166.67
$20.00	80,640	1:250.00
$50.00	29,400	1:685.71
$100	4,200	1:4,200.00
$1,000	125	1:161,280.00

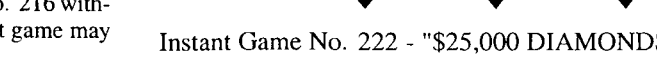
A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

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. 216 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. 216, 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-200006068

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 29, 2000



Instant Game No. 222 - "$25,000 DIAMONDS"

1.0 Name and Style of Game.

A. The name of Instant Game No. 222 is "$25,000 DIAMONDS". The play style of the game is a "add up with auto win" play style.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 222 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 222.

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: DIAMOND, SPADE, CLUB, HEART and STAR symbols.

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

PLAY SYMBOL	CAPTION
DIAMOND	DIMND
SPADE	SPADE
CLUB	CLUB
HEART	HEART
STAR	WIN$50

Table 2 of this section.

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
TWO	$2.00
FIV	$5.00
TEN	$10.00
FTN	$15.00

Figure 2:16 TAC GAME NO. 222 - 1.2E

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, $5.00, $10.00, or $15.00.

H. Mid-Tier Prize - A prize of $25.00, $50.00, $100, $250 or $500.

I. High-Tier Prize - A prize of $1,000, $5,000 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 thirteen (13) digit number consisting of the three (3) digit game number (222), 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 : 222-0000001-000.

L. Pack - A pack of "$25,000 DIAMONDS" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of twos. Tickets 000 - 001 will be on the top page and tickets 002 - 003 will be on the next page and so forth with tickets 248 - 249 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 "$25,000 DIAMONDS" Instant Game No. 222 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 "$25,000 DIAMONDS" Instant Game is determined once the latex on the ticket is scratched off to expose twelve (12) play symbols. The player must count up the number of DIAMOND symbols under the cards and use the legend on the ticket to determine their prize amount based on the number of DIAMOND symbols found. If the player finds a STAR symbol under any card, the player wins $50 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 12 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 12 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 12 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 12 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 more than 4 duplicate non-winning play symbols on a ticket.

C. The STAR symbol will only appear on intended $50 winners.

D. The STAR symbol may appear only once on a ticket.

E. There will always be one diamond symbol on non-winning tickets.

2.3 Procedure for Claiming Prizes.

A. To claim a "$25,000 DIAMONDS" Instant Game prize of $2.00, $5.00, $10.00, $15.00, $25.00, $50.00, $100, $250 or $500 a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, 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 $25.00, $50.00, $100, $250 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "$25,000 DIAMONDS" Instant Game prize of $1,000, $5,000 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 "$25,000 DIAMONDS" 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

F. 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 "$25,000 DIAMONDS" 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 "$25,000 DIAMONDS" 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 20,040,000 tickets in the Instant Game No. 222. The expected number and value of prizes in the game are as follows:

Table 3 of this section

Prize Amount	Approximate Number of Winners	Chances of Winning
$2.00	1,683,360	1:11.90
$5.00	1,442,880	1:13.89
$10.00	641,280	1:31.25
$15.00	240,480	1:83.33
$25.00	80,160	1:250.00
$50.00	10,020	1:2,000.00
$100	5,845	1:3,428.57
$250	4,175	1:4,800.00
$500	1,336	1:15,000.00
$1,000	334	1:60,000.00
$5,000	25	1:801,600.00
$25,000	8	1:2,505,000.00

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. 222 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. 222, 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-200006066

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 29, 2000

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Texas Natural Resource Conservation Commission

Enforcement Orders

An agreed order was entered regarding P.W. GENTRY DBA OLD GAS STATION, Docket No. 1998-1277-PST-E; TNRCC PST Facility ID No. 13044 on July 31, 2000 assessing $12,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gloria Stanford, Enforcement Coordinator at (512)239-1871 or Robin Houston, Staff Attorney at (512)239-0682,

Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BLUE WATER COVE WATER/WASTE WATER SUPPLY CORP, Docket No. 2000-0049-PWS-E; PWS No. 2040059 on July 31, 2000 assessing $1,188 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michelle Harris, Enforcement Coordinator at (512)239-0492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BLUEBERRY HILL PROPERTY OWNERS ASSOCIATION, Docket No. 2000-0070-PWS-E; PWS No. 1840059 on July 31, 2000 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting Jayme Brown, Enforcement Coordinator at (512)239-1683, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ROBERT WILSON DBA BRENHAM SOUTH MOBILE HOME PARK, Docket No. 2000-0205-PWS-E; PWS No. 2390047 on July 31, 2000 assessing $750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly McGuire, Enforcement Coordinator at (512)239-4761, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JOHN RICHARD SPARKS, Docket No. 1999- 1234-LII-E; No TNRCC ID No. on July 31, 2000 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at (512)239-1670 or Tracy Gross, Staff Attorney at (512)239- 1736, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAMUEL ALBA DBA ALBA'S CUSTOM IRON WORKS, Docket No. 1999-1369-AIR-E; Air Account No. HX-1453-V on July 31, 2000 assessing $3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512)239-1044, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding APAC-TEXAS INCORPORATED, Docket No. 2000-0043-AIR-E; Air Account No. DB-0616-Co n July 31, 2000 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Gerberding, Enforcement Coordinator at (512)239-4490, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CANYON PIPE LINE CORPORATION, Docket No. 2000-0264-AIR-E; Air Account No. SO-0007-V on July 31, 2000 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at (512)239-1670, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CR/PL, LLC, Docket No. 2000-0078-AIR-E; Air Account No. DB-0907-L on July 31, 2000 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Carl Schnitz, Enforcement Coordinator at (512)239-1892, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CONTINENTAL CABINETS MANUFACTURING, INC., Docket No. 1999-1536-AIR-E; Account No. EE-1227-G on July 31, 2000 assessing $1,250 in administrative penalties with $250 deferred.

Information concerning any aspect of this order may be obtained by contacting Erika Fair, Enforcement Coordinator at (512)239-6673, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LEE ROY FRAZIER DBA FRAZIER'S BACKHOE: SEPTIC SYSTEMS AND DEMOLITION SERVICES, Docket No. 1999-0936- AIR-E; Air Account No. NC-0050-C on July 31, 2000 assessing $4,375 in administrative penalties with $3,775 deferred.

Information concerning any aspect of this order may be obtained by contacting Karen Berryman, Enforcement Coordinator at (512)239-2172, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GOODMAN MANUFACTURING COMPANY L.P., Docket No. 1999-1519-AIR-E; Air Account No. HG-1016-R on July 31, 2000 assessing $5,625 in administrative penalties with $1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512)239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HARRIS FIBERGLASS MATERIALS, INC, MR. VERNON L. HARRIS, SR., MS. LYNDA HARRIS, AND MR. VERNON L. HARRIS, JR., Docket No. 2000-0041-AIR-E; Air Account No. HQ-0105-L on July 31, 2000 assessing $900 in administrative penalties with $180 deferred.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at (512)239-1670, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MERIT ENERGY COMPANY, Docket No. 1999-1109-AIR-E; Air Account No. LK-0001-M on July 31, 2000 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Carl Schnitz, Enforcement Coordinator at (512)239-1892, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NORTHERN NATURAL GAS COMPANY, Docket No. 2000-0167-AIR-E; Air Account Nos. HA-0116-Q, TD-0063-I, RC-0025-C, IA- 0040-H, WM-0009-H, GA-0174-T and ML-0022-W on July 31, 2000 assessing $6,566 in administrative penalties with $1,316 deferred.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at (512)239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding R AND B ENERGY LIMITED LIABILITY COMPANY, Docket No. 2000-0143-AIR-E; Air Account No. SN-0069-K on July 31, 2000 assessing $6,600 in administrative penalties with $1,320 deferred.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at (512)239-1670, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RCL ENTERPRISES, INCORPORATED DBA COLOR DYNAMICS, Docket No. 2000-0258-AIR-E; Air Account No. CP-0175-R on July 31, 2000 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at (512)239-1670, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEXWOOD INDUSTRIES, INCORPORATED DBA QUALITY DOORS, Docket No. 2000-0259-AIR-E; Air Account No. DB-1182-H on July 31, 2000 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at (512)239-1670, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALAN RAOUHPUR DBA TEJANO WHOLESALE, Docket No. 2000-0030-AIR-E; Air Account No. DB-5128-I on July 31, 2000 assessing $900 in administrative penalties with $180 deferred.

Information concerning any aspect of this order may be obtained by contacting Carl Schnitz, Enforcement Coordinator at (512)239-1892, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ELF ATOCHEM NORTH AMERICA, INC., Docket No. 1999-0536-AIR-E; Air Account No. HG-0461-W on July 31, 2000 assessing $39,870 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512)239-1044, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WASTE CONTROL SPECIALISTS, L.L.C., Docket No. 1999-1457-IHW-E; TNRCC Permit 50358 on July 31, 2000 assessing $9,370 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gayle Stewart, Enforcement Coordinator at (512)239-1136, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MATAGORDA COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 6, Docket No. 1999-1426-MWD-E; TNRCC WQ Permit No. 10663-001on July 31, 2000 assessing $10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michelle Harris, Enforcement Coordinator at (512)239-0492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HARRIS COUNTY MUD NO. 82, Docket No. 2000-0038-MWD-E; WQ Permit No. 11779-001; NPDES Permit No. TX0071528 on July 31, 2000 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cassandra Noble, Enforcement Coordinator at (512)239-4754, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MICHAEL J. RHINE, Docket No. 2000-0113- OSI-E; OSS Sewage Facility Installer ID No.OS5358 on July 31, 2000 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting Sherry Smith, Enforcement Coordinator at (512)239-0572, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding TIMOTHY POOLE, Docket No. 1999-0625-OSI- E; No OSS Sewage Facility No. on July 31, 2000 assessing $1,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512)239-4492 or Camille Morris, Staff Attorney at (512)239-3915, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding SHAWN WILHOIT, Docket No. 1999-0997-OSI- E; No OSS Facility Installer Certification on July 31, 2000 assessing $625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512)239-0789 or Camille Morris, Staff Attorney at (512)239-3915, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding MR. JAMES TAYLOR, Docket No. 1999-0697- PST-E; TNRCC ID NO. 0071908 on July 31, 2000 assessing $3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ricky Raspberry, Enforcement Coordinator at (512)239-4494 or Joshua Olszewski, Staff Attorney at (512)239-3645, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding BISMI CORPORATION, Docket No. 1999-1586- PST-E; TNRCC ID No. 9778 on July 31, 2000 assessing $4,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512)239-1896 or Joshua Olszewski, Staff Attorney at (512)239-3645, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PETROLEUM WHOLESALE INC DBA SUNMART #114, Docket No. 1999-1579-PST-E; PST Facility ID No. 58609 on July 31, 2000 assessing $47,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gayle Stewart, Enforcement Coordinator at (512)239-1136,

Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MISTEX ENERY, INC. AND CHARLIE CUMMINGS, Docket No. 1999-1234-LII-E; TNRCC ID No. C81973 on July 31, 2000 assessing $1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michelle Harris, Enforcement Coordinator at (512)239-0492 or Richard O'Connell, Staff Attorney at (512)239-5528, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200005997
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: August 25, 2000

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Notice-Extension of Comment Period on the Review of Chapter 281

In the August 25, 2000, issue of the *Texas Register* (25 TexReg 8453), the Texas Natural Resource Conservation Commission (commission) published a notice of intention to review and proposal of the readoption of Chapter 281, Application Processing. The deadline date for written comments was submitted in error as September 11, 2000.

The commission has **extended the deadline** for receipt of written comments to **5:00 p.m., September 25, 2000**, for the proposed review and readoption of Chapter 281.

Written comments should be mailed to Patricia Duron, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. For further information on the proposed review, please contact Debi Dyer, Policy and Regulations Division, at (512) 239-3972.

TRD-200006063
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: August 29, 2000

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Notice of Costs to Administer the Voluntary Cleanup Program

In accordance with §361.613, Subchapter S, of the Solid Waste Disposal Act, the executive director of the Texas Natural Resource Conservation Commission (TNRCC or commission) annually shall calculate and publish the commission's costs to administer the Voluntary Cleanup Program. The Innocent Landowner Program, based on authority from §361.752(b) of the Solid Waste Disposal Act, shall also annually calculate and publish a rate established for the purposes of identifying the costs recoverable by the commission. The TNRCC is publishing the hourly billing rate of $95 for both the Voluntary Cleanup Program and the Innocent Landowner Program for fiscal year 2001.

The Voluntary Cleanup Law was effective September 1, 1995, and as such, this will be the sixth year of operation for the program. The commission is able to use data from the previous five years to calculate the rate for fiscal year 2001. The Innocent Landowner Program Law was effective September 1, 1997. As such, this will be the fourth year of operation for the program. Therefore, the commission will be able to use data from the previous three years to calculate the rate for fiscal year 2001. A single hourly billing rate for both programs was derived from current projections for salaries plus the fringe benefit rate and the indirect cost rate, less federal funding divided by the estimated billable salary hours. The hourly rate for the two programs was calculated, and then rounded to a whole dollar amount. Billable salary hours were derived by subtracting the release time hours from the total available hours and a further reduction of 36.8% to account for non-site specific hours. The release time includes sick leave, jury duty, holidays, etc. and is set at 16.31% (fiscal year 1999's actual rate). The current fringe benefit rate is 20.92%. Fringe benefits include retirement, social security and insurance expenses, and are calculated at a rate that applies to the agency as a whole. The current indirect cost rate is 37.92%. Indirect costs include allowable overhead expenses, and are also calculated at a rate that applies to the whole agency. The billings processed for fiscal year 2001 will use the hourly billing rate of $95 for both the Voluntary Cleanup Program and the Innocent Landowner Program, and will not be adjusted. All travel related expenses will be billed as a separate expense. After an applicant's initial $1,000 application fee has been expended by the Innocent Landowner Program or the Voluntary Cleanup Program in site review and oversight, invoices will be sent to the applicant on a quarterly basis for payment of additional program expenses.

The commission does anticipate receiving federal funding during fiscal year 2001 for the development and implementation of the Innocent Landowner Program and for the continued development and enhancement of the Voluntary Cleanup Program. These federal funds are instrumental in the commission having some of the lowest rates of any state Voluntary Cleanup Program. If the federal funding anticipated for fiscal year 2001 does not become available, the commission may publish a new rate. Federal funding of the Voluntary Cleanup Program and the Innocent Landowner Program should occur prior to October 1, 2000.

For more information concerning this notice, please contact Charles Epperson, Voluntary Cleanup Section, Remediation Division, MC 221, TNRCC, 12118 Park 35 Circle, Building D, Austin, Texas 78753 (P.O. Box 13087, Austin, Texas 78711), (512) 239-5891.

TRD-200006074
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: August 30, 2000

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

Public Notice - Default Orders

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Default Orders. The TNRCC staff proposes a Default Order when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPR. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to Texas Water Code (the Code), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 9, 2000**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Default Order if a comment discloses

facts or considerations that indicate that a proposed Default Order is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Default Order is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed Default Orders 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 Default Order should be sent to the attorney designated for the Default Order 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 October 9, 2000**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Default Orders and/or the comment procedure at the listed phone numbers; however, comments on the Default Orders should be submitted to the TNRCC in **writing**.

(1) COMPANY: Jerry Cason; DOCKET NUMBER: 1999-1342-OSI-E; TNRCC ID NUMBER: NONE; LOCATION: 10033 Panawaka, Wills Point, Hunt County, Texas; TYPE OF FACILITY: on- site sewage facility (OSSF); RULES VIOLATED: §285.50(b) and (c) and Texas Health and Safety Code (THSC), §366.071, by failing to obtain a proper certification before making repairs and alterations to an OSSF at the site; and §285.5(l) and THSC, §366.051(c) and §366.054, by failing to give proper notice to the Sabine River Authority before making repairs and alterations to an OSSF at the site; PENALTY: $875; STAFF ATTORNEY: Becky Petty, Litigation Division, MC 175, (512) 239-1738; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(2) COMPANY: Thomas M. Chalkley and Alfred B. Chalkley dba Arrowhead Village; DOCKET NUMBER: 1999-1571-PWS-E; TNRCC ID NUMBER: 0460011; LOCATION: 418 Osage Drive, Canyon Lake, Comal County, Texas; TYPE OF FACILITY: public water supply system; RULES VIOLATED: §290.46(e),(f)(1)(A), by failing to maintain a minimum free chlorine residual of 0.2 milligrams per liter in the far reaches of the distribution system at all times and by failing to operate the system at all times under the direct supervision of a competent water works operator holding a valid grade "D" or higher operators certificate; §290.45(b)(1)(B)(iii)(iv), by failing to meet minimum water system capacity requirements for providing two or more service pumps with a capacity of 2.0 gallons per minute per connection and by failing to provide a pressure tank capacity of 20 gallons per connection; §290.41(c)(3)(K) and (O), by failing to provide a screened casing vent and an intruder-resistant fence or enclosure for well number 3; §290.51(a)(3), §291.76 and THSC, §341.041 and the Code, §5.235(n), by failing to pay public health service fees owed under account number 90460011 which are due for fiscal years 1994 thru 2000 and all associated late fees, and by failing to pay water regulatory assessment fees for calendar years 1991, 1993, 1995, 1996 thru 1999; PENALTY: $6,600; STAFF ATTORNEY: Becky Petty, Litigation Division, MC 175, (512) 239-1738; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

TRD-200006040
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: August 28, 2000

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

Public Notice - Agreed Orders

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 (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the 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 **October 9, 2000**. 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 October 9, 2000**. 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: Ki Sung Cha dba K Stop Petroleum Storage Tank; DOCKET NUMBER: 2000- 0211-PST-E; TNRCC IDENTIFICATION (ID) NUMBER: 0005626; LOCATION: 650 Avenue K, Plano, Collin County, Texas; TYPE OF FACILITY: underground storage tanks; RULES VIOLATED: §115.242(3)(A), §115.242(3)(K), and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain the Stage II vapor recovery system (VRS) in proper operating condition; §115.242(9) and THSC, §382.085(b), by failing to post the operating instructions conspicuously on the front of each dispenser equipped with a Stage II VRS; §115.245(2) and THSC, §382.085(b), by failing to conduct an annual pressure decay test on the Stage II VRS; and §334.21 by failing to pay the required underground storage tank fees for fiscal years 1996 thru 1999; PENALTY: $31,250; STAFF ATTORNEY: Ali Abazari, Litigation Division, MC 175, (512) 239-5915; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469- 6750.

(2) COMPANY: Berry Contracting, L.P.; DOCKET NUMBER: 1999-1086-AIR-E; TNRCC ID NUMBER: 90-9638-E; LOCATION: 5900 Hopkins Road, Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: asphaltic concrete manufacture plant; RULES VIOLATED: §116.115(a) and §382.085(b), by failing to submit performance testing data in accordance with TNRCC Air Permit Number 90-9638-E, Provision Number 9B(l); PENALTY: $1,000; STAFF ATTORNEY: Scott McDonald, Litigation Division, MC 175, (817) 469-6750; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(3) COMPANY: Jesse Deanda dba Thornton Soil Recycling Center and U.E.T.C. of Texas, LTD dba Thornton Soil Recycling Center;

DOCKET NUMBER: 1999-1409-PST-E; TNRCC ID NUMBER: 81112; LOCATION: State Highway 14, Thornton, Limestone County, Texas; TYPE OF FACILITY: soil remediation facility; RULES VIOLATED: §37.111 and §37.241, by failing to provide continuous financial assurance coverage for closure of the Class A Bioremediation facility and failing to pay the premium on the insurance policy for closure; PENALTY: $1,000; STAFF ATTORNEY: Becky Petty, Litigation Division, MC 175, (512) 239-1738; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: GGC, Incorporated dba Speedy Mart; DOCKET NUMBER: 1999-0842-PST-E; TNRCC ID NUMBER: 0038676; LOCATION: 7425 Lawrence Drive, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: UST; RULES VIOLATED: §115.221 and THSC, §382.085(b), by failing to install an approved Stage I VRS; and §115.241 and THSC,§382.085(b), by failing to install an approved Stage II VRS; PENALTY: $3750; STAFF ATTORNEY: Joshua Olszewski, Litigation Division, MC 175, (512) 239-3645; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200006041
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: August 28, 2000

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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 (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and 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 **October 9, 2000**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO 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 C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 9, 2000**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Ambar, Inc.; DOCKET NUMBER: 2000-0595-MWD-E; IDENTIFIER: Water Quality Permit Number 11679-001; LOCATION: Galveston, Galveston County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and Water Quality Permit Number 11679-001, by failing to comply with their effluent limits; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Bill Davis, (512) 239-6793; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Bell County Water Control and Improvement District Number 1; DOCKET NUMBER: 2000-0461-MWD-E; IDENTIFIER: Water Quality Permit Number 10351-001; LOCATION: Belton, Bell County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Water Quality Permit Number 10351-001, 30 TAC §305.125(1) and (4), and §327.3(b) and (5), and the Code, §26.039(b) and §26.121(c), by failing to provide notification of the release of water treatment plant sludge, prevent the unauthorized discharge into or adjacent to the waters in the state, operate and maintain the land application site, and abate and contain the off-site discharge of the water treatment plant sludge; PENALTY: $2,880; ENFORCEMENT COORDINATOR: Kyle Headley, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Berry Contracting, L.P.; DOCKET NUMBER: 1999-1086-AIR-E; IDENTIFIER: Air Account Number 90-9638-E; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: asphaltic concrete manufacturing; RULE VIOLATED: 30 TAC §116.115(a) and the Act, §382.085(b), by failing to submit performance testing data; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(4) COMPANY: Mr. James C. Lederer dba Brushy Creek Storage Depot; DOCKET NUMBER: 2000-0475-EAQ-E; IDENTIFIER: Edwards Aquifer Protection Program Number 00032904; LOCATION: Austin, Williamson County, Texas; TYPE OF FACILITY: storage rental service; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a water pollution abatement plan prior to initiating construction; PENALTY: $800; ENFORCEMENT COORDINATOR: Larry King, (512) 339-2929; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(5) COMPANY: Duane Cotter dba Mid-Valley Equipment; DOCKET NUMBER: 2000-0372- AIR-E; IDENTIFIER: Air Account Number HN-0430-H; LOCATION: Weslaco, Hidalgo County, Texas; TYPE OF FACILITY: surface coating and abrasive blast cleaning; RULE VIOLATED: 30 TAC §116.110(a) and the Act, §382.085(b) and §382.0518(a), by failing to obtain a permit or satisfy the conditions of a permit by rule prior to construction; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(6) COMPANY: Goodsprings Water Supply Corporation; DOCKET NUMBER: 2000-0318- PWS-E; IDENTIFIER: Public Water Supply (PWS) Numbers 2010016 and 2010038; LOCATION: near Henderson, Rusk County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(d), (f)(2)(A), (m), (n), (p)(1), (t), and (u), by failing to compile monthly operation reports and have them available for review during inspections, conduct daily disinfectant residual tests, initiate a maintenance program, maintain an up-to-date map of the distribution system, annually inspect ground storage tanks, provide, at all times, maintain all storage facilities, distribution lines, and related appurtenances in a watertight condition, and maintain a minimum residual pressure of 35 pounds per square inch; 30 TAC §290.45(b)(1)(C)(i) and (iii), and (D)(i), (ii), (iii), (iv), (v), by failing to meet the minimum water system capacity requirements, ensure that no

water have a well capacity of 0.6 gallons per minute (gpm) per connection, meet the minimum water system capacity requirements for a total storage capacity of 200 gallons per connection, meet the minimum water system capacity requirements for two or more service pumps, meet the minimum water system capacity requirements for pressure maintenance facilities consisting of either 100 gallons per connection or a pressure tank capacity of 20 gallons per connection, and meet the minimum water system capacity requirements for emergency power facilities for systems which serve more than 250 connections; 30 TAC §290.44(h)(1), by failing to ensure that no water connections from any public drinking water supply is made to any establishment where an actual or potential contamination or system hazard exists without an air gap separation; and 30 TAC §290.41(c)(1)(D) and (3)(K), by failing to provide Well B-1 with a 16-mesh or finer corrosion- resistant screened casing vent and keep livestock in pastures more than 50 feet away from a public water supply well; PENALTY: $5,438; ENFORCEMENT COORDINATOR: Julia McMasters, (512) 239-5839; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(7) COMPANY: Harris-Fort Bend Counties Municipal Utility District No. 5; DOCKET NUMBER: 2000-0349-MWD-E; IDENTIFIER: Water Quality Permit Number 13775; LOCATION: Katy, Fort Bend County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Water Quality Permit Number 13775 and the Code, §26.121, by failing to comply with permitted effluent limits; and 30 TAC §305.125(5) and Water Quality Permit Number 13775, by failing to operate and maintain the facility; PENALTY: $6,250; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

(8) COMPANY: Yetta Hustead dba High Five DOCKET NUMBER: 2000-0385-PWS-E; IDENTIFIER: PWS Number 0200492; LOCATION: Brazoria, Brazoria County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(a), (b)(1) and (5), and (e)(2), and the Code, §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis, collect and submit repeat samples for bacteriological analysis following a coliform-positive sample, collect and submit additional routine samples for bacteriological analysis, and provide public notice related to its failure to sample; and 30 TAC §290.51 and the Code, §341.041, by failing to pay public health service fees; PENALTY: $2,813; ENFORCEMENT COORDINATOR: Kimberly McGuire, (512) 239-4761; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: The City of Johnson City; DOCKET NUMBER: 2000-0607-MWD-E; IDENTIFIER: Water Quality Permit Number 10198-001 and National Pollutant Discharge Elimination System (NPDES) Permit Number TX0052973; LOCATION: Johnson City, Blanco County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Water Quality Permit Number 10198-001 and NPDES Permit Number TX0052973, by failing to comply with the permitted limits for ammonia nitrogen; PENALTY: $750; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(10) COMPANY: City of Karnes City; DOCKET NUMBER: 2000-0221-MWD-E; IDENTIFIER: Water Quality Permit Number 10352-001; LOCATION: Karnes City, Karnes County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(4) and (9), and Water Quality Permit Number 10352-001, Monitoring and Reporting Requirement Number 7, by failing to operate and maintain a city collection system to prevent an overflow and notify the regional office of the discharge; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Malcolm Ferris, (210) 490-3096; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(11) COMPANY: Kelton Independent School District; DOCKET NUMBER: 2000-0460-PWS-E; IDENTIFIER: PWS Number 2420007; LOCATION: Kelton, Wheeler County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(a) and (e)(2), and the Code, §341.033(d), by failing to collect routine monthly water samples for bacteriological analysis and provide public notification of the failure to sample; PENALTY: $938; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(12) COMPANY: Lee County Fresh Water Supply District Number 1; DOCKET NUMBER: 2000-0425-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 12007-001; LOCATION: Dime Box, Lee County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TPDES Permit Number 12007 001 and Agreed Order Docket Number 1997-0581-MWD-E, Ordering Provision Number 2B, by failing to submit a plan for the management and disposal of sludge; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Kristi Jones, (512) 239-1258; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(13) COMPANY: LG&E Natural Plains Energy Services LLC (formerly LG&E Natural Plains Energy Services, Inc.); DOCKET NUMBER: 2000-0407-AIR-E; IDENTIFIER: Air Account Number WC-0019-R; LOCATION: Pyote, Ward County, Texas; TYPE OF FACILITY: natural gas treating plant; RULE VIOLATED: 30 TAC §122.146(2) and the Act, §382.085(b), by failing to submit an annual compliance certification; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Dan Landenberger, (915) 570-1359; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(14) COMPANY: Houshang Solhjou dba Melrose Mobile Home Park; DOCKET NUMBER: 2000-0402-MWD-E; IDENTIFIER: Water Quality Permit Number 12261-001 and TPDES Permit Number 12261-001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Water Quality Permit Number 12261-001, TPDES Permit Number 12261-001, and the Code, §26.121, by failing to prevent a discharge of sewage sludge, prevent the buildup of settled and floating solids in the chlorine contact chamber, and failing to comply with their permit limits; and 30 TAC §317.7(e), by failing to post the required "Danger - Open Tanks" signs around the perimeter of the facility; PENALTY: $10,000; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Oak Grove Water Supply Corporation; DOCKET NUMBER: 2000-0135- PWS-E; IDENTIFIER: PWS Number 0190014; LOCATION: DeKalb, Bowie County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(f)(4), by failing to meet minimum water system capacity requirements of 0.6 gpm per connection; PENALTY: $313; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(16) COMPANY: Restful Acres Nursing Home, Inc.; DOCKET NUMBER: 2000-0609-PWS-E; IDENTIFIER: PWS Number 1280012; LOCATION: Kenedy, Karnes County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.120(e), by failing to conduct reduced tap monitoring sampling for lead and copper; and 30 TAC §290.51(a)(3) and the Code, §341.041, by failing to pay public health service fees; PENALTY: $313; ENFORCEMENT COORDINATOR: Keith Witter, (512) 239-5118; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(17) COMPANY: The City of Roma; DOCKET NUMBER: 2000-0533-PWS-E; IDENTIFIER: PWS Number 2140007; LOCATION: Roma, Starr County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(d), by failing to properly record and report daily turbidity analysis; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Terry Thompson, (512) 239-6095; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(18) COMPANY: Sharon Hedgpeth dba Shooters; DOCKET NUMBER: 2000-0382-PWS-E; IDENTIFIER: PWS Number 0840221; LOCATION: Santa Fe, Galveston County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(a)(1) and the Code, §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis; PENALTY: $938; ENFORCEMENT COORDINATOR: Clint Pruett, (512) 239-2041; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: City of Southmayd; DOCKET NUMBER: 2000-0526-PWS-E; IDENTIFIER: PWS Number 0910045; LOCATION: Southmayd, Grayson County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.120(e) and the Code, §341.0315(c), by failing to conduct reduced tap monitoring for lead and copper; and 30 TAC §290.103(5), by failing to perform public notification for the reduced tap monitoring; PENALTY: $313; ENFORCEMENT COORDINATOR: Clint Pruett, (512) 239-2042; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(20) COMPANY: Temple of Praise; DOCKET NUMBER: 2000-0498-PWS-E; IDENTIFIER: PWS Number 0150464; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.120(e), by failing to conduct reduced tap monitoring sampling for lead and copper; and 30 TAC §290.51(a)(3), by failing to pay public health service fees; PENALTY: $313; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(21) COMPANY: Waste Management of Texas, Inc.; DOCKET NUMBER: 2000-0218-MSW-E; IDENTIFIER: Municipal Solid Waste Permit Number 523A; LOCATION: Sherman, Grayson County, Texas; TYPE OF FACILITY: landfill; RULE VIOLATED: 30 TAC §330.133(a) and (f), by failing to provide sufficient daily cover over the exposed waste and promptly repair erosion of final cover; 30 TAC §330.122, by failing to maintain boundary and buffer markers; and 30 TAC §330.111 and the Code, §26.121, by failing to conduct on-site operations; PENALTY: $15,000; ENFORCEMENT COORDINATOR: Wendy Penland, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

TRD-200006055

Paul Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: August 29, 2000

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Notice of Water Rights Application

LA VENTANA RANCH OWNERS ASSOCIATION, INC, P.O. Box 250, Driftwood, Texas 78619, applicant, seeks 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 applicant seeks authorization to maintain three existing dams and reservoirs on Flat Creek, tributary of Onion Creek, tributary of Colorado River, in the Colorado River Basin for in-place recreational use in a residential subdivision approximately 16 miles northwest of San Marcos, Texas. Station 0+18 on the centerline of the dam for Reservoir No. 1 (the upstream dam) is S 02.35° W, 4811 feet from the northeast corner of Isaac Pearson Original Survey No. 80, Abstract No. 370, in Hays County, Texas, also being at Latitude 30.09°N, Longitude 98.04°W. The reservoir has a capacity of 0.07 acre-feet of water with the surface area of 0.03 acre. Station 0+15 on the centerline of the dam for Reservoir No. 2 is S 03.16 °W, 4770 feet from the northeast corner of the aforesaid survey, also being at Latitude 30.09°N, Longitude 98.04°W. The reservoir has the capacity of 0.25 acre-feet with the surface area of 0.08 acre. Station 0+27 on the centerline of the dam for Reservoir No. 3 (the downstream reservoir) is S 04.50°W, 4736 feet from the northeast corner of said survey, also being at Latitude 30.09° N, Longitude 98.04° W. The reservoir has a capacity of 1.0 acre-feet of water with the surface area of 0.17 acres. The applicant has indicated that the reservoirs will be maintained full at all times with groundwater.

The City of Gladewater, P. O. Box 551, Gladewater, Texas, 75647, applicant, seeks an amendment to Certificate of Adjudication No. 05-4762 pursuant to §11.122, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§ 295.1, et seq. Certificate No. 05-4762 authorizes the owner to maintain an existing dam and reservoir on Glade Creek, tributary of the Sabine River, Sabine River Basin and impound therein not to exceed 6950 acre-feet of water. The dam is located in the William Goodwin Survey, Abstract No. 175, Upshur County. The certificate owner is also authorized to divert , with a time priority of May 17, 1951, 1679 acre-feet of water per annum from the perimeter of the reservoir at a maximum rate of 5.0 cfs (2250 gpm) for municipal purposes. The City of Gladewater seeks to amend the certificate by increasing the amount of water authorized for diversion from the reservoir from 1679 acre-feet of water per annum to 3500 acre-feet of water per annum for municipal purposes within the service area of the City of Gladewater and to increase the diversion rate from the reservoir from 5.00 cfs (2250 gpm) to 10.0 cfs (4500 gpm).

Written public comments and requests for a public meeting should be submitted to 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. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

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. 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;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions to the requested extension of time 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. If a hearing request is filed, the Executive Director will not grant the application and will forward it 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, 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-200005998
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: August 25, 2000

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Notice of Water Rights Application

Notice is given that EBCO LAND DEVELOPMENT, LTD., P.O. Box 659, Rye, Texas 77369, submitted Application No. 5697 on October 14, 1997. Information needed to complete processing the application was received on August 10, 2000, and the application was declared administratively complete on August 16, 2000. The Executive Director recommends that public notice of the application be given pursuant to 30 TAC §295.152. The applicant seeks authorization to construct a dam and reservoir on Mound Creek, tributary of Lake Creek, tributary of the San Jacinto River, San Jacinto River Basin. The proposed lake will have a surface area of 50 acres and impound 105 acre-feet of water and will be an amenity in a residential development in Montgomery County, Texas. Station 6+50 on the centerline of the dam will be at Latitude 30.275°N, Longitude 95.581°W also described as bearing N 45°W , 850 feet from the southwest corner of the John Sealy Survey No. 10524, Abstract No. 759, approximately 8 miles southwest of Conroe, Texas. Applicant has indicated that the reservoir will be maintained at the normal operating level using ground water.

TEXAS WATER DEVELOPMENT BOARD, P. O. Box 13231, Capitol Station, Austin, Texas 78711; BRAZOS RIVER AUTHORITY, P. O. Box 7555, Waco, Texas 76714-7555; and CITY OF HOUSTON, P. O. Box 1562, Houston, Texas 77251, (applicants) have applied to the Texas Natural Resource Conservation Commission (TNRCC) to amend Water Use Permit No. 2925, pursuant to §§ 11.122, and 11.085 of the Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 Tex. Admin. Code §§ 295.1, et seq. The Texas Water Development Board (TWDB) currently owns Water Use Permit No. 2925 (Permit), which authorizes the construction and maintenance of a dam and reservoir on Allens Creek, tributary of the Brazos River, in Austin County, approximately 23 miles southeast of Bellville, Texas, with an impoundment of not to exceed 138,441 acre-feet at a normal operating elevation of 118 feet above mean sea level. The Brazos River Authority (BRA) and the City of Houston (COH) jointly own the land at the location of the reservoir and dam site. The applicants have indicated that the BRA and the COH will eventually acquire ownership, from the TWDB, of the water right authorized in this permit, and that they shall share in the acquisition, financing, ownership, construction, and operation of the reservoir site and the reservoir project. This application is subject to the Texas Coastal Management Program (CMP) and must be consistent with the CMP goals and policies. The permit also authorizes impoundment, diversion, circulation and recirculation of water so as to consumptively use from the reservoir for industrial purposes not to exceed 46,256 acre-feet of water per year from the stream flow of Allens Creek and other water as may be provided by contract from the Brazos River Authority; the use of 500 acre-feet of unappropriated water from Allens Creek and/or the Brazos River for dam and reservoir construction; the diversion and use of up to 189,181 acre-feet from the Brazos River over a three- year period during the initial filling of the reservoir; the return of surplus water to the Brazos River; and conditions that diversions for construction and initial filling of the reservoir be limited to times when the flow at the Richmond U.S.G.S. gage on the Brazos River (37.5 miles downstream from the mouth of Allens Creek) is greater than 1,100 cfs after the diversion and a requirement that all water inflow from the Allens Creek watershed be released through the reservoir when flow at the Richmond gage (not including water released by the Brazos River Authority) is less than 1,100 cfs after the diversion. The priority date for the Permit is September 1, 1999. By this application, the applicants request that the Commission amend Water Use Permit No. 2925 as follows: (1) authorize storage of up to 145,533 acre-feet in Allens Creek Reservoir at a maximum water surface elevation of 121.0 feet above mean sea level; (2) authorize diversion from Allens Creek Reservoir of up to 99,650 acre-feet per year for municipal, industrial, and irrigation purposes; (3) authorize in-place use of the Allens Creek reservoir for recreational purposes; (4) authorize the right to divert up to 202,000 acre-feet of water per year from the Brazos River into Allens Creek Reservoir; (5) authorize a diversion point on the Brazos River approximately 800 feet west of the Brazos River on the river bottom lands at latitude 29.650° N, longitude 96.026øW, and a point immediately east of the dam, about 1,600 feet west of the Brazos River at latitude 29.670°N, longitude 96.053°W; and a combined maximum diversion rate of 2,200 cfs from those points; (6) include monthly flow requirements at the Richmond gage for diversions from the Brazos River to safeguard downstream water rights and provide environmental flows; (7) authorize the right to impound runoff from Allens Creek watershed conditionally on the same monthly flow requirements on the Richmond gage as diversions from the Brazos River; (8) authorize the right to release water through the outlet works of the dam by gravity at a maximum rate of 700 cfs; (9) limit the maximum diversion rate from the perimeter of the reservoir to 300 cfs; (10) authorize the right for interbasin transfers of water released from Allens Creek Reservoir from the Brazos River Basin to San Jacinto-Brazos Coastal Basin and the San Jacinto River Basin for use of that water in Harris, Galveston, Brazoria, Fort Bend, Austin, and Waller Counties; (11) authorize points of return for surplus water created by the requested use of water under this water right, to be discharged at the locations of wastewater treatment plants that may be located in the Brazos River Basin, San Jacinto-Brazos Coastal Basin, and San Jacinto River Basin, in Harris, Galveston, Brazoria, Fort Bend, Austin, and Waller Counties; (12) authorize the right to use all return flows generated from the use of project water for further use for municipal, industrial, and irrigation purposes within the areas of use authorized for the initial uses and, as may be authorized by future amendments of the permit, in Harris, Galveston, Brazoria, Fort Bend, Austin, and Waller Counties. No other changes are requested.

Written public comments and requests for a public meeting should be submitted to 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. A public

meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

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. 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;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions to the requested extension of time 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. If a hearing request is filed, the Executive Director will not grant the application and will forward it 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, 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-200006060
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: August 29, 2000

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Public Notice

The executive director of the Texas Natural Resource Conservation Commission (TNRCC) is issuing a Notice of Deletion (delisting) of the Poly-Cycle Industries, Inc. (Palmer) site (the Site) from the State Registry, the list of State Superfund sites. The State Registry lists the contaminated sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The TNRCC is delisting the Site because the site has been accepted into the Voluntary Cleanup Program.

The Site covers approximately ten acres and is west of State Highway 75, 0.5 miles north of Palmer, Ellis County, Texas, at the northern end of Main Street. The Site previously operated under three separate identities: as the Stripling Sales Group until 1981; the New Rocky Point Foundation in 1982; and most recently as Poly-Cycle Industries. From approximately 1929 until the early 1960s, the Site was a brick manufacturing facility. Beginning in the late 1970's until 1983, the Site was used as lead battery treatment/recycling facility. Operations at the facility ceased in 1983.

Waste piles consisting of approximately 80 million pounds of lead battery chips, a waste lead sulphate sludge pile and two surface impoundments are the identified sources of hazardous substances at the Site. Historic and current analyses of soil samples collected indicate heavy contamination with lead.

In accordance with §335.334(b), the TNRCC held a public meeting on August 3, 2000, to receive comment on this proposed deletion. The meeting was held at the TNRCC offices, 12100 Park 35 Circle, Building E, Room 201S, Austin, Texas. No challenges were received to the proposal to delete the site from the state Superfund Registry. The complete public file may be viewed during regular business hours at the TNRCC Records Management Center, Building D, North Entrance, Room 190, 12100 Park 35 Circle, Austin, TX 78753, telephone number 1-(800) 633-9363. Fees are charged for photocopying file information.

Because the Site has been accepted into the TNRCC Voluntary Cleanup Program, it may now be delisted from the State Registry as provided by §335.344(c) and Texas Health and Safety Code, §361.189(a). All inquiries regarding the deletion of the Site should be directed to Janie Montemayor, TNRCC Community Relations, telephone numbers 1-(800) 633-9363 or (512) 239-3844.

TRD-200005948
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: August 24, 2000

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Texas Department of Protective and Regulatory Services

Request for Proposal - Community Based Family Resource and Support Program - Information and Referral Services/Gregg County

The Texas Department of Protective and Regulatory Services (PRS) Division of Prevention and Early Intervention is soliciting proposals for a contractor to provide Information and Referral services to the residents of Gregg County. The Request for Proposals (RFP) will be released on or about September 5, 2000.

Brief Description of Services: Services solicited under this RFP encompass the following:

Gathering of information regarding health and human services resources in the community; entering of information into a database system specifically designed for I & R services; updating of information periodically to ensure currency; maintaining a 24-hour telephone service to provide resource information and crisis counseling; informing the community of the availability of the I & R service; communicating with the Family PRIDE Council on an ongoing basis; maintaining records regarding specifics of each call to the I & R service; evaluating the success of the project; and identifying potential alternate funding sources to ensure the continuation of the project.

The broad goal of the service requested by the RFP is to maximize support services to individuals and families in Gregg County, with the expectation that families will be strengthened and healthier functioning overall will be ensured.

Eligible Applicants: Eligible offerors include private, nonprofit 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 submit proposals.

Limitations: Only one contract will be awarded under this RFP. Funding of the selected proposal will be dependent upon available federal and/or state appropriations. PRS reserves the right to reject any and all offers received in response to this RFP, to cancel this RFP, and to reprocure the service.

Deadline for Proposals, Term of Contract, and Amount of Award: Proposals will be due on October 24, 2000, at 3:00 p.m. The effective dates of the contract awarded under this RFP will be January 1, 2001, through August 31, 2001, with a maximum amount of $50,000 being available to fund the contract during this fiscal period.

Contact Person: Potential offerors may obtain a copy of the RFP on or about September 5, 2000. It is preferred that requests for the RFP be submitted in writing (by mail or fax) to: Judy Mayfield, Mail Code E-541; c/o Linda Fleming; Texas Department of Protective and Regulatory Services; P.O. Box 149030; Austin, Texas 78714-9030; Fax: 512-438- 2031.

TRD-200006077
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Filed: August 30, 2000

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Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On August 25, 2000, Maxcess, Inc. 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 60342. Applicant intends to remove the resale-only restriction.

The Application: Application of Maxcess, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 22958.

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 September 13, 2000. 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 22958.

TRD-200006054
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 29, 2000

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Notice of Application for Authority to Increase Fixed Fuel Factors

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application for authority to increase fixed fuel factors on August 18, 2000, pursuant to the final order in *Application of Entergy Gulf States, Inc. for Authority to Change Rates*, Docket Number 20150 (June 30, 1999) and Public Utility Regulatory Act, Texas Utilities Code Annotated §36.203 (Vernon 1998, Supplement 2000).

Docket Style and Number: Compliance Filing of Entergy Gulf States, Inc. for Docket Number 20150 (Application of Entergy Gulf States, Inc. for Authority to Change Rates). Docket Number 22928.

The Application: Entergy Gulf States, Inc. (EGS) filed the above referenced application to revise its fixed fuel factor, in compliance with the commission's final order in Docket Number 20150. EGS asserts that its revised fixed fuel factors are consistent with the methodology approved in Docket Number 20150. EGS requests interim approval of its Schedule FF, no later than August 28, 2000, so that the revised fixed fuel factor may be included in EGS' September billing. EGS' proposed fixed fuel factor revision would increase its retail fuel and purchased power revenues by approximately $93.0 million, or 31.5% on an annual basis, effective September 2000 through February 2001. The proposed fixed fuel factors, differentiated by voltage level, are as follows per kilowatt-hour: Secondary Voltage - $3.1370; Primary Voltage - $3.0469; 69kV/138kV - $2.9196; and 230kV - $2.8675. The application, if approved, will affect all Texas retail customers of EGS to which fuel factors apply.

Persons who wish to intervene in the proceeding or 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 telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989.

TRD-200006042
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 28, 2000

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on August 25, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Reflex Communications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 22961 before the Public Utility Commission of Texas.

Applicant intends to provide a wide range of broadband, integrated video, voice and data services to residential and business customers.

Applicant's requested SPCOA geographic area includes the area currently served by all incumbent local exchange companies throughout the state of Texas.

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 no later than September 13, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200006053
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 29, 2000

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 23, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of IQC, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 22941 before the Public Utility Commission of Texas.

Applicant intends to provide local and long distance services.

Applicant's requested SPCOA geographic area includes the area served by all incumbent local exchange companies throughout the state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than September 13, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200005960
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 24, 2000

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on August 24, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Matrix Datacom, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 22955 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 KBPS, Fractional T1, and long distance services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at P.O. Box 13326, Austin, Texas 78711-3326 or call the commission's Office of Customer Protection at (512) 936-7120 no later than September 13, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200006018
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 28, 2000

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Notice of Application Pursuant to P.U.C. Substantive Rule §26.208

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on August 23, 2000, pursuant to P.U.C. Substantive Rule §26.208 for approval of a tariff correction.

Tariff Title and Number: Application of Central Telephone Company of Texas, Inc. doing business as Sprint to Revise the General Customer Services Tariff, Pursuant to P.U.C. Substantive Rule §26.208. Tariff Number 22943.

The Application: Central Telephone Company of Texas, Inc. doing business as Sprint's (Sprint) purpose of this administrative filing is to withdraw from offering the Network Services Packages of Advantage and In Touch With SignalRing ® to new subscribers and grandfather to existing customers. These Network Services Packages are optional services

Persons who wish to comment upon the action sought or intervene in this proceeding should contact the Public Utility Commission of Texas on or before October 6, 2000 at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection 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 (toll-free) 1-800-735-2989. Please reference Tariff Number 22943.

TRD-200006016
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 28, 2000

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Notice of Application Pursuant to P.U.C. Substantive Rule §26.208

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on August 23, 2000, pursuant to P.U.C. Substantive Rule §26.208 for approval of a tariff correction.

Tariff Title and Number: Application of United Telephone Company of Texas, Inc. doing business as Sprint to Revise the General Exchange Tariff, Local Exchange Tariff, Pursuant to P.U.C. Substantive Rule §26.208. Tariff Number 22944.

The Application: United Telephone Company of Texas, Inc. doing business as Sprint's (Sprint) purpose of this administrative filing is to withdraw from offering the Network Services Packages of Advantage and In Touch With SignalRing ® to new subscribers and grandfather to existing customers. These Network Services Packages are optional services

Persons who wish to comment upon the action sought or intervene in this proceeding should contact the Public Utility Commission of Texas on or before October 6, 2000 at P.O Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection 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 (toll-free) 1-800-735-2989. Please reference Tariff Number 22944.

TRD-200006017
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 28, 2000

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Notice of Revisions to Certificate of Operating Authority/ Service Provider Certificate of Operating Authority Protective Order

Notice is given to the public of the filing on August 25, 2000, with the Public Utility Commission of Texas (commission) of proposed revisions to the Certificate of Operating Authority/Service Provider Certificate of Operating Authority (COA/SPCOA) Protective Order.

Project Title and Number: Project to Revise Protective Order for COA/SPCOA Applications, Docket Number 22776 before the Public Utility Commission of Texas.

The proposed revisions which include elimination of dual classification of confidential material and revisions to update changes made in open record laws.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at P.O. Box 13326, Austin, Texas 78711-3326 or call the commission's Office of Customer Protection at (512) 936-7120 no later than September 15, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. A copy of the proposed revisions are available through the commission's Central Records or at the commission's web site at http://www.puc.state.tx.us.

TRD-200006019
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 28, 2000

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Public Notice of Amendment to Interconnection Agreement

On August 18, 2000, Northpoint Communications Incorporated and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §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) (PURA). The joint application has been designated Docket Number 22926. 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 22926. 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 September 19, 2000, 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 Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22926.

TRD-200006013
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 28, 2000

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Public Notice of Amendment to Interconnection Agreement

On August 18, 2000, Southwestern Bell Telephone Company and Texas Network Communications, Inc. doing business as TXNet, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §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) (PURA). The joint application has been designated Docket Number 22932. 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 22932. 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 September 19, 2000, 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 Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22932.

TRD-200006015
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 28, 2000

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Public Notice of Amendment to Interconnection Agreement

On August 22, 2000, Southwestern Bell Telephone Company and DSLnet Communications, LLC, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §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) (PURA). The joint application has been designated Docket Number 22942. 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 22942. 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 September 21, 2000, 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. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22942.

TRD-200006050
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 28, 2000

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Public Notice of Amendment to Interconnection Agreement

On August 23, 2000, 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 §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) (PURA). The joint application has been designated Docket Number 22948. 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 22948. 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 September 21, 2000, 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. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22948.

TRD-200006046
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 28, 2000

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Public Notice of Interconnection Agreement

On August 17, 2000, Southwestern Bell Telephone Company and NationNet Communications Corporation collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §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) (PURA). The joint application has been designated Docket Number 22922. 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 22922. 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 September 19, 2000, 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;

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 Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22922.

TRD-200006012
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 28, 2000

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Public Notice of Interconnection Agreement

On August 23, 2000, Sprint Spectrum, LP and AllTel Communications Service Corporation, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §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) (PURA). The joint application has been designated Docket Number 22947. 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 22947. 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 September 21, 2000, 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. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22947.

TRD-200006047
Rhonda Dempsey
Rules Coordinator
Public Utlity Commission of Texas
Filed: August 28, 2000

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Public Notice of Interconnection Agreement

On August 23, 2000, Southwestern Bell Telephone Company and UTEX Communications Corporation, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §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) (PURA). The joint application has been designated Docket Number 22949. 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 22949. 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 September 21, 2000, 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. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22949.

TRD-200006045
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 28, 2000

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Public Notice of Interconnection Agreement

On August 23, 2000, United Telephone Company of Texas, Inc. doing business as Sprint, Central Telephone Company of Texas doing business as Sprint, and AT&T Wireless Services, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §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) (PURA). The joint application has been designated Docket Number 22946. 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 22946. 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 September 21, 2000, 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. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22946.

TRD-200006048
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 28, 2000

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Public Notice of Interconnection Agreement

On August 23, 2000, Southwestern Bell Telephone Company and HJN Telecom, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under §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) (PURA). The joint application has been designated Docket Number 22945. 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 22945. 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 September 21, 2000, 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. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22945.

TRD-200006049
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: (512) 936-7308

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Public Notice of Interconnection Agreement

On August 23, 2000, San Antonio MTA, LP doing business as Verizon Wireless and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under §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) (PURA). The joint application has been designated Docket Number 22953. 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 22953. 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 September 21, 2000, 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. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22953.

TRD-200006043
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 28, 2000

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Public Notice of Interconnection Agreement

On August 23, 2000, Dallas MTA, LP doing business as Verizon Wireless and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under §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) (PURA). The joint application has been designated Docket Number 22952. 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 22952. 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 September 21, 2000, 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. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22952.

TRD-200006044
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 28, 2000

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Public Notice of Interconnection Agreements

On August 18, 2000, Pathwayz Communications, Inc. and Verizon Southwest, collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under §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) (PURA). The joint application has been designated Docket Number 22927. 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 22927. 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 September 19, 2000, 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 Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22927.

TRD-200006014
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 28, 2000

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Public Notice of Workshop Relating to Stranded Cost Recovery of Environmental Cleanup Costs

The Public Utility Commission (commission) will be conducting a workshop in conjunction with Project Number 21406, involving development of P.U.C. Substantive Rule §25.261 relating to Stranded Cost Recovery of Environmental Cleanup Costs, on September 21, 2000. The purpose of the workshop will be to develop a methodology for calculating the impact of potential future environmental regulations on the cost of retrofitting an electric generating facility. The workshop is scheduled for 9:30 a.m. on Thursday, September 21, 2000, in the Commissioner's Hearing Room, 7th Floor, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Any changes in the scheduled date and time for the meeting will be posted on the commission's website.

The commission anticipates that a draft methodology for calculating the impact of potential future environmental regulations on the cost of retrofitting an electric generating facility will be posted by commission staff on the commission's website on or before September 15, 2000, to allow interested parties to review staff's proposal prior to the workshop. The commission anticipates that after the workshop, a draft methodology for calculating the impact of potential future environmental regulations on the cost of retrofitting an electric generating facility will be posted on the commission's website for further review and comment. Interested persons are advised to check the commission's website for details on how and when to submit written comments on this draft methodology. The commission anticipates that the comment period on the draft methodology will be relatively short. Currently, the commission anticipates that it will consider approval of a methodology for calculating the impact of potential future environmental regulations on the cost of retrofitting an electric generating facility at the October 5, 2000, open meeting.

All references to the commission's website in this notice refer to www.puc.state.tx.us/rules/rulemake/21406/21406.cfm. Individuals who do not have Internet access may contact Brian Almon at (512) 936-7355 for information regarding the matters discussed in this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200006032
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 28, 2000

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Texas Council on Purchasing from People with Disabilities

Memorandum of Agreement between the Texas Council on Purchasing from People with Disabilities and TIBH, Industries, Inc. - Approved Version

ARTICLE I.

A. PURPOSE OF AGREEMENT The purpose of this agreement is to define the relationship between the Council and a CNA in the implementation of this program, to further the State's policy of encouraging and assisting persons with disabilities to achieve maximum personal independence by engaging in useful and productive work. [Human Resources Code, §122.001]

B. DESIGNATION AS A CENTRAL NONPROFIT AGENCY

The Council under its statutory authority hereby designates TIBH as the Central NonProfit Agency (CNA) for the purposes of this agreement subject to the terms and conditions of the contract and in accordance with §122.019 of the Human Resources Code. As the designated CNA, TIBH shall carry out the duties of this agreement.

C. CONFLICT OF INTEREST

1. No member of theTIBH Board of Directors or staff shall receive any personal or financial benefit from any vendor or manufacturer or manufacturer's representative that sells a product used by a Community Rehabilitation Program (CRP); nor shall any Board or staff member derive any benefit directly or indirectly from materials or supplies used by a CRP or any product or service produced by a CRP. It shall not be a conflict of interest or violation of the foregoing policy for a CNA Board member to receive normal and reasonable compensation or salary for actual services as director or employee of a CRP.

2. TIBH shall disclose any financial or family relationships which may create the appearance of a conflict of interest. Board members may not appoint or vote for any person related to that individual within the third degree of consanguinity (related by blood) or the second degree of affinity (related by marriage) to any paid position at the CNA. All

actual or potential conflicts shall be disclosed to the Council at the next regular meeting of the Council.

D. NON-DISCRIMINATION

It is agreed that the Council and TIBH shall not discriminate and shall not permit discrimination in the provision of services, benefits, or products either by them or by any participant in this program on the basis of race, sex, color, national origin, age, religion, or disability.

E. CONFIDENTIALITY OF INFORMATION

The Council and TIBH agree that all duties and activities performed under this agreement shall conform with any applicable confidentiality and statutory requirements, subject to the Public Information Act.

ARTICLE II.

A. DUTIES OF THE COUNCIL

1. The Council shall determine the fair market price of all products and services manufactured or provided by persons with disabilities for sale to the State. [Human Resources Code, §122.003]

2. The Presiding Officer of the Council shall appoint a three member Pricing Subcommittee to review data used to determine the fair market price. The subcommittee shall make recommendations to the full Council concerning fair market price for products and services. [Human Resources Code, §122.007 (b)]

3. The Council shall revise prices as necessary to reflect changes in the market place. Such revisions may be upward or downward to reflect changing market conditions. [Human Resources Code, §122.007 (c)]

4. The Council may make rules regarding other matters related to the State's use of products and services of persons with disabilities. [Human Resources Code, §122.013]

5. The Council shall adopt the form for reporting of any products or services which are purchased under the exception provisions of Human Resources Code, § 122.016.

6. The Council shall prepare information of consumer interest about the Council and describe the procedures by which complaints are filed and resolved with the Council. The information shall be made available to the general public and State agencies. [Human Resources Code, §122.020 (a)]

7. The Council shall keep an information file about each complaint filed relating to a product or service of a CRP. [Human Resources Code, §122.020 (b)]

8. The Council shall notify all parties of the status of any complaint at least quarterly until resolution unless such notice would jeopardize an undercover investigation. [Human Resources Code, §122.020 (c)]

9. The Council shall on or before November the 1st, of each year, file a report with the Governor, the Speaker of the House, and the LT. Governor. The report shall include:

a. Accounting of all funds received and disbursed by the Council;

b. The number of persons with disabilities, according to their type of disability, participating in the program;

c. The amount of annual wages paid to person participating in the program, including disabled and non-disabled persons;

d. Summary of the sale of products and services offered by CRPs;

e. List of products and services offered by CRPs; and

f. The geographic distribution of the CRPs. [Human Resources Code, §122.022]

10. The Council may cooperate with the Texas Department of Criminal Justice - Institutional Division to accomplish the purposes of the program. [Human Resources Code, §122.010]

11. The Council may adopt procedures, practices, and standards used for Federal programs similar to the State program. [Human Resources Code, §122.011]

12. The Council shall review all applications for selection of suitable products or services for sale to the State. It shall be the duty of the General Services Commission to develop or adopt specifications for the products or services determined by the Council to be feasible for production or delivery by persons with disabilities. [Human Resources Code, §122.014]

13. The Council may suspend awarded contracts for nonperformance by CRPs in accordance with 40 TAC Texas Administrative Code, § 189.10.

14. The Council shall obtain from TIBH a list of suitable products and services offered for sale to the state which shall contain at least - 1. delivery schedule, 2. freight, and 3. packaging, and cause the same to be published in the *Texas Register* at least semiannually.

15. The Council shall cause the publication and distribution of a catalog of all products and services produced and/or provided by persons with disabilities.

16. The Council shall annually review TIBH's budget and programmatic performance and objectives in accordance with rules adopted by the Council. [Human Resources Code, § 122.019(c)]

ARTICLE III.

A. DUTIES OF THE CENTRAL NONPROFIT AGENCY

1. TIBH shall facilitate the distribution of orders among CRPs assisting persons with disabilities. [Human Resources Code, §122.019 (a)(2)]

2. No later than September 15th of each year, TIBH shall submit a draft of the Annual Report to the Council for review and comment. The reporting period covered shall be September 1 through June 30. TIBH shall provide such information as necessary for the Council to submit its required report to the Governor, Lt. Governor, and Speaker of the House. The presiding officer of the Council shall execute the final report sent to the Governor, Lt. Governor and Speaker of the House. [Human Resources Code, §122.022(a)]

3. TIBH shall be responsible for the publication of catalogs and/or updates of products and services available for sale to the state. This catalog will be utilized to fulfill the Council's requirement for publication of a list of products and services in the *Texas Register*. The catalog shall be distributed to all interested parties.

4. TIBH shall assist the CRPs in the research and development of suitable products and services and submit them to the Pricing Subcommittee for review and recommendation to the Council. No product or service shall be considered without obtaining specifications which have been developed by the General Services Commission or are based on commercial or federal specifications. [Human Resources Code, §122.014, §122.019(a)(1), and (b)(3)]

5. TIBH shall be responsible for the overall marketing of the selected products and services to the state and its political subdivisions for the purpose of promoting the program. [Human Resources Code, §122.019 (b)(2)]

6. TIBH shall provide assistance to community rehabilitation programs regarding solicitation and negotiation of contracts for qualified products and services for participating CRPs. [Human Resources Code, §122.019(b)(1)]

7. TIBH shall provide administrative, educational, marketing and accounting assistance to CRPs when requested by the CRP or when such assistance is directed by the Council or when the need for such assistance is obvious to TIBH. [Human Resources Code, §122.019 (b)(6) and (7)]

8. TIBH shall submit its budget to the Council for review and approval of its management fee. In accordance with Human Resources Code, §122.019(c) and (d), the designated central nonprofit agency will provide to the Council, subject to the Texas Public Information Act, [Government Code, Chapter 522] the following for services provided herein:

(1) quarterly reports of sales of products or services, wages paid and hours worked by people with disabilities;

(2) at least once a year, and prior to any review and/or renegotiation of the contract;

(a) an updated marketing plan.

(b) a proposed annual budget with estimated sales, commissions, and expenses.

(c) a program budget with details on how the expected revenue and expenses will be allocated to directly support and expand the state use program and other programs that expand direct services and/or the enhancement of employment opportunities for people with disabilities.

(d) latest audited annual financial statement.

(3) records in accordance with Human Resources Code, 122.009(a) for audit purposes.

ARTICLE IV.

The maximum management fee rate charged by a central nonprofit agency for its services must be computed as a percentage of the selling price of the product or the contract price of a service, must be included in the selling price or contract price, and must be paid at the time of sale. The management fee rate must be approved by the council. [Human Resources Code, §122.019(e)] A percentage of the management fee described by Subsection (e) shall be paid to the council. The percentage shall be set by the council in the amount necessary to reimburse the general revenue fund for direct and reasonable costs incurred by the commission in administering its duties. (Human Resources Code, §122.019(f)

ARTICLE V.

A. ADDITIONAL DUTIES OF THE CNA AND THE AUTHORITY TO CARRY OUT THESE DUTIES DELEGATED BY THE COUNCIL

1. TIBH shall recruit and assist community rehabilitation programs in developing and submitting applications for the selection of suitable products and services. CRPs whose applications are not adopted will be advised of the appeal process. (Human Resources Code, §122.019(a)(1))

2. TIBH shall provide assistance to CRPs regarding the solicitation and negotiation of contracts.

3. TIBH shall require annual business reports from the participating CRPs demonstrating qualifications to continue participating under this program. Additional reports shall be provided when requested by the Council or its subcommittees.

4. TIBH may temporarily suspend any CRP contract due to poor quality, non-performance, delivery problems, non-compliance, or any other breach of contract or violation of the rules applicable to this program subject to appeal by the CRP to the Council.

5. TIBH is authorized to receive payments from the agencies for products and services provided by the CRPs. TIBH shall adopt a goal to pay CRPs within 14 to 21 days for products and services delivered or performed according to their contracts.

6. TIBH shall assist CRPs in resolving any complaints filed with regard to quality, quantity, timeliness, or delivery regarding products or services.

7. TIBH shall assist the CRPs in the continued development and improvement of products and services offered for sale to the state or its political subdivisions.

8. TIBH shall notify the Council quarterly of any additions or deletions to the current listing of approved CRPs.

9. TIBH shall provide the Council information relating to completed contracts, approval, suspension or reinstatement proceedings, summary data of CRP business reports required in Article V.A.3. to ensure program compliance, and any other relevant data so requested by the Council to carry out the intent of the program.

10. TIBH shall administer and coordinate the normal day-to-day operations of the program by acting as the central facilitating agency between the CRPs, the Council, and all purchasers of products and services available in the program.

11. TIBH shall recruit such new CRPs and shall provide additional opportunities for existing CRPs to continue the program or seek new opportunities for its expansion.

12. TIBH shall cooperate with the Texas Department of Criminal Justice - Institutional Division in the implementation and operation of this program.

13. TIBH shall use all reasonable effort to insure that all data presented to the Council to establish a fair market price reflects the true and accurate costs to produce the proposed or existing product or service.

14. TIBH shall support out placement services and supported employment services.

ARTICLE VI.

A. ENTIRE AGREEMENT

The agreement and executed amendments, if any, constitute the entire agreement of the parties concerning the subject matter hereof and all prior and contemporaneous understandings, whether written, or oral are merged herein.

B. AMENDMENTS

The terms and conditions of the contract, amendments, modifications, or other documents submitted by either party which conflict with, or in any way purport to amend or add to any of the terms and conditions of the contract are specifically objected to by the other party and shall be of no force or effect, nor shall govern in any way the subject matter hereof, unless set forth in writing and signed by both parties.

C. CONTRACT ADMINISTRATORS

1. The Contract Administrator for the Council shall be the Coordinator to the Council. TIBH may direct all questions and requests to the Administrator. The address and fax number is as follows: _____

_____

_____

2. The Contract Administrator for TIBH shall be _____. The Council may direct all questions and requests to the Administrator. The address and fax number is as follows: _____

D. CONTRACT TERM

The agreement shall commence, September 1, 2000 and shall end on August 31, 2002.

E. EFFECTIVE DATE This agreement is effective as of the date when the last party executes the agreement.

TRD-200006004
Julie King
Legal Counsel
Texas Council on Purchasing from People with Disabilities
Filed: August 25, 2000

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Texas Department of Transportation

Request for Qualifications - Aviation

The Airport Sponsors listed below, through their agent, the Texas Department of Transportation (TxDOT), intend to engage Aviation Professional Engineering Firms for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT, Aviation Division will solicit and receive qualifications for professional engineering design services as described in the project scope for each project listed below:

Airport Sponsor: City of Beeville, Beeville Municipal Airport. TxDOT Project No.: 0116BEVLE. Project Scope: Provide engineering/design services to rehabilitate and mark Runway 12-30, taxiway to Runway 12, and partial parallel taxiway; rehabilitate turnaround at Runway 30 end; reconstruct hangar access taxiway; construct T-hangar access taxiway; rehabilitate T-hangar apron; reconstruct apron; install hold signs and precision approach path indicator-2 for Runway 12-30 at the Beeville Municipal Airport; Project Manager: John Wepryk.

Airport Sponsor: City of Brady, Curtis Field. TxDOT Project No.: 0123BRADY. Project Scope: Provide engineering/design services to extend Runway 17-35 at the 17 end; rehabilitate and mark Runway 17-35; construct and mark parallel taxiway to Runway 17; rehabilitate stub taxiway, hangar access taxiway, and apron; extend medium intensity runway lights at Runway 17 end; relocate precision approach path indicator-2 at Runway 17 end; relocate and install new fencing; install game-proof fencing; construct agricultural pad and agricultural pad access road; install erosion/sedimentation controls at Curtis Field. Project Manager: Harry Lorton

Airport Sponsor: City of Center, Center Municipal Airport. TxDOT Project No.: 0111CENTR. Project Scope: Provide engineering/design services to rehabilitate and mark Runway 17-35; rehabilitate partial parallel, stub taxiways, and hangar access taxiways; reconstruct/realign apron access taxiway; rehabilitate and expand apron; and install apron drainage improvements Center Municipal Airport. Project Manager: Harry Lorton.

Airport Sponsor: City of Dimmitt, Dimmitt Municipal Airport. TxDOT Project No. 0105DIMIT. Project Scope: Provide engineering/design services to rehabilitate and mark Runway 1-19; construct turnaround Runway 19 end; rehabilitate and mark parallel taxiway to Runway 1; reconstruct taxiway to apron; reconstruct south T-hangar apron; rehabilitate and mark apron; install signage; install erosion/sedimentation controls Airport. Project Manager: Alan Schmidt.

Airport Sponsor: City of Floydada, Floydada Municipal Airport. TxDOT Project No. 0105FLODA. Project Scope: Provide engineering/design services to extend Runway 17-35 at the 17 end; reconstruct and widen Runway 17-35; reconstruct and widen turnaround at Runway 35 end; construct turnaround at Runway 17 end; mark Runway 17-35; replace and extend medium intensity runway light for Runway 17-35; reconstruct and widen stub taxiway; rehabilitate hangar access taxiways and apron; install precision approach path indicator-2 for Runway 17-35, segmented circle, perimeter fencing, and erosion/sedimentation controls at Floydada Municipal Airport; Project Manager: Bijan Jamalabad.

Airport Sponsor: County of Franklin County; Franklin County Airport. TxDOT Project No. 0101MTVRN. Project Scope: Provide engineering/design to services to overlay and mark Runway 13-31; overlay taxiway and apron; install precision approach path indicator-2 Runway 31; and regrade runway shoulders at Franklin County Airport. Project Manager: Tony Krauss.

Airport Sponsor: Gillespie County, Gillespie County Airport. TxDOT Project No. 0114FRBRG. Project Scope: Provide engineering/design services to extend Runway 14-32; overlay Runway 14-32; displace threshold Runway 14 end; mark Runway 14-32; extend parallel taxiway to Runway 32 end; overlay and mark partial parallel taxiway; expand terminal apron; rehabilitate apron; extend medium intensity runway light Runway 14-32 at the Runway 32 end; install precision approach path indicator-2 Runway 14-32; relocate windcone and segmented circle; rehabilitate rotating beacon; relocate rotating beacon tower and electrical vault; install security fencing, game-proof fencing and erosion/sedimentation controls at the Gillespie County Airport. Project Manager: Harry Lorton.

Airport Sponsor: City of Gruver, Gruver Municipal. TxDOT Project No.: 0104GRUVR. Project Scope: Provide engineering/design services to rehabilitate and mark Runway 2-20, stub taxiway, and hangar access taxiway; and rehabilitate apron at the Gruver Municipal Airport. At the sponsor's discretion, the same engineer may be retained to provide engineering services for a subsequent project to replace low intensity runway lights with medium intensity runway lights; rehabilitate the rotating beacon; and install signage. Project Manager: Alan Schmidt.

Airport Manager: Jackson County, Jackson County Airport. TxDOT Project No.: 0113EDDNA. Project Scope: Provide engineering/design services to rehabilitate and mark RW 7-25 and TWs; and rehabilitate apron at the Jackson County Airport. Project Manager: John Wepryk.

Airport Sponsor: Jasper County, Jasper County Airport. TxDOT Project No.: 0120JASPR. Project Scope: Provide engineering/design services to construct parallel taxiway to Runway 18-36; drainage improvements for parallel taxiway extension; construct agricultural pad, taxiway to agricultural pad, access road to agricultural pad; and construct a hangar access taxiway, and apron expansion at the Jasper County Airport. Project Manager: John Wepryk.

Airport Sponsor: County of Live Oak, Live Oak County. TxDOT Project No.: 0116GWEST. Project Scope: Provide engineering/design services to rehabilitate and mark Runway 13-31; rehabilitate and mark taxiway and hangar access taxiway; rehabilitate apron; install precision approach path indicator-2 Runway 13-31; replace rotating beacon; and install game fence. Project Manager: John Wepryk.

Airport Sponsor: County of Mason, Mason County Airport. TxDOT Project No.: 0114MASON. Project Scope: Provide engineering/design and construction services to rehabilitate and mark Runway 17-35; reconstruct, widen, and mark stub taxiway; rehabilitate apron Mason County Airport. Project Manager: Alan Schmidt.

Airport Sponsor: County of Panola, Panola County Airport. TxDOT Project No.: 0119CARTH. Project Scope: Provide engineering/design

and construction services to rehabilitate and mark Runway 17-35; rehabilitate parallel and cross taxiways and apron; construct cross taxiway; install precision approach path indicator-4 Runway 17-35 and Runway signage; and replace rotating beacon Panola County Airport. Project Manager: Tony Krauss.

Airport Sponsor: County of San Patricio, T. P. McCampbell Airport. TxDOT Project No.: 0116INGLE. Project Scope: Provide engineering/design services to rehabilitate and mark Runway 13-31 and parallel taxiway; rehabilitate hangar access taxiway and apron; reconstruct apron; and install precision approach path indicator-2 Runway 13-31 T. P. McCampbell Airport. Project Manager: John Wepryk.

Airport Sponsor: City of Tulia and County of Swisher, City of Tulia/Swisher County Municipal Airport. TxDOT Project No.:0105TULIA. Project Scope: Provide engineering/design and construction services to rehabilitate and mark Runway 18-36, partial parallel taxiway, stub taxiway, and T-hangar access taxiways; reconstruct hangar access taxiway; and rehabilitate apron City of Tulia/Swisher County Municipal Airport. Project Manager: Alan Schmidt.

Interested firms shall utilize the **recently updated Form 439**, titled "Aviation Engineering Services Questionnaire," (**August 2000 version**) the forms may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, Phone number, 1-800-68-PILOT (74568). The form may be e-mailed by request or downloaded from the TxDOT web site, URL address http://www.dot.state.tx.us./insdtdot/orgchart/avn/avninfo/avninfo.htm Download the file from the selection "Engineer Services Questionnaire Packet". The form may not be altered in any way, and all printing must be in black. QUALIFICATIONS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. (**Note: This is a new form updated for this submission. The form is an MS Word, Version 7, document**).

Two completed, unfolded copies of Form 439 (August 2000 version), for **each** project of interest to the engineer must be postmarked by U. S. Mail by midnight September 20, 2000 (CDST). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDST) on September 22, 2000; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. September 22, 2000 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. The two pages of instructions should not be forwarded with the completed questionnaires. Electronic facsimiles will not be accepted.

NEW DELIVERY OPTION. Your form 439 may be e-mailed to TxDOT, at the following e-mail address:

AVNRFQ@dot.state.tx.us

E-mails must be **received by midnight September 20, 2000**. Received times will be determined by the marked time and date as the e-mail is received into the TxDOT network system. Please allow sufficient time to ensure delivery into the TxDOT system by the deadline. After receipt, you will be electronically notified of receipt by return e-mail. Return notification may be delayed by a day or two, as the forms will be opened and printed at the TxDOT offices. Before e-mailing the form, please confirm your completion of the form. TxDOT will directly print the transmittal and **not change the formatting or information contained on the form following receipt**. Signatures will not be required on electronically submitted forms. You may type in the responsible party's name on the signature line.

Each airport sponsor's duly appointed committee will review all professional qualifications and select three to five firms to submit proposals. Those firms selected will be required to provide more detailed, project-specific proposals which address the project team, technical approach, Historically Underutilized Business (HUB) participation, design schedule, and other project matters, prior to the final selection process. The final engineer selection by the sponsor's committee will generally be made following the completion of review of proposals and/or engineer interviews. Each airport sponsor reserves the right to reject any or all statements of qualifications, and to conduct new professional services selection procedures.

If there are any procedural questions, please contact Karon Wiedemann, Director, Grant Management, or the designated Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200006073
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: August 30, 2000

♦ ♦ ♦

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 24 (1999) is cited as follows: 24 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 "23 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 23 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. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), LOIS, Inc. (1-800-364-2512 ext. 152), 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).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 8, April 9, July 9, and October 8, 1999). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

Texas Register
Services

The *Texas Register* offers the following services. Please check the appropriate box (or boxes).

Texas Natural Resource Conservation Commission, Title 30

❑ **Chapter 285** $25 ❑ update service $25/year *(On-Site Wastewater Treatment)*
❑ **Chapter 290** $25 ❑ update service $25/year *(Water Hygiene)*
❑ **Chapter 330** $50 ❑ update service $25/year *(Municipal Solid Waste)*
❑ **Chapter 334** $40 ❑ update service $25/year *(Underground/Aboveground Storage Tanks)*
❑ **Chapter 335** $30 ❑ update service $25/year *(Industrial Solid Waste/Municipal Hazardous Waste)*

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